

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 25TH DAY OF OCTOBER, 2013

PRESENT

THE HON'BLE MR.JUSTICE H.BILLAPPA

AND

THE HON'BLE MR.JUSTICE ARAVIND KUMAR

R.P.No.68/2013 & R.P.Nos.331-351/2013

In W.A.Nos.2956-2977/2012

BETWEEN:

Vijaya Bank

A body constituted under the
Banking Companies (Acquisition
And Transfer of Undertaking Act, 1980

Represented by its

General Manager (Personnel),

Head Office, 41/2, M.G.Road,

Bangalore – 560 001

Now represented by its Senior Manager (Law)

Sri.Rejith Kumar.V.S.

...Petitioner

(Sri.Abhilash Raju.V. for

M/s.Sundanaswamy, Swamy & Ramdas, Adv.,)

AND:

1. Sri.C.Narasimhappa,
S/o.Late Sri.Challa pedda Narasimhappa,
Aged about 62 years,
Residing at No.3, EC-158, III 'E' Cross,

Kasthurinagaar,
East of NGEF,
Bangalore – 560 043.

2. Sri.D.Venkataramana Reddy,
S/o.D.Raghunatha Reddy,
Aged about 55 years,
Residing at Flat No.301,
Brudavanam,
Plot No.252 & 253,
Kalyan Nagar,
Opp. Reliance Fresh,
Hydrebad – 500 038.
3. Sri.Laxman Rao,
S/o.Sri.V.S.Sarma,
Aged about 54 years,
Residing at E-311,
Siddam Setty Towers,
Street No.5, Jawahar Nagar,
Near Bakaram,
Hydrebad – 500 020.
4. Sri.S.Narayanan,
S/o.Sri.A.R.Swaminathan,
Aged about 62 years,
Residing at No.32, Rathna Nagar,
I Floor, Virugambakkam,
Chennai – 600 600.
5. Sri.M.S.Govindan,
S/o.I.Sankaran Menon,
Aged about 63 years,
Residing at No.6-C,
Capital Symphony,
West Fort, Thrissur – 680 011.

6. Sri.Vijay Mathur,
S/o.Sri.T.N.Mathur,
Aged about 63 years,
Residing at No.B-11/122,
Srinathji Vihar,
538, Sitapur Road,
Mirala Nagar Extension,
Lucknow – 226 020.
7. Sri.K.Ramdas Kamath,
S/o.Sri.Kundu Kamath,
Aged about 63 years,
Residing at KT-133/A, 4th Cross,
Marigowda Layout,
Mandya – 571 401.
8. Sri.Rajkumar Chopra,
S/o.Sri.Santram Chopra,
Aged about 64 years,
Residing at EE-1, Panj Peer Road,
Jalandhar City,
Punjab.
9. Sri.B.S.N.Aradhya,
S/o.Sri.Shambu Soma Aradhya,
Aged about 61 years,
Residing at No.5, T Block,
7, Treasury Bagadi, II Street,
Mysore – 570 026.
10. Sri.L.Subramanian,
S/o.Sri.Nilatchumanan,
Aged about 62 years,
Residing at Plot No.161,
Door No.17, Sindhu Apartments,
Ground Floor, 6th Street,
Kumaran Colony, Vadapalani,

Chennai – 600 026.

11. Sri.Raviraja Shetty,
S/o.Sri.Annapa Hedge,
Aged about 63 years,
Residing at Guddi Hosemane,
Temple Road, Shiruru – 576 228
Kundapur Taluk,
Dakshina Kannada District.
12. Sri.P.V.Ramakrishnan,
S/o.Sri.Kammaran Nair,
Aged about 62 years,
Residing at Souparnika,
Chungam, Erannoli,
Thalassery – 670 107.
13. Sri.T.R.Kalluraya,
S/o.T.V.Kalluraya,
Aged about 62 years,
Residing at Krupa Kirana,
No.3/1190, CTO Road, Darbe,
Puttur- 574 202.
Dakshina Kannada District.
14. Sri.Gajanan Rao Yerudoor,
S/o.Sri.Ramananda Rao Yerudoor,
Aged about 59 years,
Residing at Flat No.331,
Sri Niketh, MSR College Road,
Mathikere,
Bangalore – 560 054.
15. Sri.M.Balakrishna,
S/o.Sri.B.Thammaiah Sherigar,
Aged about 61 years,
Residing at No.3-65/48,

Gautham, I Main, Lohith Nagar,
Ashoknagar Post,
Mangalore – 575 006.
Dakshina Kannada District.

