
(1995) 06 GAU CK 0032
In the Gauhati High Court
Case No : Review Application No. 76 of 1994

State of Assam

APPELLANT

Vs

Ashok Kr. Das and Others

RESPONDENT

Date of Decision : 22-06-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1995) 3 GLR 165

Hon'ble Judges : J.N. Sharma, J

Bench : Single Bench

Advocate : B. Banarjee, for the Appellant; B.P. Kakoty and R. Sharma, for the Respondent

Final Decision : Allowed

Judgement

J.N. Sarma, J.—This Review Application has been filed to review the judgment and order dated 8.2.94 passed by the Hon'ble High Court in Civil Rule No. 193/93.

2. The only ground on which review is sought that at the time of hearing the matter, the records were not produced before the Court and as against the Judgement Writ Appeal being Writ Appeal No. 173/94 was filed before the Division Bench of tills Court and the Division Bench of tills Court passed the following order:

We are of the opinion that the Appellant did not produce the relevant records before the learned Single Judge despite time being granted to them on several occasions. The learned Counsel appearing for the Appellant Mr. Chaliha urged that the records were lost and thus they could not be produced before the learned Single Judge. That being so, the proper remedy available to the Appellant is to file a review application before the learned Single Judge stating that the records could not be produced because they were lost. In case such a review application is filed it can be decided by the learned Single Judge after

giving hearing to the parties concerned, according to law.

3. This Court by judgment and Order gave the following direction:

That the Petitioners shall be appointed against the vacancies existing as well as future after medical test and other verifications within a period of 3(three) months from to-day. The select list which was made/published has not lapsed and still holds the field. The Petitioner being Scheduled Castes arc entitled for consideration under Assam Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Act, 1978 and Rules framed thereunder.

4. The main ground of Review is as follows:

For that the statements made in para 7 of the Affidavit-in-opposition clearly show that the good number of candidates were already appointed to the post for which the applications Were called for and as such the Petitioner merely because of their selection cannot claim that they should be appointed for all the subsequent vacancies that may occur irrespective of the Service Rules. It was also mentioned in the affidavit that there is no back-log vacancy in respect of Scheduled Caste and Scheduled Caste (Hills) only.

5. It is stated that the records which were produced by the Respondents were lost in the Office of the Hon''ble Government Advocate, Assam and as such it could not be produced before the Hon''ble Court when the matter was taken up for hearing. The records were traced out later-on and they are now produced for the consideration of the Court.

6. It is seen from the record as follows:

2. That in order to fill up back-log vacancies in respect of S.C., S.T. (P) and S.T. (H) candidates in the Secretariat, an advertisement was issued and a select list was published on 6.5.92 containing 161 candidates. The break-up of all the back-log reserved candidates is as follows:

ST (P) .. 32 Nos.

S.C. .. 30 Nos.

S.T. (H) .. 15 Nos.

Total =77 Nos.

The total 32 candidates belonging to S.T. (P), 30 S.C. candidates and 3 S.T, (H) candidates in order of merit of respective categories from the above select list were offered appointment starting from the Roster Point Nos. 396 to 460 (32+30+3=65 candidates) as revealed in the Registers of appointment maintained as required under the provisions of the Act and the Rules framed thereunder.

3. That there arc only 12 posts reserved for S.T. (H) candidates to be filled "up, since there were no more candidates belonging to S.T. (H) category available in

the aforesaid select list, no appointment in such category could be made.

4. That it may be mentioned that out of 30 S.C. candidates selected in order of merit only 27 S.C. candidates joined in the Lower Division Assistant keeping 3 posts vacant in that category. Thereafter 3 S.C. candidates against Roster Point Nos. 461, 462 and 463 were appointed and the candidates had already joined in the said post.

5. That in respect of S.T. (P) candidates out of 32 candidates appointed only 26 joined keeping 6 posts vacant and hence 6 more S.T. (P) candidates against Roster Point Nos. 464, 465, 466, 467, 468, 469 were offered appointment in order of merit and all of them have joined already.

6. That the deponent further states that two candidates belonging to S.T. (P) had submitted resignation appointed in order of merit and their name appeared in Roster Point Nos. 403 and 424 and hence two more ST (P) candidates were offered appointment against Roster Point Nos. 470 and 471 and both of them have joined accordingly.

