

(2023) 03 GAU CK 0056
In the Gauhati High Court
Case No : Review Petition No. 58 Of 2021

State Of Assam And 5 Ors.

APPELLANT

Vs

Padum Borah And 3 Ors.

RESPONDENT

Date of Decision : 31-03-2023

Acts Referred:

Constitution Of India, 1950 — Article 215, 226

Citation : (2023) 03 GAU CK 0056

Hon'ble Judges : Sanjay Kumar Medhi, J

Bench : Single Bench

Advocate : P N Goswami, B Barman

Final Decision : Dismissed

Judgement

1. The State of Assam and five of its Officers are before this Court by way of this application filed under Chapter X of the Gauhati High Court Rules read with Articles 226 and 215 of the Constitution of India by which a review has been sought of the judgment and order dated 10.12.2018 passed by this Court in WP(C)/7031/2015.

2. Before going to the grounds of review, it would be convenient if the order dated 10.12.2018, of which review has been sought for, is taken into consideration. However, to appreciate the order, it would be necessary to put in brief the background of the Writ Petition being WP(C)/7031/2015, which was filed by four numbers of petitioners.

3. The writ petitioners had projected that they had participated in the selection process for various posts in the Irrigation Department at Tezpur. The posts were of Grade-IV and the selection process was initiated vide an advertisement dated 23.08.1998. The petitioners claimed to have come out successful in the selection process and were accordingly issued appointment orders dated 08.10.1999 pursuant to which they joined their respective duties. The grievances of the petitioners were that after joining their respective posts, they were neither

allowed to work, nor paid their salaries.

4. Under such circumstances, the petitioners along with others had filed a writ petition before this Court which was registered as WP(C)/1342/2002, which was disposed of vide an order dated 04.03.2002. By the said order, this Court had directed the Commissioner & Secretary, Irrigation Department to consider the grievance of the petitioners and pass necessary orders within a month.

5. Since the aforesaid order dated 04.03.2002 was not complied with, the petitioners had filed a contempt petition being Cont. Case (C) No. 137/2003 before this Court.

6. When the Contempt Petition was taken up for consideration, the learned counsel appearing for the petitioners was verbally assured that the grievances of the petitioners would be redressed and on such assurance, the Contempt Petition was not pressed. Unfortunately, the assurance given in the Court was without any bona fide intention and the grievance of the petitioners remained unredressed. In the meantime, another group of similarly situated persons had filed a Writ Petition being WP(C)/5580/2002. The said writ petition was allowed by this Court vide judgment and order dated 04.09.2009. This Court was also apprised that against the aforesaid judgment and order dated 04.09.2009, an appeal was preferred by the State which was also dismissed and thereafter, an SLP was filed in the Hon'ble Supreme Court which was also dismissed. However, the grievances of the petitioners have not been redressed.

7. The petitioners in this case accordingly have prayed for a similar benefit as the writ petition instituted by similarly situated persons had attained finality after dismissal of the SLP.

8. During the hearing which was on 10.12.2018, an objection was raised regarding applicability of the orders passed in WP(C)/5580/2002 in the instant case. However, this Court had laid down that as per the settled principle of law, the judgment rendered on the same issue cannot be denied to similarly situated persons. Under the aforesaid facts and circumstances, the writ petition was disposed of vide the order dated 10.12.2018 directing the authorities to consider the case of the petitioners in the lines of the similar considerations which was directed for the petitioners in WP(C)/5580/2002 and pass speaking orders regarding allotment of work and subsequent payment of salaries.

9. This Court had also observed that since the matter was pending for about two decades, the aforesaid exercise was directed to be completed within an outer limit of two months from the date of receipt of certified copy of the order.

10. It is the aforesaid order dated 10.12.2018 passed in WP(C) 7031/2015 which is the subject matter of the present petition for review. As stated earlier, the review petition has been filed on 26.03.2021.

11. I have heard Shri PN Goswami, learned Addl. Advocate General, Assam for the review petitioners. I have also heard Shri B. Barman learned counsel for the

opposite parties (writ petitioners).