16. Sri.V.Kristappa Shetty,
S/o.Sri.Piniya Shetty,
Aged about 61 years,
Residing at Lakshmi Sadana,
Vakwady, Kundapur Taluk,
Udupi District – 576 237.
South Kanara District.
17. Sri.K.Govinda Prabhu,
S/o.Sri.K.Narayan Prabhu,
Aged about 61 years,
R/at.No.302, D Block,
Deepika Resdincy, Nagavara,
Palya Main Road, C.V.Raman Nagar,
Bangalore – 560 093.
18. Sri.K.Kariappa,
S/o.Sri.Kariappa.
Aged about 59 years,
R/at.No.14/1, 4th Main Road,
Palace Guttahalli,
Bangalore – 560 003.
19. Sri.Krishna.B.Gurjan,
S/o.A.B.Kunder,
Aged about 64 years,
Residing at No.793, Gokula,
37th Main, 17th C Cross,
J.P.Nagar, VI Phase,
Bangalore – 560 078.

20. Sri.P.Srinivas Bhat,
S/o.Sri.Gautham Bhat,
Aged about 59 years,
Residing at Flat No.369,
Block – I, II Floor, Mahavir Willow,
Kengeri Satellite Town,
Bangalore – 560 060.
21. Sri.Rasmesh Hejmadi,
S/o.Sri.H.T.Gururaja Rao,
Aged about 59 years,
Residing at Flat No.4, No.29,
I Cross, Nehru Nagar,
Bangalore – 560 020.
22. Sri.C.A.Sundara,
S/o.Sri.C.Anjanappa,
Aged about 65 years,
Residing at No.7, II Floor,
4th Cross, Gandhinagar,
Bangalore – 560 009.

...Respondents

(By Sri.M.Naga Prasanna, Adv. for R1 to 4;
R6 to 13,14,15,16,17,18,19,21 are served;
R5 & R20 service awaited)

These petitions are filed under Order 47 Rule 1 of CPC,
praying fro review the Order dated 30.07.2012 passed in
W.A.No.2956-2977/2012, on the file of the Hon'ble High
Court of Karnataka, Bangalore.

These petitions coming on for Orders this day,
H.Billappa., J., made the following:

ORDER

The petitioner is seeking review of the order dated 30.7.2012 passed by the Division Bench of this Court in W.A.Nos.2956-2977 of 2012 (S-Res.).

2. By order dated 30.7.2012, the Division Bench of this Court has dismissed the appeals, confirming the order passed by the learned Single Judge.

3. The learned counsel for the petitioner contended that the joint note dated 27.4.2010 expressly provided for the officers who were eligible for certain benefits. The writ petitioners who had resigned did not find place in the joint note. They were not eligible for any benefits. This aspect has not been considered.

4. The learned counsel for the respondents placing reliance on the decision of the Hon'ble Supreme Court reported in **2013 AIR SCW page 4944** submitted that the review petitions are not maintainable. There is no error

apparent on the face of the record. Therefore, the review petitions are liable to be dismissed.

5. The scope of review has been considered by the Hon'ble Supreme Court in **KAMLESH VERMA vs. MAYAWATI & Ors.**, reported in **2013 AIR SCW page 4944**.