7. That the deponent states that in view of the facts stated in the foregoing paras it may be stated that due to non-joining and resignation of 3 S.C. candidates and 8 S.T. (P) candidates and thereby issuing fresh appointments to 3 more S.C. & 8 more S.T. (P) candidates from the select list in order of merit, the Roster Points had to be continued serially. So, although Roster Points increased, but the filling up of vacancies remained unchanged.

7. Regarding the power of review, the law is settled. I rely on the following decisions:

i) 1979 S.C. 1047 (Aribam Tuleswar Sharma, Appellant v. Aribam Pishak Sharma and Ors. Respondents) wherein paragraph-3 the Supreme Court relying on its earlier decision 1963 S.C 1909 Shivdeo Singh v. State of Punjab laid down the law as follows:

It is true as observed by this Court in Shivdeo Singh and Others Vs. State of Punjab and Others, 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 power which may enable an Appellate Court to correct all manner of errors committed

by the Subordinate Court.

ii) 1994 (2) GLJ 383 State of Assam v. Atul Chandra Das wherein this Court stated that the Court has the power to review its order in appropriate cases but in a restricted and limited manner and in exercising the power of review, the spirit of Order 47 of CPC is to be followed as guide-line to review the judgment/ Order passed by the High Court.

iii) 1994 (2) GLR 236 Mukul Pathak v. Hemen Chandra Das wherein this Court has pointed out that power of review can be exercised if manifest wrong has been done to do full and effective justice.

8. In the instant case I find that there was manifest error and injustice caused to the Respondents in the Writ Application for non-consideration of the record which could not be placed earlier before the Court for the reasons stated above. On consideration of the records I find that the Writ Application which was allowed has caused injustice. Accordingly, this Review Application is allowed and the Writ Application shall stand dismissed.

9. In the additional affidavit filed by the Government in Paragraph, 2, 3, 4, 5, 6 and 7 it is stated as follows:

7. That in order to fill up back log vacancies in respect of S.C.S.T. (P) and S.T. (H) candidates in the Secretariat, an advertisement was issued and a select list was published on 6.5.92 containing 161 candidates. The break-up of all the back-log reserved candidates is as follows:

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The total 32 candidates belonging to S.T. (P), 30 S.C. candidates and 3 S.T. (H) candidates in order of merit of respective categories from the above select list were offered appointment starting from the Roster Point Nos. 396 to 460 (32+30+3 = 65 candidates) as revealed in the Registers of appointment maintained as required under the provisions of the Act and the Rules framed thereunder.

3. That there are only 12 posts reserved for S.T. (H) candidates to be filled up, since there were no more candidates belonging to S.T. (H) category available in the aforesaid select list, no appointment in such category could be made.

4. That it may be mentioned that out of 30 S.C. candidates selected in order of merit only 27 S.C. candidates joined in the Lower Division Assistant keeping 3 posts vacant in that category. Thereafter 3 S.C. candidates against Roster Point Nos. 461, 462 and 463 were appointed and the candidates had already joined in the said post.

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6. That the deponent further states that two candidates belonging to S.T. (P) had submitted resignation appointed in order of merit and their name appeared in Roster Point Nos. 403 and 424 and hence two more ST (P) candidates were offered appointment against Roster Point Nos. 470 and 471 and both of them have joined accordingly.

7. That the deponent states that in view of the facts stated in the foregoing paras it may be stated that due to non-joining and resignation of 3 S.C. candidates and 8 S.T. (P) candidates and thereby issuing fresh appointments to 3 more S.C. & 8 more S.T. (P) candidates from the select list in order of merit, the Roster Points had to be continued serially. So, although Roster Points increased, but the filling up of vacancies remained unchanged.

10. These facts stated in the affidavit are also borne out by the records produced.

11. I have heard Sri. B. Banarjee, learned Advocate for the Petitioner and Sri B.P. Kataki learned Advocate for the Writ Petitioners (sic, Respondents).

12. The Review Application is allowed and the Writ Application filed earlier shall stand dismissed.