

(2013) 10 MAD CK 0225

In the Madras High Court

Case No : Review Application (MD) Nos.33 & 34 of 2013

Ponnammal

APPELLANT

Vs

Director of School Education

RESPONDENT

Date of Decision : 10-10-2013

Acts Referred:

Citation : (2014) 1 MadWN(Civil) 55

Hon'ble Judges : M. Jaichandren and M. Venugopal, JJ.

Bench : Division Bench

Advocate : G. Thalamutharasu, Advocate, for the Petitioner; V.R. Shanmuganathan, Special Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

M. Venugopal, J.—The Petitioners have preferred the present Review Petitions seeking permission of this Court to Review the Common Order passed by this Court in W.P.(MD) Nos.4170 & 4171 of 2011 dated 2.4.2013.

2. Earlier, this Court, on 2.4.2013, in W.P.(MD) Nos.4170 & 4171 of 2011 (filed by the Review Petitioners) in Paragraph Nos.7 & 8 has observed to the effect that:

"On notice, the Respondents have filed a Counter Affidavit before this Court, wherein it is specifically pointed out that the claim of the Petitioners for regularisation from the date of their appointment cannot be sustained, as per G.O.Ms. No.22 dated 28.2.2006. According to the Respondents, there is no illegality in regularising the sendees of the Petitioners in the posts, which are permanent posts available, as per the directions of this Court. Considering the Orders of this Court and G.O.Ms. No.22, no exception could be taken to the Orders passed by the Respondents on 29.7.2010, giving absorption and regularisation from 23.4.2010. Regarding the contentions made by the Respondents herein, it is an admitted fact that G.O.Ms. No.22, dated 28.2.2006, was only for regularisation of the Employees working in various Government Departments, on daily wages basis and, who have completed more than 10 years

of service as on 1.1.2006. The said G.O. has no reference at all as regards regularisation of part-time Employees. Regularisation has been done by the Government pursuant to the Orders of the Court. In the absence of any G.Os before this Court claiming, as a matter of right, regularisation from the date of appointment or expiry of one year, we do not find any justifiable ground to grant the relief sought for by the Petitioners. Apart from that, the question of regularisation would arise only in a sanctioned post which was fallen vacant and an Employee appointed on part-time basis could be accommodated under permanent service only thereafter. Considering the above, we do not find any justifiable ground to grant any relief to the Petitioners."

and resultantly, dismissed the Writ Petitions.

3. The learned Counsel for the Petitioners contend that the impugned Common Order passed by this Court in W.P.(MD) Nos.4170 & 4171 of 2011 dated 2.4.2013 suffers from an Error Apparent on the face of record, besides the same being against the probabilities of the case.

4. The learned Counsel for the Petitioners urges before this Court that the Review Petitioners, on an earlier occasion, filed W.P. No.9726 of 2006 for regularisation of the services and this Court, allowed the Writ Petition on 24.6.2008. As against the said Order dated 24.6.2008 passed in W.P. No.9726 of 2006, a W.A. No. 151 of 2009 was filed by the Respondents and the same was dismissed on 23.6.2009. Even the Petition (S) for Special Leave to Appeal (Civil)/2009 C.C. 18508-18509/2009 filed against the Judgment dated 23.6.2009 in W.A. Nos. 151 of 2009 & 225 of 2009 dismissed by the Honourable Supreme Court of India on 11.2.2010.

5. The stand taken on behalf of the Review Petitioners is that the Third Respondent/District Educational Officer, Kuzhithurai, Kanyakumari District, took steps after initiation of the Contempt proceedings by the Review Petitioners in C.P. Nos.415 of 2009 & 416 of 2009 through his proceedings in Na.Ka. No.9965/A/2005 dated 29.7.2010 regularising their services only from 23.4.2010.

6. That apart, the grievance of the Petitioners is that after their services were regularised with effect from the date of arising of vacancy, then, they would have earned the retirement benefits.

7. Lastly, the learned Counsel for the Petitioners projects an argument that in a batch of Writ Petitions filed by the Part-Time Employees in W.P. No.29412 of 2010, this Court had directed the Respondent therein to consider their case and that the Government was pleased to pass a Government Order in G.O.Ms. No.III, School Education (RI) Department, dated 9.5.2012, regularising the services of part-time Employees, who had rendered 10 years of service. However, in respect of the Review Petitioners, a different yard stick was adopted and the benefits showered on others were not extended to them.

