
(2017) 04 MAD CK 0239
In the Madras High Court
Case No : 44 and 45 of 2015

N.Durairajan

APPELLANT

Vs

Government of Tamilnadu

RESPONDENT

Date of Decision : 07-04-2017

Acts Referred:

[Tamil Nadu Civil Services \(Discipline and Appeal\) Rules, 1955](#), Rule 23(1), Rule 36(1)

Citation : (2017) 04 MAD CK 0239

Hon'ble Judges : M.Venugopal, K.Kalyanasundaram

Bench : DIVISION BENCH

Advocate : M.Venugopal, K.Kalyanasundaram

Judgement

1. The Petitioner has preferred the present Review Petitions before this Court as against the Common Judgment dated 09.07.2013 in W.A.Nos.1760 and 1761 of 2011 passed by this Court. Preamble :

2. Earlier, this Court while passing the Judgment in Writ Appeal Nos.1760 and 1761 of 2011 (filed by the Petitioner as Appellant) on 09.07.2013 at Paragraph Nos.43 and 44 had observed the following:-

"43. Be that as it may, on a careful considerations of respective contentions and taking note of the fact that the Appellant's name could not be considered for being included in the panel list of Deputy Inspector of Survey for the year from 1996 to 2003, due to the pendency of punishments and as such, his name was deleted from 1996 list and therefore, he was rightly reverted to the cadre of Sub-Inspector of Survey in Dharmapuri District (in his parent unit), in the considered opinion of this Court. Also, it comes to be known that the Petitioner was provided with adequate opportunity to meet out the allegations levelled against him, as opined by this Court. Therefore, it could not be said that the principles of natural Justice were not adhered to.

44. That apart, the Enquiry Officer, who conducted the enquiry (after remand) by

the Order of the Appellate Authority dated 20.10.2006 was a different person than the one, who issued the Charge Memo. Moreover, the Appellant / Petitioner has not established to the satisfaction of this Court that the impugned orders in both the Writ Petitions have been passed by the Authorities concerned, in a malafide manner. Looking at from any angle, we come to an inevitable conclusion that the Learned Single Judge has rightly dismissed the Writ Petitions assigning cogent, coherent and convincing reasons. Consequently, the said order does not require any interference in the hands of this Court. Resultantly, the Writ Appeals fail."

and resultantly dismissed the Writ Appeals.

3. Apart from the above, this Court while dismissing the afore stated Writ Appeals had proceeded to observe the following:-

"...It is brought to the notice of this Court that in W.P.No.13760 of 2008, this Court, on 12.06.2008, granted Interim Stay and the Appellant continued to serve as Deputy Inspector of Survey and finally, attained the age of superannuation on 31.07.2009. As such the Appellant / Petitioner, by this time, would have received the monetary emoluments in the post of Deputy Inspector of Survey till his retirement. On peculiar facts and circumstances of the case, we direct the Respondents not to recover the monetary emoluments already received by him in the post of Deputy Inspector of Survey, as held by him till his retirement. Further, we direct the Respondents to settle the pensionary

benefits (if not already settled) of the Appellant / Petitioner in the post of Sub-Inspector of Survey to which post he was reverted (including the period of his service as Deputy Inspector of Survey till his retirement on 31.07.2009), within a period of six weeks from the date of receipt of a copy of this Judgment. Consequently, connected Miscellaneous Petition is closed."

Review Petitioner's Contentions:

4. The Learned Counsel for the Review Petitioner contends that the Petitioner became fully qualified and eligible for inclusion of his name in the Panel, for the year 2001 for promotion as Inspector of Survey and his name was omitted to be included in view of the very same disciplinary proceedings and punishments and even at that time, the Petitioner was allowed to continue as Deputy Inspector of Survey, but the Respondents had an vexatious endeavour to cite the very same punishment again to justify the Reversion of the Petitioner.

5. The Learned Counsel for the Petitioner urges before this Court that there is no rule empowering the 2nd and 3rd Respondents to initiate

suo motu Revision of Cancellation of Promotion of the Petitioner and that no permission was obtained from the Government in this regard. Unfortunately, this aspect of the matter was not taken note of by this Court at the time of passing the Common Judgment in W.A.Nos.1760 and 1761 of 2011.

6. Proceeding further, the Learned Counsel for the Petitioner puts forth a plea that there was no objection from any one making any claim in respect of the Petitioner's promotion as Deputy Inspector and therefore an "Order of Reversion" is an unwarranted one. Furthermore, no such claim can be made after a lapse of three years.

