

(2022) 09 GAU CK 0031

In the Gauhati High Court

Case No : Review Petition No. 120 Of 2022

Chittaranjan Nath

APPELLANT

Vs

State Of Assam And 12 Ors

RESPONDENT

Date of Decision : 12-09-2022

Acts Referred:

Constitution Of India, 1950 — Article 137, 145(c)
Assam Legislative Assembly Secretariate (Recruitment And Conditions of Service)
Rules, 1986 — Rule 16
Code Of Civil Procedure, 1908 — Order 47 Rule 1
Supreme Court Rules, 2013 — Section Order 40 Rule 1

Citation : (2022) 09 GAU CK 0031

Hon'ble Judges : R.M. Chhaya, CJ;Soumitra Saikia, J

Bench : Division Bench

Advocate : H. K. Mahanta, R. K. Borah

Final Decision : Dismissed

Judgement

1. Heard Mr. H. K. Mahanta, learned counsel for the review petitioner. Also heard Mr. R. K. Borah, Additional Senior Government Advocate for the State respondents.

2. This Review Petition is directed against the judgement and order dated 05.5.2022 whereby the writ appeal was dismissed.

3. The facts relevant are that pursuant to an advertisement dated 03.02.2015 published in the local news paper of "Assam Tribune" advertising vacant posts of Assamese Language Reporter Grade-II in the Assam Legislative Assembly. The advertisement was issued for filling up of 8(eight) numbers of posts of Language Reporter (Assamese) Grade-II, 2(two) numbers of post of Bengali Reporter, 1(one) number of post of English Reporter, Grade-II and 3(three) numbers of Stenographer Grade-III (English). Subsequently, a corrigendum advertisement was also issued on 05.02.2015 whereby the age limit was modified. All other conditions remained the same.

4. The petitioner is an OBC candidate and in response to the advertisement he applied for the said posts of Grade-II Language Reporter Assamese. According to the petitioner, he fared very well in the interview and the speed test which was conducted by the Selection Committee. The recruitment to the said posts are governed by the Assam Legislative Assembly Secretariate (Recruitment and Conditions of Service) Rules, 1986. In terms of the said Rules, the Selection Committee was constituted which comprised of :-

(i) Deputy Speaker - Chairman

(ii) Secretary - Member

(iii) Joint Secretary - Member

5. The interview was conducted on 29.10.2015 and the results were declared on 03.03.2016. The select list was hung in the notice board indicating the Roll number of the selected candidates. Pursuant to an RTI application filed by the petitioner requesting for speed test copies of the select list of the selected candidates as well as the category-wise breakup of the posts advertised pertaining to Assamese Language Reported Grade-II. As per the reply issued by the Department on 04.04.2016, it was informed that out of 12(twelve) posts 8(eight) posts were filled up by Un-reserved category, 2(two) posts by OBC category and 2(two) posts by SC category candidates. However, the speed tests copies of the selected candidates which was sought for, were refused as the same was considered to be exempted from disclosure without the consent of the third party under the RTI Act. Being aggrieved, the writ petition was filed.

6. The grievance of the writ petitioner is that under the Assam Legislative Assembly Secretariate (Recruitment and Conditions of Service) Rules, 1986, as per Rule- 16, the select list after due approval by the appointing authority was required to be published in the Assam Gazette. However, the results were merely hung on the notice board which is contrary to the mandate of Rule- 16. The further grievance of the petitioner is that the results were hurriedly declared on 03.06.2016 on which date the Model Code of Conduct by the Election Commission of India was already enforced and therefore, the results could not have been declared during the period when the Model Code of Conduct was in force. That apart, it was contended that there is complete nepotism, favoritism resorted to in the selections and, therefore, the impugned selections and the appointments were required to be interfered with, set aside and quashed. The writ petition came to be dismissed against which the Writ Appeal No. 01/2019 was preferred.

7. Before the Appellate Court, it was contended by the learned counsel for the appellant that the grounds urged were not given due consideration by the learned Single Judge. It was the case of the appellant before the Appellate Court that the mandate of Rule- 16 of the Assam Legislative Assembly Secretariate (Recruitment and Conditions of Service) Rules, 1986 demanded that the results ought to have been published in the official gazette. The same not having been

done and the same is in conflict with the prescription mandated by the Rules.

