



Rev.Applc(MD) No.26 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date: 16.10.2024

CORAM

**THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN
and
THE HON'BLE MS.JUSTICE R.POORNIMA**

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Mariappan

... Review petitioner/ Respondent

Vs

1. The State rep. By
The Additional Chief Secretary,
Commercial & Registration (A1) Department,
Secretariat, Chennai – 9.
2. The Commissioner,
Sales Tax Department,
Elizhaham, Cheppakkam,
Chennai -5.
3. The Joint Commissioner,
Commercial Tax,
Reserve Line Road,
Palayamkottai,
Tirunelveli – 2.

..... Respondents / Appellants

PRAYER: Review Application filed under Order XLVII Rule 1 and 2
r/w. Section 114 of the Code of Civil Procedure, to review the order
dated 18.03.2021 in W.A.(MD)No.576 of 2020.



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For Review Petitioner : Mr.R.Lakshmanan

For Respondents : Mr.Veerakathiravan
Additional Advocate General
Assisted by Mr.J.K.Jeyaseelan
Government Advocate

ORDER

The respondent in W.A.(MD)No.576 of 2020 has filed the present Review Application, seeking review of the judgment of a co-ordinate Division Bench (*M.M.Sundresh,J. (as His Lordship then was) and S.Ananthi,J.*) dated 18.03.2021.

2. As a matter of fact, the Division Bench had pronounced a common order not only in Writ Appeal (MD)No.576 of 2020, but, in a string of other Writ Appeals, viz., W.A.(MD)Nos.578,580-582, 593,595,597,599-601,603 and 605 of 2020. We have not been placed by any record to show that the respondent in the other Writ Appeals have expressed grievance over the common judgment passed by the Division Bench and had filed similar Review applications.



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3. The only ground, which is urged, is that the learned counsel for the review applicant had placed reliance on the judgment of the Hon'ble Supreme Court reported in **2017-1-SCC-148 (State of Punjab and other V. Jagjit Singh and others)** and that though the Division Bench had referred to that particular Judgment and had also extracted paragraphs of that particular judgment, formulated their opinion on the basis of that particular judgment, three paragraphs of that judgment which were advantageous to the review applicant, namely, paragraph Nos.56, 57, 58 were not relied on by the Division Bench.

4. It is contended on behalf of the review applicant that if those three paragraphs had been taken into consideration, then, probably, the Division Bench would have considered the concept of “*equal pay for equal work*” and might have granted the same special time scale of pay to the review applicant, who was employed in the Commercial Tax and Registration Department, as is paid to similarly placed employees in the Education Department. It is thus the argument of the learned counsel for the review applicant that though the Division Bench had referred to the



above judgment in **Jagjit Singh** (*referred supra*), a few paragraphs of the judgment alone had been referred to and not other paragraphs.

5. Before proceeding further to consider whether such a ground can be raised to review a judgment of the Division Bench, it would only be appropriate to scope of review in accordance with the Madras High Court Writ Rules 2021.

6. In the Madras High Court Writ Rules 2021, which equally applies to the Madurai Bench also, Rule No.29 provides for Review of an order. Rule 29 is as follows:

“29. Review

(1) The Court may review its orders but no petition for review will be entertained except on the grounds mentioned in Order XLVII, Rule 1 of the Code of Civil Procedure, 1908.

(2) A petition for review shall be duly supported by an affidavit and shall be filed within 30 days from the date of the order sought to be reviewed and shall clearly set out the grounds for review. However, the



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Court may entertain a review petition filed thereafter, for sufficient cause.

(3) A petition for review shall be disposed of, as far as practicable, by the same Judge who delivered the order sought to be reviewed. The Court may either dismiss the petition or direct notice to the respondents.

(4) No petition to review an order made on a petition for review or on an order made in the main petition consequent to a review being allowed shall be entertained.”