12. The learned Addl. Advocate General appearing for the applicants had firstly submitted that though appointment orders dated 08.10.1999 were issued, those were pursuant to a confidential order dated 23.07.1999 issued by the then Minister, Irrigation Department and does not speak about any selection process. He submits that the appointment orders did not contain the addresses of the appointees which raises serious doubts regarding the veracity of such appointment.

13. Pursuant to the order dated 10.12.2018 passed by this Court, an enquiry was undertaken in which it revealed that there was no records of any selection process. The State has also projected that an Enquiry Committee was constituted which had also submitted a report dated 24.12.2020. As per the said Enquiry Report, there was no selection process and other formalities and approval from the Government or the Department was also not there and therefore the appointments made were termed to be illegal.

14. It is urged on behalf of the applicants that the appointment letters apparently were not preceded by any selection process and therefore, could not have been given effect to. In this connection, reliance has been placed upon the case of Secretary, State of Karnataka and Ors. vs. Umadevi and Ors. reported in (2006) 4 SCC 1.

15. The learned Addl. Advocate General has also submitted that if an order is bad in its inception, it cannot be sanctified at a later stage. It is also submitted that the petitioners had approached the Writ Court after a substantial delay and the said delay would disentitle the petitioners from getting any relief.

16. It has further been stated that there was no advertisement, no selection and relevant factors and facts could not be placed before this Court which led to the error in the judgment and therefore it is liable to be reviewed. It is further submitted that this Court is a Court of record under Article 215 of the Constitution of India and has the inherent powers to correct the same.

17. On the other hand, Shri B. Barman learned counsel for the opposite parties / writ petitioners has submitted that filing of this review is only an afterthought and has been done to circumvent the outcome of a contempt petition. The learned counsel has submitted that a false assurance was given in the Court for which the contempt petition was withdrawn and only thereafter the instant writ petition had to be filed as the orders of this Court were yet to be complied with. The learned counsel for the opposite parties / writ petitioners have also raised a question of delay and laches in filing the review petition. He has pointed out that while the judgment and order of which review has been sought for is dated 10.12.2018, the review petition has been filed on 26.03.2021. He submits that this delay itself would be fatal and would disentitle the review applicants from a hearing of the review petition.

18. Before going to the merits of the rival contentions, this Court is required to address the issue of delay in filing the review petition. Admittedly, the present application has been filed after a delay of about two years three months. The period prescribed under the law of limitation, 1963 to prefer a review is 30 days.

19. At this stage, a question was raised on behalf of the applicants regarding the applicability of the law of limitation in a writ proceeding. The said objection was raised as the present review is against a judgment passed in a writ petition.

20. On this issue, the learned counsel for the parties were requested to address this Court.

21. Shri Goswami, the learned Addl. Advocate General, Assam has placed before this Court a judgment of the Hon'ble Supreme Court reported in AIR 1966 SC 1313 State of Punjab vs. Amar Singh Harika. In the aforesaid case, the Hon'ble Supreme Court had held that an order of dismissal would take effect only after it is communicated to the Officer concerned. In the considered opinion of this Court, the said decision has no relevance with the present issue at hand.

22. Per contra, the learned counsel for the opposite parties/ writ petitioners had placed reliance upon a Constitutional Bench judgment of the Hon'ble Supreme Court reported in AIR in 1964 SC 1006 [State of MP vs. Bhailal Bhai].

23. In the aforesaid case of Bhailal Bhai (supra), the Hon'ble Supreme Court has held that Limitation Act, per se, may not have an application with a writ proceeding. However, the powers exercised by a Writ Court being a power of equity, delay and laches would be a relevant factor. It has been specifically laid down that whatever is barred by limitation would certainly be applicable in a writ proceeding and over and above that, even if law of limitation prescribes for a lengthier period, in a given case, on the ground of delay itself, a review can be dismissed. The relevant part of the judgment of the Hon'ble Supreme Court is extracted herein below:

"21. ... Learned counsel is right in his submission that the provisions of the Limitation Act do not as such apply to the granting of relief under Art 226. It appears to us however that the maximum period fixed by the legislature as the time within which the relief by a suit in a Civil Court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured. The court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the court to hold that it is unreasonable ..."

