Tamilnadu Terminated Full Time ... vs S.K. Roy, The Chairman, Life Insurance ... on 9 August, 2016

Equivalent citations: AIR 2016 SUPREME COURT 3964, 2016 LAB. I. C. 4107, 2016 (4) AJR 534, AIR 2016 SC (CIVIL) 3004, (2016) 7 SCALE 639, (2016) 4 JCR 278 (SC), (2016) 150 FACLR 924(2), (2016) 3 ESC 468, (2016) 3 CURLR 289, (2016) 4 SCT 288, 2016 (4) KCCR SN 502 (SC), 2016 (9) ADJ 40 NOC

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Bench: V. Gopala Gowda, C. Nagappan

NON REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CONTEMPT PETITION (C) NO. 459 OF 2015
IN
CIVIL APPEAL NO. 6950 OF 2009

TAMILNADU TERMINATED FULL TIME
TEMPORARY LIC EMPLOYEES ASSOCIATION …PETITIONER

Vs.

S.K. ROY, THE CHAIRMAN, LIFE
INSURANCE CORPORATION OF INDIA & ANR. …CONTEMNORS

WITH
CONTEMPT PETITION (C) NO. 634 OF 2015
IN
CIVIL APPEAL NO.6956 OF 2009,

REVIEW PETITION (C) NO. 3846 OF 2015
IN
CIVIL APPEAL NO. 6950 OF 2009,

REVIEW PETITION (C) NO. 2994 OF 2015
IN
CIVIL APPEAL NO.6953 OF 2009,

REVIEW PETITION (C) NO. 2991 OF 2015
IN
CIVIL APPEAL NO.6956 OF 2009,

CONTEMPT PETITION (C) NO. 637 OF 2015
IN
CIVIL APPEAL NO.6953 OF 2009,

REVIEW PETITION (C) NO. 2990 OF 2015
IN
CIVIL APPEAL NO.6954 OF 2009,

REVIEW PETITION (C) NO. 2993 OF 2015
IN
CIVIL APPEAL NO.6952 OF 2009,

CONTEMPT PETITION (C) NO. 502 OF 2015
IN
CIVIL APPEAL NO.6952 OF 2009,

REVIEW PETITION (C) NO. 2989 OF 2015
IN
CIVIL APPEAL NO.6951 OF 2009
AND

CONTEMPT PETITION (C) NO. 21 OF 2016
IN
CIVIL APPEAL NO.6950 OF 2009

J U D G M E N T

V. GOPALA GOWDA, J.

Delay condoned in filing the Review Petitions.

These Review Petitions arise from the impugned judgment and order dated 18.03.2015 passed by this Court in Civil Appeal No. 6950 of 2009 and connected appeals, whereby it was held that the Award passed by Central Government Industrial Tribunal, New Delhi (CGIT) in I.D. No. 27 of 1991 is legal and valid and the same be restored and implemented by the Life Insurance Corporation of India (hereinafter referred to as the "LIC") by absorbing the concerned workmen in the permanent posts. It was further held that the Corporation would be liable to pay all consequential benefits including monetary benefits taking into consideration the revised pay scale in the cases of those workmen who had attained the age of superannuation.

As the facts of the case are already stated in the judgment in Civil Appeal No. 6950 of 2009, the same need not be reiterated herein for the sake of brevity. The following contentions were advanced by the learned counsel appearing on behalf of the parties in support of their case:

> Mr. Mukul Rohatgi, the learned Attorney General appearing on behalf of the review petitioner-LIC contends that this Court, while passing the judgment and order dated 18.03.2015, failed to appreciate that the Tulpule and Jamdar awards stood substituted by the "Terms of Compromise" way back on 01.03.1989, which stood finally disposed of vide judgment and order dated 07.02.1996 passed by this Court in Civil Appeal No. 1790 of 1989. It is further contended that this Court failed to

appreciate the effect of settlement of an award, in the light of the decision of this Court in the case of Herbertsons Ltd. v. Workmen[1], which has further been followed by this Court in the cases of Transmission Corpn., A.P. Ltd. v. P. Ramchandra Rao[2] and ITC Ltd. Workers Welfare Assn. v. ITC Ltd.[3] The learned Attorney General further submits that under Section 24 of the Life Insurance Corporation Act, 1956 (hereinafter referred to as the "LIC Act, 1956"), the Central Government does not allocate any fund for LIC, and the funds for LIC are generated from the payments made to it and that the Central Government does not contribute towards the funding of LIC. It is further submitted that under Section 28 of the LIC Act, 1956, 95% of the surplus of LIC is to be allocated to or reserved for its life insurance policy-holders. Thus, the contention that LIC has a huge surplus and is in a position to implement the order of this Court is misconceived as the same goes against the statutory provisions of the LIC Act, 1956.

The learned Attorney General further submits that the financial implications on LIC in complying with the impugned judgment and order of this Court cannot be ignored.

At this stage, we would deem it fit to point out that the same, however, does not find any mention in the Review Petition filed by LIC before this Court and does not form a part of its pleadings.

