

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

WP(C) No. 524 of 2018

Shri T. Tunzalian, aged about 64 years, S/o T. Sinpum and a resident of Chapellane, Hiangtam, Lamka, P.O., P.S. & Dist. Churachandpur, Manipur, Pin No. 795128.

-- -- -- ***Petitioner***

- VERSUS-

1. The State of Manipur, through the Principal Secretary/ Commissioner (Finance), Government of Manipur, P.O. Imphal, Pin No. 795001. (Old Secretariat, Babupara).
2. The High Powered Committee, Governmetn of Manipur represented by its Chairman/Chief Secy. of Manipur, P.O. Imphal, Pin No. – 795001. (Old Secretariat, Babupara).
3. The Principal Secretary/Commissioner (Power), Government of Manipur, P.O. Imphal, Pin No. 795001, Secretariat Complex, Babupara.
4. The Under Secretary (Finance/PIC), Government of Manipur, P.O. – Imphal, Pin No. – 795001, New Secretariat, Babupara.

5. The Managing Director (MSPCL), Government of Manipur, P.O. – Imphal, Pin No. – 795001.
6. Accountant General, Manipur, P.O. – Imphal, Pin No. – 795001 (Babupara).

-- -- -- **Respondents**

Review Petition No. 17 of 2017

Ref:- WP(C) No. 93 of 2013

1. The State of Manipur represented by the Principal Secretary/Commissioner (Finance), Government of Manipur.
2. The Chairman, High Powered Committee, Government of Manipur.
3. The Principal Secretary/Commissioner (Power), Government of Manipur.
4. The Under Secretary (Finance/PIC), Government of Manipur.

-- -- -- **Petitioners**

- VERSUS-

1. Shri T. Tungzalian, aged about 59 years, S/o T. Sinpum and a resident of Chapellane, Hiangtam, Lamka, P.O. & P.S. Churachandpur, District- Churachandpur, Manipur, Pin No. 795128.

2. Shri T. Yamkhosan Mate, aged about 55 years,
S/o (L) Palet Mate, a resident of Mantripukhri,
P.O. & P.S. Heingang, Imphal East District,
Manipur, Pin No. 795002.

-- -- -- **Respondents**

3. The Chief Engineer (Power), Government of
Manipur.
4. Smt. Lalzawni, Former Under Secretary
(Power), Government of Manipur.

-- -- -- **Proforma Respondents in
the Review Petition**

Review Petition No. 33 of 2017

Ref:- WP(C) No. 545 of 2012

1. The State of Manipur represented by the
Principal Secretary/Commissioner (Finance),
Government of Manipur.
2. The Chairman, High Powered Committee,
Government of Manipur.
3. The Principal Secretary/Commissioner (Power),
Government of Manipur.
4. The Under Secretary (Finance/PIC),
Government of Manipur.

-- -- -- **Petitioners**

- VERSUS -

1. Benjamin Lalneisang Saiate, aged about 52 years old, S/o C.N. Vunga of Renkai Vengthlang, Churachandpur, P.O. & P.S. Churachandpur District, Manipur.
2. The Chief Engineer (Power), Government of Manipur.
3. Smt. Lalzawni, Former Under Secretary (Power), Government of Manipur, at present residing at Hmuia Veng, Tiddim Road, Churachandpur-795128.

-- -- -- ***Proforma Respondents in
the Review Petition***

Review Petition No. 34 of 2017

Ref:- WP(C) No. 552 of 2012

1. The State of Manipur represented by the Principal Secretary/Commissioner (Finance), Government of Manipur.
2. The Chairman, High Powered Committee, Government of Manipur.
3. The Principal Secretary/Commissioner (Power), Government of Manipur.
4. The Under Secretary (Finance/PIC), Government of Manipur.

-- -- -- ***Petitioners***

- VERSUS-

1. Shri Ng. Subhaschandra Singh, aged about 51 years old, S/o (L) Ng. Rashi Singh of Khabam Lamkhai, P.O. Mantripukhri & P.S. Heingang, Imphal East District, Manipur.
2. The Chief Engineer (Power), Government of Manipur.
3. Smt. Lalzawni, Former Under Secretary (Power), Government of Manipur, at present residing at Hmuia Veng, Tiddim Road, Churachandpur-795128.