24. In the instant case, the delay is found to be about two years three months. Initially there is no explanation of any kind in the review petition as to the delay. However, after raising of this point of delay, an additional affidavit has been filed by the applicants explaining the delay. The explanation given are not at all convincing as it mainly relates to some in-house enquiry. The present case

involves an appointment, pursuant to an advertisement dated 23.08.1998. The appointment itself was of October, 1999. This Court had further seen that in the meantime, at least two numbers of writ petitions have been filed on the same subject matter followed by a contempt petition. The circumstance under which the contempt petition was dismissed on withdrawal is also unfortunate inasmuch as an assurance was given that the order of this Court would be complied with.

25. In view of the above, this Court is of the unhesitant opinion that the present application cannot pass the test of overcoming the delay and laches as the so called explanation given has been done at a much later stage and that without any sufficient reasons.

26. That apart, it is a settled position of law that the role of a Review Court is a very limited one. By borrowing the principles of review from the Code of Civil Procedure, a Review Petition is maintainable only on the ground that a new matter has been discovered which was not within the knowledge of the applicant or that the same was not able to be found out even after due diligence or that there is an error apparent on the face of the records in the judgment or for sufficient reasons. At this stage, this Court is reminded of the settled position of law that to maintain a review petition, three conditions precedent have to be there i.e., error apparent on the face of the records, discovery of new facts which were not within the knowledge of the review applicant and would have a material bearing in the adjudication and thirdly, for any other sufficient reasons.

27. The contentions advanced on behalf of the State are mainly touching the merits of the case which involves the process of recruitment by which the writ petitioners were inducted into the services. The arguments though may be relevant in an original writ proceeding would not be of much relevance in a review petition wherein the principal ground of review, amongst others have to be an error apparent on the fact of the records. In other words, the error should be palpable and glaring which any reasonable person can detect.

28. To appreciate the rival contentions on the point of review, it would be beneficial to refer to certain case laws. 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 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."

29. In the 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 has reiterated the aforesaid law laid down in the case of *Kamlesh Verma* (supra).

30. In the case of *Shivdev Singh & Ors. Vs. State of Punjab & Ors.*, reported in AIR 1963 SC 1909, the Hon'ble Supreme Court has clarified that there is no restriction in Article 226 of the Constitution of India for exercising the power of review as, it is a Court of plenary jurisdiction. However, it has been held that there are definitive limitations and are not to be exercised on the ground that the decision was erroneous on merits, as the same could be a matter within the domain of an Appellate Court. It has further been clarified that a review power should not be confused with appellate power which may enable an Appellate Court to correct all matters of error committed by a subordinate court.

31. The aforesaid view has been uniformly followed by the Hon'ble Supreme Court, including in the landmark case of *Aribam Tuleswar Sharma Vs. Aribam Pishak Sharma*, reported in (1979) 4 SCC 389, a case which had gone from this

High Court.

32. This Court finds force in the contention of the learned counsel for the respondents that a review petition cannot be equated with the original writ petition as, in a review petition, the grounds are circumscribed and limited. This Court, in the judgment dated 10.12.2018, has duly considered the case of the writ petitioners and thereafter, allowed the same. This Court is of the opinion that in the findings reached, as recorded in the order dated 10.12.2018, no error apparent on the face of the records is seen therein and the same has been passed by taking into consideration all the relevant materials. It is an established law that the correctness of an order cannot be tested in a review petition for which the appellate forum is available. It is further laid down that a judgment may be erroneous but that by itself, would not make it fit for review unless, the error is apparent on the face of the records. In the course of hearing, nothing could be shown on behalf of the petitioners that the judgment was palpably erroneous on the face of the records.

33. Therefore, taking into consideration the aforesaid discussion including the principles governing a Review Petition, this Court, apart from holding the instant petition to be a belated one which does not deserve any consideration, even on merits, applicants have failed out to make out any case for exercise of the extraordinary powers of review.

34. The review petition is accordingly dismissed.

35. No order, as to costs.