8. On behalf of the Petitioners, references are made before this Court in regard

to the Orders passed by this Court in Writ Petitions, Writ Appeals and in S.L.P.C.C. Nos. 18508-18509/09. They are as follows:

(i). In *Rajam v. The Director of School Education (High School), College Road, Chennai-6 2 others*, W.P. (MD) No.9727 of 2006 on 24.6.2008, it is inter alia held by this Court to the effect that:

... Consequently, the reason basing on which the Petitioner's claim is rejected by the impugned Order is unsustainable and the same is set aside and the Respondents are directed to absorb the Petitioner in the available vacancies as a full time Employee and to regularise her service, within a period of four weeks from the date of receipt of a copy of this Order."

(ii). In *The Director of School Education (Elementary), College Road, Chennai-6 & 3 others v. Ponnamma*, W.A.(MD) Nos. 151 & 325 of 2009, 23.6.2009 & this Court has concurred with the view expressed by the learned Single Judge and resultantly, dismissed the Writ Appeals.

(iii). In *Government of Tamil Nadu, rep. by its Secretary, Education Department, Fort St. George, Chennai-9 and 2 others v. K. Saraswathy and 2 others*, W.A. (MD) No.762 of 2008 dated 9.7.2009, this Court issued directions to the Appellants therein to approve the appointment of the First Respondent therein from 4.9.2000 and to pay the arrears within a period of four weeks from the date of receipt of a copy of this Order.

(iv). In *Director of School Education. & ors. v. Ponnamma, eta*, S.L.P C.C. No. 18508-18509/2009, the Honourable Supreme Court, on 11.2.2010, dismissed S.L.Ps. which were filed against the Judgment dated 23.6.2009 in W.A. No. 151 of 2009 & W.A. No.225 of 2009 on the file of this Court.

(v). In *P. Suburamani v. The Director of School Education, College Road, Chennai-6 and 3 others*, W.P. No.4859 of 2009 dated 24.2.2010, this Court allowed the Writ Petition by setting aside the impugned Order passed by the Third Respondent therein dated 18.11.2008 and directed the Respondents therein to regularise the services of the Petitioner as Sweeper in the third Respondent-School with effect from 1.11.1990 and to pay all monetary benefits and other attendant benefits within a period of eight weeks from the date of receipt of a copy of this Order.

(vi). In *P. Thomas v. The Director of School Education, Madras-600 006 and 3 others*, W.P. No.4639 of 2009, Order dated 16.9.2010, this Court, while allowing the Writ Petition has held that the Petitioner is entitled to get his services regularised on completion of his ten years of total service and directed the Respondents 1 to 3 to pass Orders granting regularisation of his services with time scale of pay and arrears of pay on his completion of ten years from the date of his initial appointment, after deducting break-in-service, as stated supra and also further directed to pay monetary benefits from the date of completion of ten years of total service within eight weeks from the date of receipt of the copy of

this Order, etc.

(vii). In *The Director of School Education, College Road, Chennai and three others v. P. Subramani*, W.A. No. 1520 of 2010, this Court, on 25.10.2010 has dismissed Writ Appeal and held that the learned Single Judge was fully justified in directing regularisation of the Respondent/Petitioner with effect from 1.11.1990 and issued directions to the Appellants to comply with the Order passed by the learned Single Judge as expeditiously as possible and in any case, within a period of three months from today.

(viii). In *N. Baby v. The State of Tamil Nadu, rep. by its Secretary, School Education Department, Fort St. George, Chennai-600 009 and 4 others*, W.P. No.24217 of 2010, Order dated 1.11.2010, this Court has allowed the Writ Petition by issuing direction to the Respondents to regularise the Petitioner's services as Sanitary Worker/Water Supplier on completion of ten years of part-time services from 1.10.1983 and to pay time scale of pay and other benefits payable from 1.10.1993 within a period of three months from the date of receipt of the copy of this Order.

(ix). In *P. Syman Raj v. The State of Tamil Nadu, rep. by Secretary, School Education Department, Fort St George, Chennai-9 and 4 others*, W.P. No.29396 of 2010, Order dated 10.11.2010, this Court while allowing the Writ Petition, directed the Respondents to regularise the services of the Petitioner on completion of ten years of service from the date of his initial appointment, in terms of G.O.Ms.22, Personal and Administrative Reforms (P) Department, dated 28.2.2006.