-- -- -- ***Proforma Respondents in
the Review Petition***

Review Petition No. 35 of 2017

Ref:- WP(C) No. 550 of 2012

1. The State of Manipur represented by the Principal Secretary/Commissioner (Finance), Government of Manipur.
2. The Chairman, High Powered Committee, Government of Manipur.
3. The Principal Secretary/Commissioner (Power), Government of Manipur.
4. The Under Secretary (Finance/PIC), Government of Manipur.

-- -- -- **Petitioners**

- VERSUS-

1. Shri Sijagurumayum Joykumar Sharma, aged about 59 years old, S/o (L) S. Apabi Sharma of Brahmapur Aribam Leikai, P.O. Imphal & P.S. Porompat, Imphal East District, Manipur.

-- -- -- **Petitioners**

2. The Chief Engineer (Power), Government of Manipur.
3. Smt. Lalzawni, Former Under Secretary (Power), Government of Manipur, at present residing at Hmuia Veng, Tiddim Road, Churachandpur-795128.

-- -- -- **Proforma Respondents in
the Review Petition**

Review Petition No. 36 of 2017

Ref:- WP(C) No. 535 of 2012

1. The State of Manipur represented by the Principal Secretary/Commissioner (Finance), Government of Manipur.
2. The Chairman, High Powered Committee, Government of Manipur.
3. The Principal Secretary/Commissioner (Power), Government of Manipur.

4. The Under Secretary (Finance/PIC),
Government of Manipur.

-- -- -- **Petitioners**

- VERSUS-

1. Shri Seram Dumbeshwar Singh, aged about 57 years old, S/o (L) S. Angou Singh of Nongmeibung Seram Leiak, P.O. Imphal & P.S. Porompat, Imphal East District, Manipur.

-- -- -- **Petitioner**

2. The Chief Engineer (Power), Government of Manipur.
3. Smt. Lalzawni, Former Under Secretary (Power), Government of Manipur, at present residing at Hmuia Veng, Tiddim Road, Churachandpur-795128.

-- -- -- **Proforma Respondents in
the Review Petition**

BEFORE
HON'BLE MR. JUSTICE M.V. MURALIDARAN

For the Petitioners	::	Mr. Serto T. Kom, Advocate.
For the Respondents	::	Mr. Lenin Hijam, AG Mr. S. Niranjana, GA Mr. S. Biswajit, Advocate Mr. N. Jotendro, Sr. Advocate Mr. S. Suresh, Advocate
Date of Hearing and reserving Judgment & Order	::	16.08.2022
Date of Judgment & Order	::	21.10.2022

JUDGMENT AND ORDER
(CAV)

W.P.(C) No.524 of 2018 has been filed by the petitioner to set aside the letter dated 7.2.2017 whereby the Senior Accounts Officer(Pen) directed the District Treasury Officer, Churachandpur to recover a sum of Rs.47,73,333/- towards government dues from the retirement dues payable to the petitioner.

2. Review Petition (C) Nos.17, 33 to 36 have been filed to review the order dated 7.3.2017 passed in W.P.(C) Nos.93 of 2013; 545, 552, 550 and 535 of 2012 by this Court.

3. Since the issue involved in the writ petitions and the review petitions is one and the same, they are clubbed together and disposed of by this common order.

4. Heard Mr.Serto T Kom, learned counsel for the petitioners; Mr.Lenin Hjam, learned Advocate General assisted by Mr.S.Nirajan, learned Government Advocate for the respondent State and Mr.S.Biswajit, learned counsel for the respondent Accountant General.

5. Assailing the impugned recovery order, the learned counsel for the petitioner submitted that the same is

illegal, as both the earlier decisions of the High Powered Committee dated 13.9.2011 and the Government Order dated 3.8.2012 for recovery of the amount from the petitioner have already been set aside by this Court.

6. The learned counsel further submitted that the High Powered Committee vide Minutes of their meeting dated 10.4.2017 decided to initiate a fresh enquiry under the Manipur Public Servant's Personal Liabilities Act and Rules and further decided that an application will be filed before this Court so that recoverable amount be kept in the bank accounts of the employees, including the petitioner by way of recovery mentioned in the order dated 3.8.2012 i.e. (i) for those in service at the rate of 50% of salaries and admissible allowances starting from the pay of August 2012 and (ii) for retired employees at the rate of one-third of monthly pension/family pension and 100% of retirement benefits till the final decision is taken in the fresh enquiry.