8. The departmental counsel strongly disputed the contentions of the appellant and contended that selection was conducted purely in terms of the mandate of the Rules and there was no infirmity in the process of selection. The petitioner having appeared in the selection and upon being declared unsuccessful now cannot turn around and challenge the selection process. It was, however, admitted by the learned counsel for the respondents that the select list, as a matter of practice, were hung on to the notice board. It was further contended that the results were declared on 03.03.2016 and the Code of Conduct was imposed by the Election Commission of India w.e.f. 04.03.2016. Consequently, there was no violation of the Code of Conduct as contended by the petitioner.

9. The Appellate Court upon hearing the learned counsel dispelled the challenge made by the appellant seeking interference of the order passed by the learned Single Judge as well as to selection results which were impugned. The Appellate Court held that the allegations that the selection is arbitrary, irregular and that nepotism, favouritism, corruption was rampant during the selection process was not supported by specific averments to that effect. The Appellate Court held that the contentions of the appellant that no OBC candidate was selected and that he being an OBC candidate, his candidature was overlooked, is incorrect on facts and the same is apparent from the reply in response to the RTI application filed by the appellant himself. The Appellate Court also recorded a finding that there is no denial of the statement made in paragraph- 13 of the affidavit filed by the department wherein it was averred that the appellant was intimated to come and inspect the answer-sheets on any working day with prior intimation but the appellant never approached the authority in response to such offer made. The appellant's reply to the said paragraph- 13 that several attempts were made to inspect the answer-sheets but he was instead harassed by the actions of the respondents is unsupported with any details as to when he had attempted to inspect the answer-sheets. It was also held that there is no challenge to the constitution of the selection committee or its functioning as being contrary to the Rules nor is there any challenge to the manner/process by which the selection was conducted and in the absence of any such challenge the selection made should not be interfered with at the instance of a candidate who had subjected himself to the said process and had been declared unsuccessful. The Appellate Court on such findings dismissed the appeal and against which order the present review petition has been preferred. The review petition has been sought for on the followings grounds:-

(i) That the Hon'ble Division Bench held that there is no material to hold that the selection process conducted was in conflict with the Rules, or that there was gross irregularity or illegality resorted to by the authorities while conducting the selection process.

(ii) That the Hon'ble Division Bench held that the selection process shall not be interfered with the judicial review at the instance of a candidate who had

appeared in a selection but declared unsuccessful with the exception to the rule is that when such selection is conducted de hors the Rules or in complete contravention to any set of norms or parameters as may be stipulated under the Rules or in the absence of any Rule as declared by the appointing authority prior to any such selection Initiated.

10. The learned counsels for the parties have been heard. Pleadings on record have been carefully perused. We have also perused the grounds on which the review has been preferred.

11. As have been discussed above, before the appellant Court it was urged that the challenge to the selection is made primarily on the ground that the selection results have not been published in the Gazette as required under Rule 16 of the Assam Legislative Assembly Secretariat (Recruitment and Conditions of Service) Rules, 1986 rather they were published in the news paper and hung in the notice board. Such publication in the news paper is not as per the prescription of Rule 16. The further grievance is that the results were declared in violation of the Model Code of Conduct, which was stated to have been imposed by the Election Commission of India on the date of declaration of the results which is on 03.03.2016. It was also urged that no OBC candidates have been selected although reservation for the same was made in the advertisement. The appellant Court held that in so far as the challenge to the selection made on the ground of violation of the Model Code of Conduct as well as overlooking the OBC candidates during the process of selection, held that the Model Code of Conduct was imposed on 04.03.2016 and not on 03.03.2016 as contended by the review petitioner. This is evident from the communication issued by the Election Commission of India itself which is a part of the pleadings. In so far as the overlooking the OBC candidates is concerned, the appellate Court held that the RTI reply dated 05.03.2016 which was issued to the review petitioner itself gave details of the selection made category wise. In the said reply, it was mentioned that in so far as the OBC category is concerned, two (2) candidates were selected, Therefore, the contention made by the review petitioner that selection of OBC candidates were overlooked is belied by the reply given under RTI the applicant for which was filed by the review petitioner himself. In so far as the challenge made to the selection being violative of Rule 16 because of non-publication of the results of the Gazette of Assam, the appellate Court held that such a challenge is not supported by any allegation of bias and/or any infraction of any procedures during the selection process and/or any allegation against the selection committee members. There are no specific averments to support such contentions raised by the review petitioner. The appellate Court held that the offer made by the Department permitting the review petitioner to inspect the answer sheet was not availed of. Instead it was contended by the review petitioner that he had made several attempts to inspect the same but he was harassed by the respondent department. The appellate Court found that such contentions are bereft of any specific particulars as to when the review petitioner approached the department in response to their offer for inspection of the

