

(2024) 05 GAU CK 0017

In the Gauhati High Court

Case No : Writ Petition (C) No. 4487 Of 2018, Review Petition No. 166 Of 2017

Samsun Nehar

APPELLANT

Vs

State Of Assam And 4 Ors.

RESPONDENT

Date of Decision : 13-05-2024

Acts Referred:

Constitution Of India, 1950 — Article 226

Code of Civil Procedure, 1908 — Section 114, Order 47, Order 47 Rule 1

Citation : (2024) 05 GAU CK 0017

Hon'ble Judges : Sanjay Kumar Medhi, J

Bench : Single Bench

Advocate : R Choudhury, M Bhattacharaya, Sn Adhyapak

Final Decision : Dismissed

Judgement

1. Both the review petition and the writ petition being connected and filed by the same petitioner, those are taken up together for an analogous hearing and are being disposed of by this common judgment and order.

2. The facts projected are that a recruitment process was initiated in the year 2009 to fill up the posts of Anganwadi Workers/Helpers in various Centres, including 22 No. Jaberikuchi Uttar Suba Anganwadi Centre under West Mangaldai Child Development Project in the district of Darrang.

3. It is the case of the petitioner that she being eligible in all respects and had fared well in the selection should have been appointed. However, one Aparna Devi was selected against Sl. No. 1 and was offered the appointment. It is alleged that the said candidate, Aparna Devi was not a resident under the concerned Anganwadi Centre.

4. The aforesaid appointment of Aparna Devi was challenged by the present respondent no. 5 by filing WP(C)/4470/2013 in which, however, the petitioner was not made a party. The said writ petition was allowed vide an order dated 29.07.2016 whereafter the respondent no. 5 has been appointed. It is the

contention of the petitioner that she was in Sl. No. 2 in the select list and therefore, in the event when the first nominee was held to be ineligible, the petitioner should have been offered the appointment. Accordingly, the review application was filed. In the meantime, a report dated 04.09.2015 was submitted by the concerned CDPO holding the writ petitioner to be ineligible as she was not a resident of the particular Anganwadi Centre and that has been said to be the reason of not offering the appointment to the writ petitioner but offering the same to the private respondent no. 5 and accordingly, the second writ petition has been filed.

5. I have heard Mrs. R Choudhury, learned counsel for the review applicant/petitioner. I have also heard Ms. M Bhattacharaya, learned Addl. Senior Government Advocate, Assam as well as Shri SN Adhyapak, learned counsel for the respondent no. 5. Pleadings have been exchanged

6. Ms. Choudhury, learned counsel for the review applicant/petitioner has submitted that the private respondent was not even a selected candidate and therefore, the appointment could not have been offered to her only because she had filed the earlier writ petition. With regard to her challenge to the report dated 04.09.2015, it is submitted that the petitioner has annexed the concerned certificate from the Government Gaonburah certifying her to be a resident under the said Centre. The learned counsel, accordingly submits that both the review petition and the writ petition should be allowed with a direction to appoint the petitioner as the Anganwadi Worker of the 22 No. Jaberikuchi Uttar Suba Anganwadi Centre by interfering with the appointment of the respondent no. 5.

7. Per contra, Ms. Bhattacharaya, learned State Counsel, Assam has submitted that the reason for not offering the appointment to the petitioner is evident as the petitioner was not a resident under the concerned Anganwadi Centre and therefore, she will not have the locus to question the appointment made. The anomalies in the certificate relied upon by the petitioner, including the discrepancies in the translations done have also been highlighted by the learned State Counsel. A communication dated 04.11.2019 made by the CDPO, Pachim Mangaldai ICDS Project to the Director, Social Welfare Department, Assam has also been placed on record as per which, the writ petitioner is not a resident under the concerned Anganwadi Centre.

8. Shri Adhyapak, learned counsel for the respondent no. 5 has submitted that the writ petition by his client was filed in the year 2013 challenging the appointment of one Aparna Devi and the said writ petition was pending for about a period of more than 3½ years and there was no action of any nature of the petitioner at that point of time. The said writ petition, being WP(C)/4470/2013 was disposed of on 29.07.2016 and pursuant thereto, on 08.08.2016, the respondent no. 5 was appointed. The review application was itself filed after a period of about 1 year which makes it clear that it has been filed as an afterthought. By referring to the affidavit-in-opposition filed by the respondent no. 5, it is also contended that the writ petitioner was a Gaon Panchayat member

for the period from 2013 to 2017 and the present approach of filing the review lacks bona fide.

9. The rival submissions of the learned counsel for the parties have been duly considered and the materials placed before this Court have been carefully examined.