7. The learned counsel would submit that highlighting the order of this Court dated 7.3.2017, the petitioner sent a legal notice through his counsel to the Accountant General not to deduct the amount from the retirement benefits

of the petitioner, as this Court has set aside the decision for recovery of the amount.

8. The learned counsel urged that since the petitioner was only releasing the money to the contractors as per the cheque drawing authority issued by the Under Secretary, Government of Manipur, he cannot held responsible, inasmuch the decision of the High Powered Committee and the Government Order to recover a sum of Rs.47,73,333/- has already been set aside by this Court in W.P.(C) No.538 of 2012 etc. batch, dated 7.3.2017. Arguing so, the learned counsel prayed for setting aside the impugned letter dated 7.2.2017.

9. Per contra, the learned Advocate General submitted that the impugned letter dated 7.2.2017 of the office of the Accountant General, Manipur wherein the District Treasury Officer, Churachandpur was directed to recover a sum of Rs.47,73,333/- from the retirement benefits and one-third pension of the petitioner must be in pursuance to the direction/recovery order of the High Powered Committee.

10. The learned Advocate General further submitted that even if the order of this Court dated 7.3.2017 passed in 29 analogous writ petitions set aside the findings of the High

Powered Committee dated 13.9.2011 and the Government Order dated 3.8.2012 without going into the merits of the case and liberty was given to the authorities to initiate a fresh enquiry in terms of the Act and Rules.

11. The learned Advocate General urged that enquiry in respect of all the 25 alleged officers were initiated at the first place to fix responsibility on the officers who had misused the funds and diverted to unapproved schemes and also for recovery of the misused amount from the public servants who had acted irregularly. Since there is no ground to set aside the impugned letter, the learned Advocate General prayed for dismissal of the writ petition.

12. The learned counsel appearing for the respondent Accountant General submitted that the Accountant General is implementing the decision of the State authorities relating to GPF, pension and gazette entitlement and that the Accountant General is not responsible for the administrative function/decision of the State authorities. Only pursuant to the direction of the State authority, the office of the Accountant General issued the impugned letter. That apart, the office of the Accountant General is not a party in W.P.(C) No.93 of 2013 and other connected writ petitions.

13. In so far as review petitions are concerned, it is the submission of the learned Advocate General that the order dated 7.3.2017 passed in W.P.(C) No.93 of 2013 etc. batch is vitiated, as the same suffers from manifest error of law apparent on the face of the record which goes to the very root of the matter in a case relating to recovery under the said Act and that the said order dated 7.3.2017 has rendered the aims and objects behind the enactment of the said Act redundant.

14. The learned Advocate General further submitted that the order dated 7.3.2017 has rendered the liberty given to the State Government to conduct fresh inquiry into the matter afresh under the said Act an exercise will be futility as the State Government will have no means to recover the liable amount.

15. The learned Advocate General urged that the High Powered Committee which is an expert body under the said Act has examined the order dated 7.3.2017 and decided to initiate fresh enquiry in terms of the said Act and Rules against the alleged officers as per the directions given. However, it was observed by the Committee that the recoverable amount from the alleged officers as per statement dated 3.8.2012 is huge and that the same cannot be recovered if the orders restraining certain amount of salary and pensionary benefits lying in the

respective bank accounts of the officers are lifted as per the order of the High Court and that the very purpose of initiating fresh enquiry as per the order of this Court will be frustrated if sufficient amount of money are not kept in the bank accounts of the officers. Thus, a prayer is made to review the order dated 7.3.2017 passed in W.P.(C) No.538 of 2012 etc. batch.

16. In reply, the learned counsel for the respondents/writ petitioners submitted that the whole ground of the review petitions is for the purpose of re-hearing of the disposed of writ petitions in the guise of review petitions and the review petitioners are trying to re-hear the writ petitions in the nature of appeal. He would submit that the order dated 7.3.2017 is a composite order arrived at with the consent of counsel of both parties and that the parties are at liberty either to accept the whole of the order or reject and the same cannot be accepted in part. Thus, a prayer is made to dismiss the review petitions.