(x). In *M. Ranjani and six others v. The Secretary to Government, Personnel and Administrative Reforms Department, Secretariat, Chennai-9 and 2 others*, W.P. No.25671 of 2010, Order dated 2.12.2010, this Court, while allowing the Writ Petition has directed the Second Respondent to pass Orders granting regularisation of the Petitioner's services with time scale of pay from the date of their completion of ten years of service, after verifying the Service Certificates issued by the Third Respondent, where the Petitioners are working. Further, this Court also issued directions to the Second Respondent by mentioning that Regularisation Order is to be passed by him within a period of four weeks from the date of receipt of a copy of this Order and to pay the arrears of pay payable to the Petitioners to such regularisation to them within a period of four weeks therefrom.

(xi). In *D. Paul Daniel and another v. The Secretary to Government, School Education (R1) Department, Secretary, Chennai and 3 others*, W.P.(MD) Nos. 14405 & 14406 of 2011, Order dated 16.12.2011, this Court while disposing of the Writ Petition has directed the Respondents to consider the Petitioner's representation dated 5.11.2011 and pass appropriate Orders on merits and in accordance with law by regularising their services from the date of their appointments within a period of eight weeks from the date of receipt of a copy of

this Order.

9. Conversely, the learned Special Government Pleader appearing for the Respondents 1 to 3. submits that the Common Order passed by this Court in W.P (MD) Nos.4170 & 4171 of 2011 dated 2.4.2013 does not suffer from any error apparent on the face of record and there is no illegality in the Order so passed and therefore, prays for dismissal of the Review Petitions.

10. It is to be noted that the ambit and power of Review by a Court of Law is not to be confused with an Appellate power which enable the Appellate Court to correct an erroneous decision. Indeed, the Court of Law, hearing a Review Petition/Application does not act as a Superior Court hearing an Appeal. It cannot be gainsaid that the Petition/Application for Review is not an Appeal in disguise." After all, the term of "Review" means both literally and even judicially re-examination or reconsideration of the subject matter in issue. Generally, a party is aggrieved by an Order/Judgment delivered by a Court of Law which in his subjective understanding/appreciation has not been correctly decided or even wrongly decided, then, it is open to him to raise such a plea/argument in Appeal before the superior forum as opined by this Court.

11. That apart, the "Review Jurisdiction" is not available for an erroneous decision to be heard. Further more, if "Review" requires a detailed process of reasoning for discovering an error and such an error by no stretch of imagination be termed as an "Error apparent on the face of record" in our considered view. Moreover, re-arguments in a given case are certainly not to be permitted under "Review Jurisdiction"

12. In this connection, this Court worth recalls and recollects the decision of this Court in S.O. Krishna Aiyar v. S.V. Narayanan @ S.V. Doraiswami and others, AIR 1951 Mad. 660, wherein, it is held thus:

"What the learned Judge has really done is to write a Second Judgment reversing his first because on fuller argument and further consideration he thought that the view he had first taken was wrong. This is clearly not a purpose for which Order 47, Rule 1 is intended. This Petition is allowed with costs and the proceedings of the Court below under the power of review which it supposed it had are set aside."

13. Be that as it may, in the instant cases on hand, before this Court, we are of the considered opinion that as against the Common Order in W.P.(MD) Nos.4170 & 4171 of 2011 dated 2.4.2013 passed by this Court, it is for the Review Petitioners/Applicants to prosecute their further remedy of filing an Appeal before the appropriate forum and viewed in that perspective, the present Review Petitions filed by the Petitioners are not perse maintainable before this Court. Even otherwise, the Petitioners cannot reargue the subject matter in issue and such an exercise is not permissible under Review Jurisdiction. Also, if two views are possible on the points involved, then that itself is not a valid ground for Review. To put it succinctly, this Court in W.P.(MD) Nos.4170 & 4171 of 2011 on

2.4.2013, passed the Orders, after taking into considerations the contentions raised by the respective parties and decided the main proceedings. As such, the said Order passed by this Court in the Writ Petitions cannot be re-opened under the guise of Review Petitions. Viewed from any point of view, the Writ Petitions filed by the Petitioners are devoid of merits. Consequently, the Review Petitions fail.

14. In the result, the Review Petitions are dismissed. No costs.