7. A plain reading of the aforementioned stipulation, would indicate that no petition for review will be entertained, except on the grounds mentioned in Order 47 Rule 1 of the Code of Civil Procedure, 1908.

8. This naturally necessitates examination of the stipulations in Order 47 Rule 1 of the Code of Civil Procedure.



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9. Even before examining Order 47 Rule 1 of the Code of Civil Procedure, it would only be appropriate to examine Section 114 of the Code of Civil Procedure.

10. Section 114 of the Code of Civil Procedure is as follows:

“114. Review:

Subject as aforesaid, any person considering himself aggrieved

(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed by this Court, or (c) by a decision on a reference from a Court of Small Causes, may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.”

11. Order 47 Rule 1 of the Code of Civil Procedure is as follows:

“1. Application for review of judgment.

(1) Any person considering himself aggrieved-

(a) by a decree or order from which an appeal



is allowed, but from which no appeal has been preferred, (b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record of for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.



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Explanation-

The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.”

12. A plain reading of the aforementioned provisions makes it clear that a review would lie against a decree or order, against which, no appeal had been preferred or a decree or order from which no appeal is allowed or a decision of a reference of a Court of Small Cases on the following grounds:

(i) discovery of new and important matter of evidence, which was not produced at the time when the order was made;

(ii) on account of some mistake or error apparent on the face of record; and

(iii) any other sufficient reason.



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13. The Hon'ble Supreme Court had examined in extensio the scope of review vis-a-vis the scope of an appeal. It had been laid down by the Hon'ble Supreme Court that when application of mind is required to examine whether the decision under review was right or wrong or when an alternate view is possible or even when records already available had not been referred, review would not lie. To correct the order in such instances, an appeal alone would lie.

14. With respect to the only ground taken in this application, namely, that though the judgment of the Hon'ble Supreme Court in **Jagjit Singh** (*referred supra*) had been relied by the Division Bench, portions which, according to the learned counsel for the review applicant were advantages to the review applicant had not been referred to it would be useful to examine the dictum of law laid down by the Hon'ble Supreme Court in **Aribam Tuleshwar Sharmma v. Aribam Pishak Sharma and others (1974) 4 SCC 389**.

15. In that case, the Hon'ble Supreme Court had very clearly stated that merely because a document which formed part of the record



was not considered at the time of deciding the case, it cannot be categorized as a mistake or error apparent on the face of record. The Hon'ble Supreme Court had held as follows:

*“...The Judicial Commissioner gave two reasons for reviewing his predecessor's order. **The first was that his predecessor had overlooked two important documents Exs. A-1 and A-3 which showed that the respondents were in possession of the sites even in the year 1948-49 and that the grants must have been made even by then.** The second was that there was a patent illegality in permitting the appellant to question, in a single writ petition, settlement made in favour of different respondents. **We are afraid that neither of the reasons mentioned by the learned Judicial Commissioner constitutes a ground for review.** It is true as observed by this Court in **Shivdeo Singh v. State of Punjab [AIR 1963 SC 1909]** there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. **But, there are definitive limits to the exercise of the power of review.** The power of review may be exercised on the discovery of new and important*



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*matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, **it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate powers which may enable an appellate court to correct all manner of errors committed by the subordinate court.***”

(emphasis supplied)

16. In the above case, it had been observed by the Hon'ble Supreme Court that though it was complained that two important documents, Ex.A1 and A3, which reflected possession had not been considered in the judgment, the Hon'ble Supreme Court had held that even if the decision was erroneous, it could only be set aside by filing an appeal and could not be subjected to review.



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17. In the instant case, the Division Bench while examining the concept of 'equal pay for equal work', had as a matter of fact, observed in paragraph No.12, which is as follows:

“12. The principle of equal pay for equal work can only apply if there is complete and whole sale identity between two groups. Even, if the employees in the two groups doing identical work they cannot be granted equal pay, if there is no complete and wholesale identity. Pay scale can be different, if nature of jobs, responsibilities, experience, method of recruitment are different as per Judgement reported in 2007 (8) SCC 279 in S.C. Chandru Vs. State of Jharkhand.”

