

(2016) 11 GAU CK 0046

In the Gauhati High Court

Case No : Rev. Pet. No. 127 of 2016, Rev. Pet. No. 63 of 2015, W.A. No. 248 of 2012 (D/O)

State of Assam

APPELLANT

Vs

Jayanta Kumar Sarma

RESPONDENT

Date of Decision : 18-11-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 5 GauLT 347

Hon'ble Judges : Ajit Singh, CJ. and Kalyan Rai Surana, J.

Bench : Division Bench

Advocate : Mr. K.N. Choudhury, Sr. Advocate, Ms. R. Deka, Mr. H. Buragohain, Ms. R. Borah, SC, PWD, Mr. P. Pathak, Mr. D.C. Borah, Mr. K. Lahkar, Mr. D. Barman and Ms. B.M. Lahkar, Advocates, for the Petitioner; Mr. N. Alam, Mr. K. Jain, Mr. A. Sharma, GA, Assam, SC

Final Decision : Dismissed

Judgement

Kalyan Rai Surana, J. - This review application has been filed by the State of Assam and three others, seeking review of the common judgment and order dated 30.01.2014, passed by this court in W.A.No. 248/2012 and W.A. No. 249/2012.

2. By passing a common order dated 21.11.2011, the learned Single Judge had allowed two writ petitions, being W.P.(C) No. 331/2011 and W.P.(C) No. 1741/2010. It is against the said order that the State of Assam and others had preferred two herein before mentioned writ appeals. It would be pertinent to mention herein that the order dated 21.11.2011 passed in W.P.(C) No. 1741/2010 was corrected by order dated 27.02.12 and, as such, W.A. No. 248/2012 was filed for assailing both the orders.

3. Relevant summary of the case is that the writ petitioners were holding Diploma in Engineering and they were working in the Public Works Department of the Government of Assam as Junior Engineers. The prescribed qualification for

the promotional post of Assistant Engineer is a degree in Engineering. The writ petitioners had projected that they have taken B.Tech degree in Civil Engineering from the Institute of Advanced Studies and Education, Gandhi Vidya Mandir, Sardar Sahar, Rajasthan, which they claimed was a Deemed University for the purpose of UGC Act, 1946 and that the said institute provided facility for distance educational learning. It was projected that the degree obtained by the writ petitioners was recognised by the Director Technical Education, Assam as well as by the Ministry of Human Resources Department, Government of India. It was projected that the concerned service rules envisaged that whenever a Diploma holder acquires a degree, he will be promoted to the vacant post of Assistant Engineer and such recruitment would be deemed to be a direct recruitment. It was projected that although other departments of the Government of Assam were promoting similarly placed persons to the vacant posts of Assistant Engineers, the Public Works Department had denied the similar benefits to the writ petitioner. In order to buttress the point, the writ petitioners heavily relied on the letter dated 07.10.2009 (enclosure to Annexure-14 of the writ petition). The Public Works Department of the Government of Assam took a different view to the effect that the B.Tech degree, obtained from distance learning institute lacked approval of the All Indian Council for Technical Education ("AICTE" for short), for which it was not a valid degree.

4. This court on considering the contentions raised by the learned counsel for the parties, by the judgment and order dated 10.01.2014, accepted the prayer made by the petitioners for issuance of a direction to the State respondents to consider the case of the petitioners for promotion to the post of Assistant Engineer by recognizing B.Tech (Civil Engineering) degree obtained by them from the Institute in question. In the said order this court had opined that the contention that the degree is not approved by the AICTE had been considered by the learned Single Judge and rightly found that the said contention is untenable and therefore the writ appeal was dismissed.

5. We have heard Shri K.N. Choudhury, learned Senior Advocate assisted by Mr. H. Buragohain, learned counsel for the petitioners, Mr. N. Alam, learned counsel for the respondent No. 11 and Mr. B.N. Sarnia, learned Senior Govt. Advocate, Assam in R.P No. 127/2016. We have also heard Mr. N. Nath, learned counsel appearing for the respondent No. 12-19 and Mr. B.N. Sarma, learned Senior Govt. Advocate, Assam in R.P. No. 63/2015. It was strenuously argued that the degrees obtained by the writ petitioners were fake degrees and in support of the said contention the learned Senior Counsel relied on letter dated 17.02.2016 (Annexure-4), letter dated 19.07.2016 (Annexure-5), e-mail dated 19.09.2016 (Annexure-6) and Public Notice bearing Advt. No. UB/04(04)/2010 (Annexure-6A), as annexed to the present Review Petition. On perusal of the said letters, we see that the said letters/mail were not in existence when the order dated 30.1.2014 was passed by this court in W.A. No. 248/2012 and W.A. No. 249/2012. Moreover, the Public Notice bearing Advt. No. UB/04/(04)/2010 does not contain the date of its issue/publication and it also does not disclose any date

from which the concerned authority had adopted the policy not to recognize the qualification acquire through distance education mode at the Diploma, Bachelor and Masters level in the field of Engineering, etc.

6. Admittedly, in the present case in hand, the review petitioner could not have produced the aforesaid two letters dated 17.02.2016 and 19.02.2016 as well as the e-mail dated 19.07.2016 before this court earlier as those letters did not exist then. Moreover, in the absence of material particulars, we deem it proper to presume that the Public Notice under Advt. No. UB/04(04)/2010 also could not have been produced in the writ petition or in the writ appeal, because its existence came as an enclosure to the letter dated 17.02.2016. Furthermore, there is no mention in the review application as to why the second enclosure to the letter dated 17.02.16 (Annexure-4) was not produced for the perusal of this court. After giving our anxious thought, we are of the opinion that the documents (as now produced in the review petition), which were not even in existence when the writ petition and the writ appeal was heard and decided, cannot be read while exercising the review jurisdiction. This is not a case where a discovery of new and important matter has been subsequently made. This is also not a case where evidence could not be collected even after exercise of due diligence. Rather, the writ appeal was allowed on the ground that other departments of the Govt, of Assam were accepting the degree obtained by distance education and the said finding was based on the Government order under Memo No. WR(E)239/2007/57 dated Dispur, the 7th October, 2009 (enclosure with Annexure-14 in W.A. No.249/2012). Under the circumstances, if the review jurisdiction is exercised on the basis of material now placed on record, it would amount to rehearing of the entire matter by delving deep on the various issues in controversy afresh as if entertaining an appeal. We are of the considered opinion that this is not a case of error on the face of record, but in order to find out such error, if any, it would require a long drawn process of reasoning. We are also of the unhesitant view that merely because there are possibility of two views, that would not be a good ground for a review.

7. In view of the discussion above, the review of judgment and order dated 30.1.14 is not maintainable and hence, it is dismissed. However, there shall be no order as to cost.