



Rev.Aplc(MD)No.94 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED:01.02.2024

CORAM

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MR.JUSTICE K.K.RAMAKRISHNAN**

**Rev.Aplc(MD)No.94 of 2023
and
C.M.P(MD)No.16042 of 2023**

- 1.The Secretary to Education Department,
Government of Tamil Nadu,
Fort St. George, Chennai – 9.
 - 2.The Director of Elementary Education,
College Road, Chennai – 6.
 - 3.The District Elementary Educational Officer,
Tanjore District.
 - 4.The Additional Assistant Elementary Educational
Officer,
Thirupanathal.
- .. Review Applicants/Appellants

Vs.

- 1.R.Muthian,
Middle School Headmaster,
Kasthiriba Gandhi Gurukulam,
Tanjore District – 609 804.



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2.The Secretary,
Kasthuriba Gandhi Gurukulam,
Aided Middle School, Dugli,
Thirupananthal, Tanjore – 609 804. .. Respondents / Respondents

PRAYER: Review Application filed under Order 41 Rule 1 & 2 r/w
Section 114 of C.P.C., to review the order dated 13.02.2023 passed by this
Court in W.A(MD)No.1408 of 2014.

For Applicants : Mr.D.Sadiq Raja,
Additional Government Pleader
For R-1 : Mr.S.N.Ravichandran

JUDGMENT

DR.G.JAYACHANDRAN,J.
and
K.K.RAMAKRISHNAN,J.

Review petition is filed by the State being aggrieved by the judgment of this Court dated 13.02.2023 made in W.A(MD)No.1408 of 2014 on the ground that the Hon'ble Supreme Court subsequently in *the State of Tamil Nadu & Others v. Nehru Middle School & Another* vide judgment dated 24.03.2023, had upheld the action of the State not approving the appointment of a Middle School Headmistress, who did not possess the minimum requirement of five years teaching experience.



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2. The learned Additional Government Pleader appearing for the State submitted that the first respondent herein, who was appointed as Headmaster in Kashthuriba Gandhi Gurukulam middle school, the second respondent herein on 15.02.1990 through employment exchange had no teaching experience of five years and therefore, his appointment was approved subject to the condition that he will be paid only the secondary grade pay till he possesses five years of teaching experience. Challenging the same, the first respondent filed W.P(MD)No.4319 of 2012 wherein the learned Single Judge relied upon the orders passed in identical case in R.Ulaganathan v. the Government of Tamil Nadu in W.P(MD)No.6691 of 2010, dated 07.01.2010 and in W.P(MD)No.20780 of 1992, dated 04.01.1999, wherein the plea of the writ petitioner to set aside the five years experience was allowed by setting aside the impugned order of the State and therefore, on parity the writ petition which was filed by the first respondent was also allowed.

3. Being aggrieved, the State preferred W.A(MD)No.1408 of 2014 and the same was also dismissed. But, however, the subsequent judgment



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rendered in Nehru Middle School's case, has settled the law wherein the Hon'ble Supreme Court has observed that such an appointment relaxing the requisite teaching experience and direction to pay lesser pay scale till teaching experience obtained, is untenable in law. Therefore, in view of the latter judgment, the order passed by this Court on 13.02.2023 allowing the writ petition filed by the first respondent has to be set aside and the writ appeal has to be allowed dismissing the writ petition.

4. The learned counsel appearing for the first respondent effected his argument on twofold. His first argument is focussed on the point that a review application cannot be entertained based on a subsequent judgment in view of explanation to Order 47 Rule 1 of C.P.C., which reads as below:

“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.”



In support of this argument, he relies upon the judgment in ***Shanti Devi v. State of Haryana and Others*** reported in ***(1999) 5 Supreme Court Cases 703.***

5. The second limb of his argument is that the review petition is not maintainable since the facts in the Nehru Middle School's case cited by the learned Additional Government Pleader is different from the facts of the case before this Court.

6. According to the learned counsel, the person who was appointed as Headmaster in the Nehru Middle School's case did not have the requisite five years teaching experience besides in the very same school, there were other eligible B.T., Teachers for promotion as Headmaster in the middle school. Ignoring their eligibility, the management tried to appoint the person directly without teaching experience which the Government resisted and denied. When this matter came up for consideration before the Supreme Court, the Supreme Court on facts found that the very appointment of a person without requisite teaching experience when eligible



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candidates in the school were available is untenable. Whereas in the case of the first respondent, there is no eligible candidate in the second respondent institute and taking note of the fact that the Government Order permitting relaxation of the experience, the first respondent was appointed in the year 1990. Whereas the subsequent G.O.Ms.No.932, Educational Department dated 15.09.1992, came to be passed only in the year 1992. By that time, the first respondent had been appointed, approved and was in service for more than two years. Therefore, the learned counsel for the first respondent submitted that when the facts are different, the judgment cannot be taken into account for reviewing the order passed much earlier and which has reached finality.

7. Furthermore, the learned counsel for the first respondent submitted that when similarly placed persons had already been granted the benefit of relaxation and monetary benefit, the judgment in respect of a person, who is not similarly placed, cannot be cited or relied to unsettle the judgment already rendered. In support of this argument, the learned counsel referred the dictum laid in *Kamalesh Verma v. Mayavati & Others* reported in



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2013 (8) SCC 320, which has culled out the principal when a Court can review its judgment.

8. This Court after giving anxious consideration to the rival submissions, though may not agree with the first limb of the argument made by the learned counsel for the first respondent, impressed upon the second limb of argument, namely, the judgment cited by the learned Additional Government Pleader rendered in Nehru Middle School's case, dated 24.03.2023, passed subsequent to the orders passed by this Court, which is the subject matter of the review, factually not similar to the case in hand and the difference makes the Court to hold the review petition not maintainable.

9. In Kamalesh Verma's case (cited supra), the Hon'ble Supreme Court while summarizing the principal in Paragraph No.20.2 has laid down when review will not be maintainable. For convenience sake, the said principle is extracted below:

"20.2. When the review will not be maintainable:

- i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.



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- ii) Minor Mistakes of inconsequential import.
- (iii) Review proceedings cannot be equated with the original hearing of the case.
- iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.
- v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.
- vi) The mere possibility of two views on the subject cannot be a ground of review.
- vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.
- viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.
- ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negated.”

10. We find that the learned Single Judge as well as this Court while disposing the matter, has gone through the facts of the case and record and being satisfied that the first respondent is entitled for the relief sought, had granted the relief as mentioned in the order. While plea to review the order is sought by the State, the plea should fall within anyone of the parameters stated in Kamalesh Verma’s case. However, we find no discovery of new



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fact or evidence. Neither we find error apparent on the face of the record nor we find any sufficient reason to review the order passed. The subsequent judgment cited which is factually correct and observation by the judgment of the Hon'ble Supreme Court, cannot be a reason to review the earlier order. Hence, the review petition is dismissed. No Costs. Consequently, connected Miscellaneous Petition is closed.

(G.J.,J.) (K.K.R.K.,J.)
01.02.2024

NCC : Yes / No
Index : Yes / No

PM

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