

(2023) 05 GAU CK 0054

In the Gauhati High Court

Case No : Review Petition No. 141 Of 2018

Longsing Terang And Anr

APPELLANT

Vs

State Of Assam And 107 Ors

RESPONDENT

Date of Decision : 23-05-2023

Acts Referred:

Citation : (2023) 05 GAU CK 0054

Hon'ble Judges : Sanjay Kumar Medhi, J

Bench : Single Bench

Advocate : P.K. Roy Choudhury, J. Chutia, M.K. Boro, M. Agarwalla, M. Mahanta, P. Hazarika

Final Decision : Dismissed

Judgement

1. Heard Shri P.K. Roy Choudhury, learned counsel for the applicants, who by means of this application has prayed for review of the judgment and order dated 18.08.2016 passed in WP(C)5660/2009. Also heard Shri J. Chutia, learned Standing Counsel, KAAC, Shri M.K. Boro, learned counsel appearing for the respondent nos. 9, 14, 29, 37, 44, 47, 48, 60, 75, 77, 80 & 81, Shri M. Agarwalla, learned counsel appearing for the respondent nos. 10, 17, 27, 34, 49, 52, 57, 59, 65, 67, 73 & 78, Shri M. Mahanta, learned counsel appearing for the respondent nos. 12, 13, 15, 21, 43, 46, 50, 51, 53, 55, 66, 68, 74, 82, 83, 85 & 86, and Shri P. Hazarika, learned counsel appearing for the respondent nos. 22, 24, 28, 31, 42 & 63.

2. Two applicants have preferred this review against the aforesaid judgment as mentioned. The principal ground of review is that a particular point urged in the writ petition was not considered at all while the judgment dated 18.08.2016 was delivered. It is contended that there were a bunch of writ petitions which were disposed of by the common judgment and order dated 18.08.2016.

3. Shri P.K.R. Choudhury, the learned counsel for the applicants has submitted that a categorical point taken in the writ petition was that in the impugned

selection for the posts of Assistant Teacher in the Karbi Anglong Autonomous Council, reservation was not followed which was in violation of the statute. It has further been contended that in the affidavit-in-opposition filed by the Karbi Anglong Autonomous Council, the said point instead of being disputed, was, to the contrary admitted. He, therefore, contends that the entire selection was vitiated due to non-following of the reservation policy which is mandatory in nature. He submits that the learned Single Judge while passing the aforesaid judgment did not even consider the aforesaid aspect which was in fact an admitted position. The learned counsel has already drawn the attention of this Court to an order dated 10.02.2017 passed by the Hon'ble Division Bench in Writ Appeal 38/2017 whereby a liberty was given to the appellants in that case to prefer a review.

4. Shri Roy Choudhury, the learned counsel for the applicants submits that when a point of law was urged and was not considered in spite of the point being conceded by the contesting respondents, the judgment in question is liable to be reviewed in the interest of justice.

5. Refuting the aforesaid submissions, Shri J. Chutia, the learned Standing Counsel, KAAC has submitted that the present application for review is not maintainable for more than one reason. By drawing the attention of this Court to the review petition, he submits that though the judgment dated 18.08.2016 was a common judgment, the review was sought for only in respect of WP(C)/5660/2009 in which the applicant no. 1- Longsing Terang was not even a petitioner. He submits that so far as the applicant no. 2 is concerned namely, Shri Tapan Khemprai, though he was a petitioner in WP(C)/5660/2009, there is no statement that the applicant no. 2 belonged to the Scheduled Tribe category.

6. By drawing the attention of this Court to the pleadings made in paragraph nos. 27 & 28 of the writ petition, Shri Chutia, the learned Standing Counsel has submitted that only a general statement has been made regarding the application of the Reservation Act and the Rules.

7. Shri Chutia, the learned Standing Counsel further submits that even overlooking the aforesaid aspect of the matter, the appointment order dated 27.11.2009 which was annexed to the writ petition would show that 17 persons were appointed against the 17 numbers of vacancies which were in order of merit. To buttress his argument, attention of this Court has also been drawn to the Select List prepared, in which the position of the application no. 2 was 35 and there were a number of persons in the ST category above the petitioners who were also not appointed. He submits that in any case, the reservation being only 5 % would have constituted one post which would not give any relief to the applicant no. 2. He further submits that the advertisement in question had made it clear that the Reservation Policy would be followed and in fact three persons belonging to the reserved category of ST (H) were amongst the persons appointed. He submits that apart from the fact that the present application is not maintainable, no fruitful purpose would be served and the applicants would not

be benefitted in any way even if the review petition is allowed.

8. The learned counsel for the private respondents while endorsing the submissions made by the learned Standing Counsel of the Council have submitted that no faults can be attributed to their clients inasmuch as their selection was done in accordance with merits and in fact there is no allegation of any nature against their selection and the challenge is only pertaining the issue of following the Reservation Policy.

9. Rejoining his submissions, Shri Roy Choudhury, the learned counsel for the applicants has submitted that there were a number of writ petitions and though only one writ petition has been mentioned in this review petition, since the judgment and order is a common one, the first objection is not tenable. He submits that in any case, so far as the applicant no. 2 is concerned, he was a petitioner in the concerned writ petition and therefore, it cannot be said that the review petition is not maintainable, more so, when liberty was granted to the applicants by the Hon'ble Division Bench to prefer a review. He has also drawn the attention of this Court to the averments made in the affidavit-in-opposition of the Council dated 10.02.2010 wherein the allegations of not following the Act in question have been admitted.

10. The rival submissions made by the learned counsel for the parties have been duly considered and the materials placed before this Court have been examined.

11. The power of review is to be exercised on extra ordinary circumstances and only in a case which falls within the contours of the provisions relating to review.

12. In the case of Kamlesh Verma Vs. Mayawati & Ors. reported in (2013) 8 SCC 320, the following have been laid down by the Hon'ble Supreme Court:

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

20.1. 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" have been interpreted in Chhajju Ram v. Neki and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius 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 v. Sandur Manganese & Iron Ores Ltd.

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 reheard 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."

13. In the recent decision dated 18.08.2022 in the case of S Madhusudhan Reddy Vs. V Narayana Reddy & Ors. reported in (2022) SCC OnLine 1034, a Three Judges' Bench of the Hon'ble Supreme Court has reiterated the aforesaid law laid down in the case of Kamlesh Verma (supra).

14. In the instant case, the primary ground of review is that a point which was taken up in the writ petition was not considered by the learned Single Judge while disposing of the writ petition vide the common judgment and order dated 18.08.2016.

15. It is a settled position of law that points which were not extremely dealt with by a Court and not specifically find mention in the judgment, are deemed to have been considered and rejected. In this connection, reference may be made to the case of Central Bank of India & Ors. vs. Dragendra Singh Jadon reported in (2022) 8 SCC 378. Under those circumstances, this Court is not able to accept to the contention made on behalf of the applicants that the judgment and order in question is liable to be reviewed. Even otherwise, the facts and circumstances as narrated above are such that no case for review is made out and no fruitful purpose would be served even if this Court decides to re-hear the petition as the position of the applicant no. 2 was 35 in the select list and there were only 17 numbers of post which were filled up. This Court has also noted the submissions made on behalf of the Council that there are persons above the petitioners who were also not offered appointment and had belonged to the Scheduled Tribe category. The learned Standing Counsel of the Council has also submitted that amongst the candidates who were appointed, there were three numbers of

candidates belonging to the ST (H) category.

16. Under those facts & circumstances, this Court is of the opinion that no case for review is made out. Accordingly, the same stands dismissed.