

(2011) 11 MAD CK 0301

In the Madras High Court

Case No : Review Application (MD) No. 52 of 2010 and M.P. (MD) No. 1 of 2010

K.K. Chockalingam

APPELLANT

Vs

The Commissioner and Director, Directorate of Technical Education, Guindy, Chennai-600025 and The Correspondent, Rukmani Shanmugam Polytechnic College, Varichiyur, Madurai-625020

RESPONDENT

Date of Decision : 29-11-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Constitution of India, 1950 — Article 226

Citation : (2011) 11 MAD CK 0301

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : A. Thirumurthy, for the Appellant; M. Govindan Special Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Justice K. Chandru

1. The review petitioner is the original writ petitioner. The review petitioner filed W.P. (MD) Nos. 11700 of 2009 and 13474 of 2009 before this Court. The review petitioner was working as an Assistant in the second respondent private Polytechnic College at Varichiyur, Madurai. In the first Writ Petition, the petitioner challenged the charge memos dated 29.06.2007 and 30.04.2008 and after setting aside those charge memos, he sought for a direction to comply with the request made by him vide request letter dated 10.10.2009. In the second Writ Petition, the petitioner sought for a Mandamus for bearing the third respondent therein in conducting further enquiry proceedings, pursuant to the enquiry notice.

2. Both Writ Petitions were dealt with and a common order was passed on 26.03.2010. The learned Judge, who heard the Writ Petitions, felt that the petitioner had no case for challenging the charge memos and the ground raised

by him that the charge memos were issued, after a considerable delay was rejected by the learned Judge. The learned Judge found that before framing a charge memo, the college had conducted a preliminary enquiry and thereafter, on the basis of materials, the charges were framed. Though the petitioner placed reliance upon a judgment of the Supreme Court in P.V.Mahadevan vs. M.D., Tamil Nadu Housing Board reported in 2005 (4) CTC 403 (SC), in support of his contention, the learned Judge distinguished the said judgment by stating that it is only in case of unexplained long delay and prejudicial is established, the charge memos can be questioned. But, in the present case on hand, there was no unexplained delay and, therefore, the learned Judge refused to interfere with the charge memos. The learned Judge also found that there was no irregularity or violation of the principles of natural justice in initiating disciplinary action and enquiry officer was also directed to give appropriate opportunities to the petitioner and if any documents asked for, which are relevant to the case, he was directed to comply with the same. The petitioner was not satisfied with the dismissal of the Writ Petitions and hence, he has filed the present Review Application.

3. The Review Application though was filed as early as on 07.06.2010, it is yet to be admitted. The ground raised in the review application was that the petitioner had reached the age of superannuation and, therefore, there was no ground to proceed with the enquiry and reliance was placed upon a judgment of this Court in N.M.Somasundaram vs. The Director General of Police and others reported in 1997 Writ L.R. 120 and State of Tamil Nadu vs. R.Karupiah, Inspector of Police and others reported in 2005 (2) MLJ 342. It is also stated by the petitioner that these judgments were not brought to the notice of the learned Judge at the time of argument and, therefore, the order of the learned Judge has to be reviewed. However, the petitioner's attempt, which now wakes up a new issue, that too in a Review Application, cannot be countenanced by this Court.

4. Even otherwise, the present question raised by the petitioner has been squarely answered by a Division Bench of this Court, presided by P.K.MISRA, J [as he then was], vide judgment in T.K.K.Tharmar vs. Registrar, Central Administrative Tribunal, Chennai reported in 2008 (3) MLJ 877. This Court, after referring to all the judgments of the Division Bench and also the other judgments of the Supreme Court in this regard, held that there is no bar in conducting the disciplinary proceedings even after retirement.

5. Further, the scope of the Review Application came to be considered by the Supreme Court in Union of India (UOI) Vs. Paul Manickam and Another, . Paragraph 19 of the said judgment may be usefully extracted below:

19. As noted supra, for the first time in the review application it was disclosed that the representation was made to the President of India and no representation was made to the State of Tamil Nadu or the Union of India who were arrayed in the writ petition as parties. This appears to be a deliberate attempt to create confusion and reap an undeserved benefit by adopting such dubious device. The

High Court also transgressed its jurisdiction in entertaining the review petition with an entirely new substratum of issues. Considering the limited scope for review, the High Court ought not to have taken into account factual aspects which were not disclosed or were concealed in the writ petition.....

6. Further, the Supreme Court in *Smt. Meera Bhanja Vs. Smt. Nirmala Kumari Choudhury*, held that the review application is maintainable only when there is an error apparent on the face of the record of the Court. The following passages found in paragraphs 8 and 9 of the said judgment may be usefully extracted below:

8. It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, CPC. In connection with the limitation of the powers of the court under Order 47, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court, in the case of *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma*¹, speaking through Chinnappa Reddy, J., has made the following pertinent observations: (SCC p. 390, para 3)

It is true as observed by this Court in *Shivdeo Singh v. State of Punjab*², there is nothing in Article 226 of the Constitution to preclude the 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 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 power which may enable an appellate court to correct all manner of errors committed by the subordinate court.

9. Now it is also to be kept in view that in the impugned judgment, the Division Bench of the High Court has clearly observed that they were entertaining the review petition only on the ground of error apparent on the face of the record and not on any other ground. So far as that aspect is concerned, it has to be kept in view that an error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on points where there may conceivably be two opinions. We may usefully refer to the observations of this Court in the case of *Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale*³ wherein, K.C. Das Gupta, J., speaking for the Court has made the following observations in connection with an error apparent on the face of the record: An

error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ.

(Emphasis added)

7. In the light of the above, there is no case made out for reviewing the order passed by this Court in W.P.(MD)No.11700 of 2009, dated 26.03.2010. Hence, the Review Application will stand dismissed. Consequently, the connected miscellaneous petition is closed. No costs.