17. This Court considered the rival submissions and also perused the materials available on record.

18. The petitioner challenged the impugned letter dated 7.2.2017 mainly on the ground that the recovery of a sum

of Rs.47,73,333/- from the petitioner's retirement benefits is illegal as both the earlier decisions of the High Powered Committee dated 13.9.2011 and the Government Order dated 3.8.2012 for the recovery of the said amount from the petitioner were set aside by this Court in W.P.(C) No.538 of 2022 etc. batch and in the said batch of writ petitions, W.P.(C) No.93 of 2013 has been filed by the petitioner. Now the grievance of the petitioner is that despite setting aside the decision of the High Powered Committee and the subsequent Government Order, the petitioner has been denied pension alleging that the respondent State filed review petitions to review the order dated 7.3.2017.

19. The learned counsel for the petitioner urged that even if the impugned letter was issued as per the earlier decision of the High Powered Committee, as the said decision being already set aside by this Court, the respondents could have withdrawn the impugned letter dated 7.2.2017 in view of the order dated 7.3.2017 passed in the writ petitions.

20. On the other hand, the learned Advocate General submitted that the direction to recover a sum of Rs.47,73,333/- from the retirement benefits and one-third monthly pension of the petitioner must be in pursuance of the direction of the High

Powered Committee. Even if the this Court vide order dated 7.3.2017 set aside the findings of the High Powered Committee and the Government Order dated 3.8.2012 without going into the merits of the case, liberty was given to the authorities to initiate fresh inquiry in terms of the said Act and Rules, if so advised. He submits that the further decisions of the High Powered Committee would be taken based on its findings.

21. Earlier, the petitioner has filed W.P.(C) No.93 of 2013 challenging the decision of the High Powered Committee and the Government Order dated 3.8.2012. The said writ petition and other connected writ petitions were taken up together and this Court by the order dated 7.3.2017 disposed of all the writ petitions. The common order dated 7.3.2017 passed in W.P.(C) No.538 of 2012 etc. batch reads thus:

“Heard Mr. H.S. Paonam, learned Sr. Counsel assisted by Mr. A. Arunkumar, learned Advocate as well as Mr. N. Jojendro, Mr. Serto T. Kom, Mr. Juno Rahaman and Mr. A. Jagjit, learned counsels for the petitioners. Also heard Mr. N. Ibotombi, learned Addl. A.G. assisted by Mr. A. Rommel, learned Jr. G.A. for the State respondents.

When these matters were taken up, learned counsel for the petitioner have contended that all the proceedings initiated under the Manipur Public Servants' Personal Liability Act, 2006 against the petitioners cannot be sustained for the reason that, though under Rule 7 of the rules namely, the Manipur Public Servants' Liability Rules, 2006, framed under the said Act, namely, the Manipur Public Servants' Personal Liability Act, 2006, the constitution of High Powered Committee under Section 7 of the Act has to be notified in the State Gazette, the same was not done. In other words, the High Powered Committee can become effective only when constitution of the same is notified in the State Gazette as required under Rule 7. However, the same was not done so. It has been contended that though the Notification constituting the High Powered Committee was issued on 26.07.2006, the same was notified in the Manipur Gazette only on 26.04.2010 and as such, the entire proceedings which were initiated in the year 2008 would be vitiated on account of non-notification of the constitution of the High Powered Committee in the State Gazette as required under Rule 7 of the aforesaid Rules.

Mr. N. Ibotombi, learned Addl. A.G. acknowledges the defect in the non-notification of the notification constituting the High Powered Committee in the State Gazette as required under Rule 7 of the Rules as mentioned above and submits that in view of the above, the proceedings initiated against the petitioners may be rendered illegal and hence liable to be interfered with.

In this regard, parties have also drawn attention of this Court to the writ petition, W.P.(C) No.525 of 2010 which was disposed of by the Court on 22.07.2014 by which the proceeding initiated under the same Act was set aside by this Court on the ground that though the Rules provide for service of notice in Form No.2 along with the statement of facts and supporting documents, the State had not followed the said procedure. Accordingly, the proceeding under the said Act was set aside, however, by granting liberty to the authorities to start a fresh enquiry in terms of the Act and Rules by providing an opportunity to the petitioner to submit his explanation. Parties submit that order in similar terms may be passed by this Court in all these petitions.