18. Further, in paragraphs Nos. 13 and 14, the Division Bench had observed and held as follows:

“13. Fixation of pay scale is a delicate mechanism which requires various consideration including financial capacity, responsibility, educational qualification, mode of appointment, etc.

14. Further, subject, posts persons have to prove that they are doing all works what the reference



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posts persons doing and also they are having same responsibilities. Except, a letter dated, 29.01.2020 no other evidence to show that they are performing equal work. The respondents have not established that the duties and responsibilities of the posts held by them are similar, equivalent to those of the reference posts.”

19. There had been a specific reference to the judgment of the Hon'ble Supreme Court reported in **2017-1-SCC-148 (State of Punjab and others V Jeggit Singh and others)**, in paragraph No.17 of the order, which is as follows:

” 17. The Judgment reported in 2017, SCC, 148, State of Punjab and others Vs. Jeggit Singh and others, clearly hold that equal work to be established by the subject posts with reference posts. In the case on hand no pleadings. In the case on hand, no pleadings and no proof for equal work and responsibilities are proved by the respondents/petitioners.”

20. It is thus seen that the issue now canvassed on behalf of the review applicant had actually been considered by the Division Bench.



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The Division Bench had after referring to the judgment referred by the learned counsel for the review applicant thought it fit to pass a particular order. It is not that they had omitted to refer to the said judgment. They had referred to the passages, which, according to the Division Bench were relevant to the facts and circumstances of the case. The argument that further paragraphs or further observations should have been relied on is a hypothetical argument and cannot be countenanced in a review application.

21. In paragraph No.19, the Division Bench had also held as follows:

“19. Each and every case should be decided on its own merits. In the case on hand, the Writ petitioners have not proved the main criteria that is they are doing equal work. Only the employer has rights to decide the salary. However, the Government can consider the representations of the writ petitioners, considering the present cost of living. Though, the learned Single Judge of this Court gone through the Judgment of Apex Court and pass an Order in favour



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of the Writ petitioners, the ratio and principles are not applicable to this case.”

22. The learned counsel for the review applicant stated that since notice had been directed earlier in the Review Application, the Review Application must automatically be allowed. We are not able to agree with such a contention.

23. The Division Bench had very categorically held that each and every case should be decided on its own merit. They had also observed that the writ petitioners who also include the review applicant herein had not proved the main criteria that they are doing equal work. The learned counsel for the review applicant vehemently argued that the review applicant is also doing the same work as those who are employed in Education Department. That is an issue on fact which has to be examined and cannot be presumed or assumed.

24. The one analogy which this Court can draw is the work discharged by a Steno-Typist or Personal Assistant to the District



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Judiciary / the High Court, wherein, judgments are dictated and taken down in shorthand in pages after pages. A Steno-Typist in the office of a Collector would only be engaged in taking down dictation of letters of a few pages in a whole day. They cannot be said to discharge the same work, though they could be placed in the same category and same position. The work done is totally different. One is exhaustive, whereas the other is not so exhaustive. Therefore, there cannot be comparison of work of employees in two separate Departments.

25. No other point had been urged by the learned counsel for the review applicant. We do not agree that this is a fit case for review.

26. Accordingly, this Review Application stands dismissed.

No costs.

(C.V.K., J.) (R.P, J.)
16.10.2024

Index : Yes
Internet : Yes
NCC : Yes
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To

1. The Additional Chief Secretary,
Commercial & Registration (A1) Department,
Secretariat, Chennai – 9.
2. The Commissioner,
Sales Tax Department,
Elizhaham, Cheppakkam,
Chennai -5.
3. The Joint Commissioner,
Commercial Tax,
Reserve Line Road,
Palayamkottai,
Tirunelveli – 2.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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R.POORNIMA, J.

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