7. It is represented on behalf of the Petitioner that even assuming without admitting no "Order of Reversion" can be passed after a lapse of several years, especially when such promotion was not given based on any representation of the Petitioner. At this juncture, the Learned Counsel for the Petitioner brings it to the notice of this Court that the Petitioner was not only allowed to serve as "Deputy Inspector of Survey" for more than six years, but he was also deputed to undergo Management Training for "B" Class Officers at Anna Institute of Management, Chennai.

8. The Learned Counsel for the Petitioner projects an argument that this Court while passing a Common Judgment in W.A.Nos.1760 and 1761 of 2011 dated 09.07.2013 had failed to consider that the Petitioner was serving as Sub-Inspector of Survey at Hosur Municipality when the alleged irregularity was committed and further that the Tahsildar, Hosur was the custodian of the records and documents mentioned in the charge and without there being any adverse reports either from the Municipal Commissioner or Tahsildar (The Controlling Officers of the Petitioner) the act of the 5th Respondent in the issue of Charge Memo dated 28.01.1998 on the basis of records of the two authorities is an illegal one besides the same is without jurisdiction.

9. The Learned Counsel for the Petitioner strenuously proceeds to take a stand that the Assistant Director of Survey and Land Records, Dharmapuri / 5th Respondent had failed to appreciate the scope of the order dated 28.10.1996 of the Appellate Authority, according to which

the entire proceedings should have been commenced afresh with the issue of fresh charge memo etc., However, it is projected on behalf of the Petitioner that the 5th Respondent, had not adopted a "Proper Course" but simply passed a fresh order on the basis of an existing Enquiry Report and awarded same punishment.

10. The version of the Learned Counsel for the Petitioner is that this Court had failed to consider that the 2nd Respondent / Appellate Authority had not considered the relevant factors as specified in Rule 23(1) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and therefore, the Order dated 22.01.2009 of the Appellate Authority is clearly an unsustainable one.

11. Expatriating his submission, the Learned Counsel for the Petitioner takes an emphatic plea that this Court had not considered a vital fact that the Petitioner's request for change of enquiry officer at different cadre was not considered by the 3rd Respondent and that the 5th Respondent was allowed to proceed with the

enquiry which had caused prejudice being to the Petitioner. Respondents' submissions:

12. The Learned Additional Government Pleader for the Respondents submits that because of the punishments, the name of the Petitioner was not considered for the post of Deputy Inspector of Survey Panel in the year 1996 - 2008. Apart from that, the Review Petitioner / Appellant attained superannuation on 31.07.2009 and therefore he was not considered for the 2009 Year Deputy Inspector of Survey and Land Records Panel also.

13. The Learned Additional Government Pleader for the Respondents contends that the Petitioner / Appellant was not considered for inclusion in the original panel as there were certain punishments imposed on him and also due to the pendency of charges from the year 1996. Moreover, on the date of preparation of revised panel, viz., on 20.04.1998, there were certain punishments and charges were pending against the Review Petitioner.

14. The Learned Additional Government Pleader for the Respondents brings it to the notice of this Court that the name of the Petitioner / Appellant was wrongly included in the panel for Deputy

Inspector of Survey for the year 1996 without taking into account of his punishments.

15. The Learned Additional Government Pleader for the Respondents takes a plea that the Review Petitioner was not fit for promotion for the post of Deputy Inspector of Survey, which is a feeder category to the post of Inspector of Survey. Also that the Petitioner was in the habit of committing irregularities and several charges were framed against him.

16. The Learned Additional Government Pleader for the Respondents contends that the punishments mentioned by the Petitioner, which were quashed by this Court, were cancelled by the Appellate Authorities. But the Petitioner's name was not to be considered for the respective panel years for the post of Deputy Inspector of Survey because of the reason that there were other punishments and charges pending.

17. The Learned Additional Government Pleader for the Respondents submits that as per Rule 36(1) of the Tamil Nadu Civil

Services (Discipline and Appeal) Rules, the State Government and Other Departments may at any time on their or its own motion or otherwise take up "Revision" without any time limit.

18. The Learned Additional Government Pleader for the Respondents proceeds to state before this Court that just because the Petitioner was deputed to undergo Management Training for "B" Class Officers, he could not be continued as "Deputy Inspector of Survey" .

19. The Learned Additional Government Pleader for the Respondents informs this

Court that the Petitioner had received a sum of Rs.26,461/- on 15.02.2010 towards S.P.F., in respect of GPF, he received a sum of Rs.2,21,604/- on 18.02.2010 and further, he received a sum of Rs.1,76,287/- on 20.03.2015 towards his "Surrender Leave Salary" and that on 20.03.2017, a sum of Rs.1,79,348/- was paid to the Petitioner through ECS. Further, a sum of Rs.2,21,949/- was to be credited to the TNHB Account.