It is observed as follows at paras 8, 11, 12, 15 and 16;

8. *This Court has repeatedly held in various judgments that the jurisdiction and scope of review is not that of an appeal and it can be entertained only if there is an error apparent on the face of the record. A mere repetition through different counsel, of old and overruled arguments, a second trip over ineffectually covered grounds or minor mistakes of inconsequential import are obviously insufficient. This Court, in Sow Chandra Kante & Anr. vs. Sheikh Habib (1975) 1 SCC 674 : (AIR 1975 SC 1500) held as under:*

"1. Mr. Daphtary, learned counsel for the petitioners, has argued at length all the points which were urged at the earlier stage when we refused special leave thus making out that a review proceeding virtually amounts to a rehearing. May

be, we were not right is refusing special leave in the first round; but, once an order has been passed by this Court, a review thereof must be subject to the rules of the game and cannot be lightly entertained. A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. A mere repetition, through different counsel, of old and overruled arguments, a second trip over ineffectually covered ground or minor mistakes of inconsequential import are obviously insufficient. The very strict need for compliance with these factors is the rationale behind the insistence of counsel's certificate which should not be a routine affair or a habitual step. It is neither fairness to the Court which decided nor awareness of the precious public time lost what with a huge backlog of dockets waiting in the queue for disposal, for counsel to issue easy certificates for entertainment of review and fight over again the same battle which has been fought and lost. The Bench and the Bar, we are sure, are jointly concerned in the conservation of judicial time for maximum use. We regret to say that this case is typical of the

unfortunate but frequent phenomenon of repeat performance with the review label as passport. Nothing which we did not hear then has been heard now, except a couple of rulings on points earlier put forward. May be, as counsel now urges and then pressed, our order refusing special leave was capable of a different course. The present stage is not a virgin ground but review of an earlier order which has the normal feature of finality.”

11. *An error which is not self-evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review. 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. This Court, in Parsion Devi & Ors. vs. Sumitri Devi & Ors., (1997) 8 SCC 715, held as under:*

“7. It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1, CPC. In Thungabhadra Industries Ltd. v. Govt. of A.P. (AIR 1964 SC 1372) this Court opined:

“What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an ‘error apparent on the face of the record’). The fact that on the earlier occasion the Court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an ‘error apparent on the face of the record’, for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by ‘error apparent’. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error.”(emphasis ours)

8. Again, in *Meera Bhanja v. Nirmala Kumari Choudhury* (AIR 1995 SC 455) while quoting with approval a passage from *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma* (AIR 1979 SC

1047) this Court once again held that 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.

9. Under Order 47, Rule 1, CPC a judgment may be open to review *inter alia* if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47, Rule 1, CPC. In exercise of the jurisdiction under Order 47, Rule 1, CPC it is not permissible for an erroneous decision to be “reheard and corrected”. A review petition, it must be remembered has a limited purpose and cannot be allowed to be “an appeal in disguise”.

12. Error contemplated under the rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence. The power of review can be exercised for correction of a mistake but not to substitute a view. The mere

possibility of two views on the subject is not a ground for review.

15. *Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XLVII 15 Rule 1 of CPC. In review jurisdiction, mere disagreement with the view of the judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned judgment in the guise that an alternative view is possible under the review jurisdiction.*

Summary of the Principles:

16. *Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:*

(A) When the review will be maintainable:-

(i) 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;

(ii) Mistake or error apparent on the face of the record;

(iii) 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 Poulouse 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., JT 2013 (8) SC 275: (2013 AIR SCW 2905).

(B) 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 negated.

6. It is clear the scope of review is very limited. It is only the error apparent on the face of the record which can be reviewed. In the present case, clause 7 of the circular dated 7.9.2010 which denied pensionary benefits to the writ petitioners has been quashed. The writ petitioners had put in requisite number of years of service qualifying for pensionary benefits. In that view, it has been held that the writ petitioners are entitled for pensionary benefits. The ground now urged does not fall within the realm of review and it amounts to reconsideration of the matter which is not permissible. Therefore, the review petitions are liable to be dismissed.

Accordingly, the review petitions are dismissed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

Bss.