The learned Attorney General further submits that as on 31 03.2015, LIC had 55,427 Class III employees and 5,190 Class IV employees. If LIC is directed to consider the absorption of the workmen to the advertisement, then the number of Class III employees will increase by 11.14% and Class IV employees by 56.65% and the same will affect the employee's ratio in addition to the increase in its financial burden and that the same will be contrary to the interests of the policyholders. The learned Attorney General estimates the financial liability for implementing the order of this Court at approximately Rs.7087 crores, with the annual liability at around Rs.728 crores per year and that this will be a huge financial burden for LIC to bear.

On the other hand, the learned counsel appearing on behalf of the respondents-workers submit that it becomes clear from a perusal of the Review Petitions filed by LIC that it is trying to re-agitate the case on merits. The learned counsel placed reliance on the decision of this Court in the case of Enviro Legal Action v. Union of India[4] wherein this Court elaborated the scope of the review power of this Court under Article 137 of the Constitution. It was held as under:

"The ratio of these judgments is that a court of final appeal has power in truly exceptional circumstances to recall its order even after they have been entered in order to avoid irremediable injustice.

Reviewing of various cases of different jurisdictions lead to irresistible conclusion that though the judgments of the apex court can also be reviewed or recalled but it

must be done in extremely exceptional circumstances where there is gross violation of principles of natural justice." Further reliance is placed on the decision of this Court in the case of Kamlesh Verma v. Mayawati[5], wherein this Court held as under:

"20.1 When the review will be maintainable:-

Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

Mistake or error apparent on the face of the record;

Any other sufficient reason.

The words "any other sufficient reason" has been interpreted in Chhajju Ram vs. Neki, AIR 1922 PC 112 and approved by this Court in Moran Mar Basselios Catholicos vs. Most Rev. Mar Poulose Athanasius & Ors., (1955) 1 SCR 520, to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in Union of India vs. Sandur Manganese & Iron Ores Ltd. & Ors.

20.2 When the review will not be maintainable:-

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

(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 re-heard and corrected but lies only for patent error.

(vi)The mere possibility of two views on the subject cannot be a ground for 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 negatived." The learned counsel contend that the ground raised in the review petitions filed by LIC do not warrant any interference by this Court in the name of exercise of power of review under Article 137 of the Constitution, as all the averments in the Review petition are nothing but attempts made by the review petitioner-LIC to protract the implementation of the order passed by this Court.

We have heard the learned counsel appearing on behalf of the parties. At this stage, it would be useful to reiterate what this Court had held in the impugned judgment and order dated 18.03.2015:

> "27. In view of the law laid by this Court in the case referred to supra, both the Award of Justice Tulpule reiterated by way of clarification Award by Justice Jamdar are still operative as the same are not terminated by either of the parties as provided under Section 19(6) of the Act. The compromise between the parties in SLP No. 14906 of 1988 and the Scheme formed in E. Prabhavathy & Ors. and G. Sudhakar & Ors. cases referred to supra do not amount to substitution of the Awards passed by Justice R. D. Tulpule and by Justice S. M. Jamdar. Hence, in view of the aforesaid reasons, the submissions made by Mr. Naphade, learned Amicus Curiae, in justification of the Award passed by the CGIT is based on the terms and conditions laid down in the Awards passed by the NIT (by Justice Tulpule and Justice Jamdar) in favour of the workmen for absorption as they have been rendering their service to the Corporation in the perennial nature of work for a number of years and hence, the High Court was not justified in interfering with the said Award passed by the CGIT. The said contention urged by the learned amicus curiae is accepted by us, as the impugned judgment and order of the High Court is contrary to the Awards referred to supra, the provisions of the Industrial Disputes Act and the law laid down by this Court in the aforesaid cases. The Awards passed by the NIT is binding upon the Corporation till it is substituted by another Award or replaced by another settlement in relation to the service conditions of the workmen of the Corporation in accordance with law as provided under Section 12 read with Section 18(3) of the Act or another Award that is required to be passed by the Jurisdictional CGIT in relation to the above subject matter after the Awards which are in operation are terminated by either of the parties as provided under Section 19(6) of the Act. Until then, the said Award passed by the NIT will still be operative in law. Therefore, the same has been rightly applied to the fact situation on hand in the Award passed by the CGIT and it could not have been set aside by the High Court.

Thus, we are of the opinion that the single Judge erroneously set aside the Award passed by the CGIT and the said judgment of the single judge has been further erroneously affirmed by the Division Bench of the High Court. The said judgments of the High Court are clearly contrary to law and legal principles laid down by this Court in cases referred to supra. Hence, the same are liable to be set aside by allowing these appeals and restoring the Award of the CGIT." The review petitioner-LIC has not submitted anything on record to suggest that the impugned judgment and

order suffers from an error apparent in law. While in the review petitions the factual and legal submissions urged in the Civil Appeal have been reiterated, in the written submissions placed before us, the emphasis shifted to the practical difficulty in implementation of the order of this Court. It has been well settled by this Court that a mere repetition of the same arguments which were urged in the appeal and have been rejected, is not sufficient to justify the exercise of power of review under Article 137 of the Constitution by this Court. In the case of Kamlesh Verma (supra), this Court has held as under:

> "Review is not re-hearing of an original matter. The power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. A repetition of old and overruled argument is not enough to re-open concluded adjudications. This Court, in Jain Studios Ltd. v. Shin Satellite Public Co. Ltd. (2006) 5 SCC 501, held as under:
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> 11. So far as the grievance of the applicant on merits is concerned, the Learned Counsel for the opponent is right in submitting that virtually the applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negatived. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter. It is settled law that the power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases." (emphasis laid by this Court) While ordinarily, the aspect of financial hardship would not be a sufficient ground to warrant our interference in the instant case, but keeping in view the fact that LIC is a statutory Corporation operating in the interest of the public at large, on the limited point of payment of full back wages to the temporary and badli workers who are entitled for regularisation, we may reconsider the same. A constitution bench of this Court in the case of Keshav Mills Co. v. CIT[6] held as under:
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> "23. .....In reviewing and revising its earlier decision, this Court should ask itself whether in the interests of the public good or for any other valid and compulsive reasons, it is necessary that the earlier decision should be revised. When this Court decides questions of law, its decisions are, under Art. 141, binding on all courts within the territory of India, and so, it must be the constant endeavour and concern of this Court to introduce and maintain an element of certainty and continuity in the interpretation of law in the country. Frequent exercise by this Court of its power to review its earlier decisions on the ground that the view pressed before it later appears to the Court to be more reasonable, may incidentally tend to make law uncertain and introduce confusion which must be consistently avoided. That is not to say that if on a subsequent occasion, the Court is satisfied that its earlier decision was clearly erroneous, it should hesitate to correct the error; but before a previous decision is pronounced to be plainly erroneous, the Court must be satisfied with a fair amount of

unanimity amongst its members that a revision of the said view is fully justified. It is not possible or desirable, and in any case it would be inexpedient to lay down any principles which should govern the approach of the Court in dealing with the question of reviewing and revising its earlier decisions. It would always depend upon several relevant considerations: What is the nature of the infirmity or error on which a plea for a review and revision of the earlier view is based? On the earlier occasion, did some patent aspects of the question remain unnoticed, or was the attention of the Court not drawn to any relevant and material statutory provision, or was any previous decision of this Court bearing on the point not noticed? Is the Court hearing such plea fairly unanimous that there is such an error in the earlier view? What would be the impact of the error on the general administration of law or on public good? Has the earlier decision been followed on subsequent occasions either by this Court or by the High Courts? And, would the reversal of the earlier decision lead to public inconvenience, hardship or mischief? These and other relevant considerations must be carefully borne in mind whenever this Court is called upon to exercise its jurisdiction to review and revise its earlier decisions." For the limited purpose of modifying the relief granted in the Civil Appeal only with regard to the Back wages, we directed Mr. Ashok Panigrahi, the learned counsel appearing on behalf of the review petitioner-LIC to submit a document containing the pay scales indicating the basic pay and other emoluments payable to the concerned workmen. The same were furnished with the periodic revisions in the years 1992, 1997, 2002, 2007 and 2012, without furnishing the other component figures which would be the gross salary of the different classes of workmen in the present dispute. These periodic revisions of pay of basic salary, along with other component figures comprising the gross salary including Dearness Allowance, House Rent Allowance etc. etc., as applicable, must be accounted for while computing the amount due to the workmen towards the back wages.

The temporary and badli workers of LIC, who are entitled for regularisation as permanent workmen in terms of the impugned judgment and order dated 18.03.2015 passed by this Court, by applying the terms and conditions of the modified award dated 26.08.1988 passed by Justice Jamdar, are held to be entitled to full back wages as well. However, keeping in mind the immense financial burden this would cause to LIC, we deem it fit to modify the relief only with regard to the back wages payable and therefore, we award 50% of the back wages with consequential benefits. The back wages must be calculated on the basis of the gross salary of the workmen, applicable as on the date as per the periodical revisions of pay scale as stated supra. The computation must be made from the date of entitlement of the workmen involved in these cases, that is, their absorption, till the age of superannuation, if any concerned workman has attained the age of superannuation as per the regulations of the review petitioner-LIC, as applicable to the concerned workman.

With the above modifications to the judgment and order sought to be reviewed, these review petitions are disposed of in the terms as indicated above. Since the judgment and order is passed in

favour of workmen and their dispute is being litigated for nearly twenty five years, the directions contained in the judgment and order dated 18.03.2015 with the above modifications shall be complied with by the review petitioner-LIC within eight weeks of the receipt of the copy of this order.

In view of the disposal of the Review Petitions, the Contempt Petitions are also disposed of, but in case of non-compliance of the above order within the stipulated time, the parties will be at liberty to file Contempt Petitions afresh. All pending applications are disposed of.

.....J. [V. GOPALA GOWDA]

.....J.
[C. NAGAPPAN]

New Delhi,
August 9, 2016

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[1] (1976) 4 SCC 736

[3] (2006) 9 SCC 623

[5] (2002) 3 SCC 411

[7] (2011) 8 SCC 161

[9] (2013) 8 SCC 320

[11] AIR 1965 SC 1636