20. The Learned Additional Government Pleader for the Respondents takes a plea that in regard to the imposition of punishment by the 5th Respondent, the Petitioner preferred an Appeal before the 3rd

Respondent and that the 3rd Respondent had also appointed a new enquiry officer and after receipt of enquiry report, the 3rd Respondent affirmed the punishments imposed by the 5th Respondent.

21. The Learned Additional Government Pleader for the Respondents contends that while finalizing the "Appeal", the 2nd Respondent had considered the relevant ingredients of Rule 23(1) of Tamil Nadu Civil Service (Discipline and Appeal) Rules and therefore, the order dated 22.01.2009 is a valid one. Petitioner's Reply:

22. By means of a reply, the Learned Counsel for the Petitioner submits that as per Letter No.67652/S/2000-6 P&AR(S) Department dated 27.08.2003, the employees were awarded with "censure" ought not to be considered for the inclusion for the period of one year, but no such guidelines was in force as on the date of punishment in this case, viz., on 05.05.1995 or on the date of completion of one year on 04.05.1996 and as such, the said punishment cannot serve as an impediment for inclusion of the Petitioner's name in the panel for the year 1996.

23. It is represented on behalf of the Petitioner that the guidelines

mentioned in Letter No.67652/S/2000-6 P&AR(s) Department dated 27.08.2003 came into force only on 27.08.2003 and hence the same cannot be made applicable to a punishment awarded on 05.05.1995 for inclusion of Petitioner's name in the panel in the year 1996 (the Crucial date being 25.04.1996).

24. The Learned Additional Government Pleader for the Respondents contends that as per Letter No.28790/S2006-1, P&AR dated 05.07.2001, the punishment of stoppage of increment would take effect from the date on which the order was communicated. Moreover, the punishment of stoppage of increment for six months with cumulative effect was ordered on 26.03.2008 (currency period 01.10.2008 to 31.03.2009), the period of alleged occurrence does not come within five years and that the said punishment would be an impediment only for further promotion above the post of Deputy Inspector of Survey as the Petitioner was eligible for inclusion in the year 1996 panel itself. Legal Position on Review:

25. At the outset, this Court pertinently points out that the "Power to Review" is creation of statute. A Review is not an "Appeal" in disguise.

Moreover, a mere possibility of two views on the subject is not a reason for "Review". Also that a Court of Law has no inherent jurisdiction to Review its decision duly passed, but it can do so only when a statute authorises it to do so. Even a Court of Law cannot Review its Judgment merely on merits because it has come to a different conclusion on further arguments and further consideration. As a matter of fact, the purpose of Review Petition cannot be "Rehearing" with a view to find out whether a different conclusion on merits could be adopted.

26. It is to be noted that the ambit of the power of the Review in Law is very limited, viz., confined strictly to "Error Apparent on the Face of Record". Indeed, the "Review Proceedings" cannot be equated with the original hearing of the case and a Writ Petition / Writ Appeal cannot be reheard only on the ground that Law was not properly considered and applied. A "Review" is not permissible based on a reason that the decision is erroneous on the merits as per decision *Dolat Industries, Gonal V. Krishna Oil Industries, Jamnagar*, AIR 2002 Gujarat Page 91.

27. It cannot be gainsaid that a "Review" cannot be claimed or

merely asked for a fresh hearing or arguments or correction of an erroneous view taken earlier.

28. It is to be remembered that under the garb of Review, the High Court would not rehear the parties "On point of Law afresh". In short, rehearing of the matter on merits and re-appreciation of arguments / pleas raised by the parties in original order is not permissible in Review, as per decision *MCD V. Anil Prakash*, AIR 2007 (NOC) 1653 (Del .) (DB).

29. In this connection, this Court aptly points out that "Review" does not lie where there is no error apparent on the face of record. To put it succinctly, a decision / order erroneous in Law or on merits cannot be a ground for "Review" as per decision *Smt. Sushila & Another V. Rajbeer Singh & Another*, AIR 2007 (NOC) 1870 (M .P.) (DB).