10. The primary contentions advanced on behalf of the petitioner is that the respondent no. 5 was not a selected candidate and in the event, the eligibility of the candidate against Sl. No. 1, Aparna Devi was found fault with by this Court, it should have been the writ petitioner who was required to be given the offer of appointment. The petitioner has also relied upon certain certificates on the aspect of eligibility regarding the place of residence. To examine the aforesaid aspect, this Court has looked into the materials placed on record. Though there are certain certificates which have been annexed with the review as well as writ petition, anomalies are found both with the issuing authorities and the translations made. While the petitioner places reliance on the certificate issued by one Deobar Deka, Government Gaonburah of Dekargaon Village, in the translated version, the village has been written as Dekargaon, Jaberikuchi, Balobara Tuk. The aforesaid aspect has, however, been fairly admitted by the learned counsel for the petitioner/applicant. What is also to be noted is that the report dated 04.09.2015, so far as the petitioner is concerned, shows that her certificate has been said to be issued by one Bangshidhar Deka and not Deobar Deka as claimed by the petitioner. The said aspect has also been clearly stated in the affidavit-in-opposition filed by the respondent no.4 on 29.11.2019. In paragraph 3 of the said affidavit-in-opposition, the following has been stated:

"3. That one survey report was prepared by the department regarding residential status under concern Anganwadi centre under the 22 no. Jaberikuchi Uttar Chula Anganwadi Centre there are 47 numbers of family where the name of the family of petitioner was not found. Therefore, it is clear that the petitioner is not a resident within the 22 no. Jaberikuchi Uttar Chuba Anganwadi Centre."

11. This court is of the considered view that when the eligibility of the applicant/petitioner itself on the ground of residence has been questioned and there are materials on record to justify such a view, this Court would not be in a position to make a roving inquiry into the disputed questions of facts.

12. This Court is also of the opinion that an ineligible candidate would not have the locus to challenge the selection and appointment of another candidate. In any case, the residential status of the respondent no. 5 was/is not the subject matter of challenge. This Court has also taken note of the fact that the earlier writ petition instituted by the respondent no. 5 in the year 2013 was pending in this Court for a period of more than 3½ years when no steps/actions were taken by the petitioner. The appointment of the incumbent, Aparna Devi was also admittedly not challenged by the writ petitioner which, prima facie demonstrates that the subsequent action of filing the review and the instant writ petition are

afterthoughts and lack bona fide.

13. So far as the aspect of review is concerned, the contours of entertaining or examining an application for review are well-defined. In this connection, there is a catena of decisions of the Hon'ble Supreme Court and one may gainfully refer to the some of those decisions:

- i) Aribam Tuleshwar Sharma v. Aribam Pishak Sharma, (1979) 4 SCC 389;
- ii) Union of India v. B. Valluvan, (2006) 8 SCC 686; and
- iii) State of W.B. v. Kamal Sengupta, (2008) 8 SCC 612.

14. In the case of Aribam Tuleshwar Sharma (supra), the following has been laid down:

"The Judicial Commissioner gave two reasons for reviewing his predecessor's order. The first was that his predecessor had overlooked two important documents Exs. A-1 and A-3 which showed that the respondents were in possession of the sites even in the year 1948-49 and that the grants must have been made even by then. The second was that there was a patent illegality in permitting the appellant to question, in a single writ petition, settlement made in favour of different respondents. We are afraid that neither of the reasons mentioned by the learned Judicial Commissioner constitutes a ground for review. It is true as observed by this Court in Shivdeo Singh v. State of Punjab there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate powers which may enable an appellate court to correct all manner of errors committed by the subordinate court."

15. In the case of B. Valluvan (supra), the following has been laid down:

"The Division Bench of the High Court committed a serious error in entering into the merit of the matter while exercising its review jurisdiction. The Court's jurisdiction to review its own judgment, as is well known, is limited. The High Court, indisputably, has a power of review, but it must be exercised within the framework of Section 114 read with Order 47 of the Code of Civil Procedure. The High Court did not arrive at a finding that there existed an error on the face of the record. In fact, the High Court, despite noticing the argument advanced on

behalf of the Union of India that the 1st respondent had no legal right to be appointed, proceeded to opine that the panel prepared for filling up of future vacancies should be given effect to. The review of the High Court was not only contrary to the circular letter issued by the Union of India, but also contrary to the general principles of law.”

16. In the case of Kamal Sengupta (supra), the following has been laid down:

“The term ‘mistake or error apparent’ by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision.”

17. The principles governing review are well settled. In a recent decision dated 18.08.2022 reported in (2022) SCC OnLine 1034, (S Madhusudhan Reddy Vs. V Narayana Reddy & Ors.), a three Judges’ Bench of the Hon’ble Supreme Court, after discussing the relevant case laws has reiterated the principles laid down in the case of Kamlesh Verma Vs. Mayawati & Ors. , reported in (2013) 8 SCC 320 which are as follows:

“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 Poulouse 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 negative.”

18. Following the aforesaid guidelines, this Court is of the view that by the application filed for review, the applicant is attempting to have a re-hearing of the earlier writ petition touching upon the merits and by bringing in certain issues which may affect the decision and are not within the permissible ambit of an exercise to be conducted in powers of review.

19. In view of the aforesaid facts and circumstances and the discussions made, both the review petition and the writ petition are dismissed.

20. No order as to cost.