answer sheet. Under such circumstances, the appellate Court held that the challenge made to selection at the instance of an unsuccessful candidate cannot be interfered with solely on the ground of non-compliance of Rule 16 without there being any supporting materials brought on record to support the contentions that the same was done due to favouritism, nepotism and rampant corruption in order to favour the selected candidates. The appellate Court also took notice of the fact that the respondents, who are the selected candidates, have been an employment for past 6 (six) years pursuant to the selection.

On the grounds urged in the present review petition, the review petitioner has not been able to show any error apparent on the face of the record which requires re-examination and recall of the Judgment and Order dated 05.05.2022 passed by the appellate Court in W.A. No. 01/2019. It is not the case of the review petitioner before this Court that all the grounds urged before the appellate Court were not taken into consideration by the appellate Court. The Appellate Court has given the reasons for the rejection of the writ appeal. The review petitioner has not brought to the notice of this Court that there was any error apparent on the grounds and reasons on which the Judgment and Order under review was rendered. It appears that the review petitioner appears to have filed this review petition seeking re-hearing of the writ appeal, which is not permissible under the review jurisdiction of the High Court.

12. In *Sow Chandra Kante and Another -Vs- Sheikh Habib*, reported in (1975) 1 SCC 674, the Apex Court explained the parameter for exercise of the review jurisdiction under the High Courts. The relevant paragraphs is extracted below:-

"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."

13. In *S. Nagaraj and Others -Vs- State of Karnataka and Another* reported in

1993 Suppl. (4) SCC 595, the Apex Court held that :-

"19. Review literally and even judicially means re-examination or re-consideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its order the courts culled out such power to avoid abuse of process or miscarriage of justice. In *Raja Prithwi Chand Lal Choudhury v. Sukhraj Rai* [AIR 1941 FC 1, 2 : 1940 FCR 78 : (1941) 1 MLJ Supp 45] the Court observed that even though no rules had been framed permitting the highest Court to review its order yet it was available on the limited and narrow ground developed by the Privy Council and the House of Lords. The Court approved the principle laid down by the Privy Council in *Rajunder Narain Rae v. Bijai Govind Singh* [(1836) 1 Moo PC 117 : 2 MIA 181 : 1 Sar 175] that an order made by the Court was final and could not be altered:

"... nevertheless, if by misprision in embodying the judgments, by errors have been introduced, these Courts possess, by Common law, the same power which the Courts of record and statute have of rectifying the mistakes which have crept in The House of Lords exercises a similar power of rectifying mistakes made in drawing up its own judgments, and this Court must possess the same authority. The Lords have however gone a step further, and have corrected mistakes introduced through inadvertence in the details of judgments; or have supplied manifest defects in order to enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies."

Basis for exercise of the power was stated in the same decision as under:

"It is impossible to doubt that the indulgence extended in such cases is mainly owing to the natural desire prevailing to prevent irremediable injustice being done by a Court of last resort, where by some accident, without any blame, the party has not been heard and an order has been inadvertently made as if the party had been heard."

Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality. When the Constitution was framed the substantive power to rectify or recall the order passed by this Court was specifically provided by Article 137 of the Constitution. Our Constitution-makers who had the practical wisdom to visualise the efficacy of such provision expressly conferred the substantive power to review any judgment or order by Article 137 of the Constitution. And clause (c) of Article 145 permitted this Court to frame rules as to the conditions subject to which any judgment or order may be reviewed. In exercise of this power Order XL had been framed empowering this Court to review an order in civil proceedings on grounds

analogous to Order XLVII Rule 1 of the Civil Procedure Code. The expression, 'for any other sufficient reason' in the clause has been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances has been held to be sufficient ground to exercise the power. Apart from Order XL Rule 1 of the Supreme Court Rules this Court has the inherent power to make such orders as may be necessary in the interest of justice or to prevent the abuse of process of Court. The Court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for sake of justice".

14. In view of the above, we find no ground to review the Judgment and Order dated 05.05.2022 passed in WA No. 01/2019.

15. The Review Petition is accordingly dismissed as not maintainable.