Accordingly, having heard the learned counsel for the parties and as also submitted by the counsel for both sides, and since the authorities themselves also have acknowledged the aforesaid defect as mentioned above, the present writ petitions are allowed by setting aside the findings of the High Powered Committee dated 13.09.2011 and the impugned orders dated 3.8.2012, without going into the merit of the case, however, with liberty to the authorities to initiate a fresh enquiry in terms of the Act and Rules, if so advised.

It has been submitted by the learned counsel for the petitioners that by virtue of earlier interim orders, certain amounts amounting to 50% of the salary and pensionary benefits which are lying in the respective accounts had been blocked. It is directed that such restraint order shall stand lifted.

All the petitions stand disposed of accordingly by this common order.”

22. Admittedly, the impugned letter dated 7.2.2017 was issued pursuant to the decision of the High Powered Committee and the Government Order dated 3.8.2012. As

stated supra, when challenge was made to the decision of the High Powered Committee and the Government Order dated 3.8.2012, this Court by the common order dated 7.3.2017, set aside the findings of the High Powered Committee and the order dated 3.8.2012. When the findings of the High Powered Committee and the Government Order dated 3.8.2012 were set aside by this Court, the very root of issuance of the impugned letter dated 7.2.2017 will automatically goes. Thus, in view of the common order dated 7.3.2017 passed W.P.(C) No.538 of 2012 etc. batch setting aside the decision of the High Powered Committee as well as the Government Order dated 3.8.2012, the impugned letter dated 7.2.2017 is not sustainable and the same is liable to be set aside.

23. As far as the review petitions filed by the respondent State are concerned, the respondent State contended that after long discussion on the direction of this Court dated 7.3.2017 as well as the irregular actions in sub-allocation of funds and in payment for the unapproved and unauthorized works/supplied against CDA of Rs.2241.29 lakhs released by the Finance Department and considering the request of the Administrative Department, decided to initiate a fresh enquiry in terms of the said Act against the alleged officers

and, accordingly, directed FD (PIC) to issue necessary notices to the alleged officers under the rules. It is further contended that the Committee observed that the recoverable amount as per statement dated 3.8.2012 issued by the Finance Department is huge and that the same cannot be recovered if the orders restraining certain amount of salary and pensionary benefits lying in the respective bank accounts of the officers are lifted, further the very purpose of initiating fresh enquiry as per the order of this Court will be frustration if sufficient amount of money are not kept in the bank accounts.

24. The respondent State further stated that the order dated 7.3.2017 passed in W.P.(C) No.538 of 2012 etc. batch vitiated as the same suffers from manifest error of law apparent on the face of the record which goes to the very root of the matter in a case relating to recovery under the said Act.

25. The contention of the respondent State to review the order dated 7.3.2017 passed in W.P.(C) No.538 of 2012 cannot be countenanced, as no error apparent on the face of record. When we see the order dated 7.3.2017, the same is a consensual order passed after hearing all the parties and, more particularly, passed based on the admitted facts appraised by the counsel appearing for both sides.

26. The law is well settled that no appeal or review shall lie against consensual judgment/order passed after hearing all the parties and having mutually agreed to.

27. At the cost of repetition, the submission made by learned Additional Advocate General while disposing of W.P.(C) No.538 of 2012 dated 7.3.2017 is reproduced as under:

“Mr. N. Ibotombi, learned Addl. A.G. acknowledges the defect in the non-notification of the notification constituting the High Powered Committee in the State Gazette as required under Rule 7 of the Rules as mentioned above and submits that in view of the above, the proceedings initiated against the petitioners may be rendered illegal and hence liable to be interfered with.”

28. The aforesaid submission made by the learned Additional Advocate General clearly proves that only after knowing that the proceedings initiated against the petitioner and others are illegal, the learned Additional Advocate General made such submission before the Court and accordingly, this Court interfered the orders impugned in W.P.(C) Nos.538 of 2012 etc. batch decided on 7.3.2017.

