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Review Application No.40 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2025

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

Review Application No.40 of 2015

The Management,
Irudhukottai Primary Agricultural Co-operative Credit Society Ltd.,
Rep. By its Special Officer,
Irudhukottai,
Thenkanikottai,
Krishnagiri District.

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Salem.

2.G.Vijayakumar

... Respondents

Prayer: Review Application filed under Order 47 Rule 1 r/w Section 114 of C.P.C. to review the order passed in W.P.No.21443 of 2009 dated 09.08.2011 on the file of this Court.

For Petitioner : Mr.M.S.Palaniswamy

For Respondents : Labour Court [R1]
No appearance [R2]

Amicus Curiae : Mr.Balan Haridass

ORDER



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This Review Application has been filed by the petitioner seeking to review the order dated 09.08.2011 passed by this Court in W.P.No.21443 of 2009.

2. Review petitioner had filed a Writ Petition in W.P.No.21443 of 2009, seeking to quash the award dated 08.07.2009 in C.P.No.100 of 2008 passed by the 1st respondent/Labour Court and this Court, vide order dated 09.08.2011 dismissed the said writ petition. Aggrieved by the same, the petitioner has preferred a writ appeal before this Court in W.A.No.2294 of 2012 and the Division Bench of this Court, passed a judgment dated 07.11.2012, granting permission to the petitioner to file a review application. Hence, the petitioner has come up with this Review application.

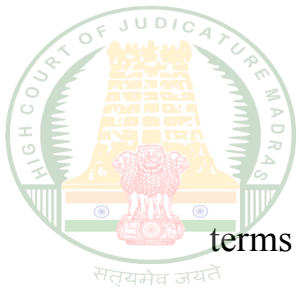
3. Learned counsel appearing for the review petitioner submitted that the present review application is filed on two grounds; first ground is that when there is a specific provision available for claiming subsistence allowance under the Payment of Subsistence Allowance Act, filing a claim petition u/s 33(C)(2) of the Industrial Disputes Act, 1947 (in short 'the ID Act') is not sustainable. Apart from that, when a person committed



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misappropriation, for which, a criminal case was registered against him in C.C.No.17 of 2004, in which, the 2nd respondent pleaded guilty and he was let-off under the provisions of the Probationers Offenders Act and when a person is convicted, he is not entitled to payment of subsistence allowance. The said two issues were not properly adjudicated by this Court, thereby the present review application is filed. Accordingly, he prays for allowing the review application.

4. *Per contra*, Mr.Balan Haridas, learned Amicus Curiae appointed by this Court on behalf of the 2nd respondent submitted that claiming payment of subsistence allowance u/s 33(C)(2) of the ID Act did not bar in view of the decision rendered by the Apex Court in the case reported in **2010 (7) SCC 635**, wherein the Apex Court specifically observed that incorrect label of the application and mentioning wrong provision neither confers jurisdiction nor denudes the court of its jurisdiction. Relief sought for, if falls within the jurisdiction of the court, it cannot be thrown out on the ground of its erroneous label or wrong mentioning of provision and the labour court entitled to entertain the petition and only the payment of gratuity is excluded in terms of the Gratuity Act and other beneficiary legislation including payment of subsistence allowance is amendable in



terms of Section 33(C)(2) of the ID Act. In respect of other ground raised by the petitioner that when the case was ended in conviction under the provisions of the Probationers Offenders Act on 13.04.2005, however, the present impugned order is passed on 08.07.2009 not on the ground of conviction, hence, referring the conviction order and denying the payment of subsistence allowance is not sustainable. Accordingly, he prays for dismissal of the review petition.

5. Heard both sides and perused the entire materials available on record.

6. The petitioner Management had raised two grounds before the Writ Court, viz., firstly that the payment of subsistence allowance can be claimed only before the authorities constituted under the Tamil Nadu Payment of Subsistence Allowance Act, 1981 and the Labour Court did not have jurisdiction to entertain the petition under Section 33-C(2) of the I.D. Act; secondly, that the second respondent workman was gainfully employed and therefore, he was ineligible to get subsistence allowance. The Writ Court has dealt with the aforesaid two contentions and held as against the petitioner Management. In the present review application, the



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petitioner Management has raised entirely two new grounds and under the guise of this review application, the petitioner wants to re-agitate the matter afresh, which is impermissible under law. Even otherwise, this review application cannot be entertained as the Labour Court has jurisdiction to entertain the application filed under Section 33C(2) in the light of the decision in *Vijaya Bank v. Shyamal Kumar Lodh reported in (2010) 7 SCC 635*.

7. Review is not an appeal in disguise. It is settled position of law that only if a patent error or mistake of law resulting in total miscarriage of justice is well identified, the aggrieved party is entitled to seek the relief of review and unless there is error apparent on the face of the record, review cannot be entertained.

8. A perusal of the grounds of review coupled with the submissions made by the petitioner Management have not disclosed any sufficient or tenable reasons to entertain the review petition. The Labour Court as well as the learned Single Judge of this Court, in extenso, considered the points raised on behalf of the review petitioner and chosen to reject the claim and this Court finds no reason to entertain the review application.



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12.03.2025

Index : Yes / No
Speaking order / Nonspeaking order
Neutral Citation Case : Yes / No
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To
The Presiding Officer,
Labour Court,
Salem.



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M.DHANDAPANI, J.

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