30. If a litigant is aggrieved by any Judgment which in his understanding was not correctly decided as per Law or erroneously decided, then, such a plea of an argument may be agitated in Appeal before the Superior Court / Forum, but, certainly not in a Review Petition, in the considered opinion of this Court. Also that "Review" would not be

entertained to substitute the view already taken or for a fresh decision in the case. Discussions:

31. In so far as the Common Judgment in W.A.Nos.1760 and 1761 of 2011 dated 09.07.2013 passed by this Court (relating to the Petitioner / Appellant), this Court on going through the same does not find any apparent mistake / error on the face of record. In fact, the Petitioner in the present two Review Petitions obviously seek rehearing of the subject matter, which is not a justifiable one in the eye of Law because of the reason the ambit of "Review" is very restricted. A litigant is not entitled to seek a "Review of Judgment" just for the purpose of

rehearing and a fresh decision of the case. The Review Court cannot sit in an Appeal over its own Judgment / Order and rehearing of the matter is not possible in Law. Further, "Review" is an exception to the general rule and once an Order or Judgment signed or pronounced, it cannot be altered. Even the "Power of Review" is not to be exercised by a party as an alternative mode of an Appeal. Strictly speaking, "Review" and "Appeal" cannot go together. In fact, any endeavour, except an endeavour to correct an error apparent or an endeavour not rested on any ground set out in Order XXXVII of the Civil Procedure Code clearly

amounts to misuse of the liberty of a Litigant.

32. Besides this, the clear cut stand of the Respondents is that only because of the punishment, the name of the Petitioner / Appellant could not be considered for the post of Deputy Inspector of Survey Panel for the years 1996 - 2008 and in as much as he got superannuation on 31.07.2009, he was not considered for 2009 Year Deputy Inspector of Survey and Land Records Panel also.

33. Further, it transpires that since W.P.No.13760 of 2008 filed by the Revision Petitioner against his Order of Reversion from the post of Deputy Inspector of Survey to Sub Inspector of Survey was pending on the date of his superannuation, based on request of the Petitioner to grant him provisional pension and on the direction of the 3rd Respondent he was granted a provisional pension with effect from 01.08.2009 as per proceedings of the 4th Respondent dated 29.07.2010. Pursuant to the final orders of this Court dated 18.02.2011 in W.P.No.49661 of 2006, W.P.No.13760 of 2008 and W.P.No.348 of 2010, the 3rd Respondent issued orders on 23.12.2013 reverting the Petitioner from the post of Deputy Inspector of Survey to Sub Inspector of Survey and his pay was

fixed in the cadre of Sub Inspector of Survey and Land Records as per proceedings of the 4th Respondent dated 6.08.2014. Later the pension proposal was submitted to the Accountant General, which was admitted on 25.09.2014 and terminal benefits like SPF, GPF, Surrender salary were sanctioned and paid, even the DCRG of the Petitioner amounting to Rs.4,01,297/- was admitted by the Accountant General and finally based on the revalidated DCRG Orders, a bill was presented for Rs.4,01,297/- (out of Rs.4,01,297/-, the sum of Rs.1,79,348/- was paid to the Petitioner through ECS on 20.03.2017). According to the Respondents, sum of Rs.2,21,949/- in respect of the Petitioner is to be credited to the Tamil Nadu Housing Board Account. Disposition:

34. Be that as it may, on a careful consideration of the respective contentions and on an overall assessment of the entire conspectus of attendant facts and circumstances of the instant cases in an integral manner, this Court comes to an irresistible and inevitable conclusion that the Petitioner has not made out justifiable grounds for entertaining the present Review Petitions. Apart from that, this Court finds that there is /

there are no apparent errors on the face of record in the Common Judgment

dated 09.07.2013 in W.A.Nos.1760 and 1761 of 2011 passed by this Court. Also that it is to be noted that the "Power of Review" is not to be confused with an Appellate Power of a Court of Law. In fact an erroneous order / decision is not an "Error apparent on the face of Record". To put it precisely, a "Mistake" or an "Error apparent on the face of record" is one which is self evident and does not require a process of reasoning. That apart, "Rehearing" every matter under the guise of "Review" is not a matter of course. The matter which has attained finality cannot be re-opened, unless a clear case is made out. Besides this, in "Review", a Court of Law cannot rehear the subject matter in issue "Denovo". Further, a "Review" is impermissible on new ground. In short, a "Review Petition" has a limited role to play and the same cannot be permitted to act as an "Appeal" in disguise.

35. In as much as seeking "Review of a Judgment" is a serious step and it is just and proper only when there is a grave error or patent mistake or glaring omission crept in earlier judicious fallibility. As a matter of fact, in the considered opinion of this Court, a mere repetition of earlier, old, fresh or overruled pleas with a view to make an endeavour

to embark upon second innings over the already covered ground / grounds are hopelessly inadequate, insufficient and an otiose one for exercising the jurisdiction under "Review". Viewed in that perspective, the Review Petitions are devoid of merits. Consequently the Review Petitions fail. In fine, the Review Petitions are dismissed. No costs.