29. If a review petition is to be considered, it requires the long drawn process of reasoning on points demonstrating that there has been an error of facts apparent on the face of record in the order dated 7.3.2017 and otherwise the review petition is not maintainable at all. The filing of review petitions is only for the purpose of re-hearing the disposed writ petitions which cannot be permitted.

30. A mistake or an error apparent on the face of the record means a mistake or an error which is *prima facie* visible and does not require any detail examination. In the present case, the alleged error pointed out by the review petitioners is not an error apparent on the face of record.

31. The Hon'ble Supreme Court, in a catena of decisions, while dealing with the scope of review has held that re-appreciation of evidence and re-hearing of case without there being any error apparent on the face of the record is not permissible in the light of the provisions as contained under Section 114 and Order 47, Rule 1 of the Code of Civil Procedure, 1908.

32. In *S.Bagirathi Ammal v. Palani Roman Catholic Mission*, reported in (2009) 10 SCC 464, the Hon'ble Supreme Court held thus:

"12. An 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. In other words, it must be an error of inadvertence. It should be something more than a mere error and it must be one which must be manifest on the face of the record. When does an error cease to be mere error and becomes an error apparent on the face of the record depends upon the materials placed before the court. If the error is so apparent that without further investigation or enquiry, only one conclusion can be drawn in favour of the applicant, in such circumstances, the review will lie. Under the guise of review, the parties are not entitled to rehearing of the same issue but the issue can be decided just by a perusal of the records and if it is manifest can be set right by reviewing the order. With this background, let us analyse the impugned judgment of the High Court and find out whether it satisfies any of the tests formulated above.

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26. As held earlier, if the judgment/order is vitiated by an apparent error or it is a palpable wrong and if the error is self-evident, review is permissible and in this case the High Court has rightly applied the said principles as provided under Order 47 Rule 1 CPC. In view of the same, we are unable to accept the arguments of learned Senior Counsel appearing for the appellant, on the other hand, we are in entire agreement with the view expressed by the High Court."

33. Rehearing of a case can be done on account of some mistake or an error apparent on the face of the record or for any other sufficient reason. In the present case, as stated supra, there is no error apparent on the face of the record and the review petitioners, in fact, under the guise of review is challenging the order passed by this Court, which is not permissible under law.

34. It is a settled law that every error whether factual or legal cannot be made subject matter of review under Order 47 Rule 1 of the Code of Civil Procedure, 1908 though it can be made subject matter of appeal arising out of such order. In other words, in order to attract the provisions of Order 47 Rule 1 of

the Code of Civil Procedure, the error/mistake must be apparent on the face of the record of the case.

35. Admittedly, the respondent State is wants this court to re-hear the writ petitions in the nature of appeal. If at all they have aggrieved, they ought to have filed an appeal. Having given consent for setting aside the orders in impugned in W.P.(C) No.538 of 2012 etc. batch, the review petitioners now cannot plead that there is an error in the order dated 7.3.2017. As stated supra, since the order passed in the writ petitions is a consensual order, as mutually agreed by all the parties in the open Court, there is no ground to file review petitions to review and/or modify the order dated 7.3.2017 passed in W.P.(C) No.538 of 2017 etc. batch.

36. The subsequent Minutes of the meeting of the High Powered Committee dated 10.4.2017 and issuance of notice dated 2.5.2017 is not a ground for reviewing the order dated 7.3.2017 passed in W.P.No.538 of 2012 etc. batch. Further, the respondent State/review petitioners by these review petitions totally turned the order dated 7.3.2017 passed in W.P.(C) No.538 of 2012 only in their favour even though the Government Order dated 3.8.2012 which was challenged by the

writ petitioners in W.P.(C) No.538 of 2012 was set aside with the consent of the respective counsel. In view of the above, the review petitions are liable to be dismissed, as there is no error apparent on the face of the record. More so, the order under review was passed by consent of the parties to the writ proceedings.

37. In the result,

- (1) W.P.(C) No.524 of 2018 is allowed. The impugned letter dated 7.2.2017 is set aside.
- (2) Review Petition (C) Nos.17, 33, 34, 35, 36 of 2017 are dismissed.
- (3) There will be no order as to costs.

JUDGE

FR/NFR

Sushil