
(1998) 09 GAU CK 0001

In the Gauhati High Court

Case No : Review Application No. 78 of 1997 in Writ Appeal No. 27 of 1996

Subhash Kr. Roy and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 17-09-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Constitution of India, 1950 — Article 226

Citation : (1998) 4 GLT 224

Hon'ble Judges : M. Sharma, J;D.N. Chowdhury, J

Bench : Division Bench

Advocate : B.K. Das, A. Roy, D. Mazumdar and P.K. Roy, for the Appellant; B.P. Bora, A.K. Bhattacharyya, S. Sarma and N.T. Tamuly, for the Respondent

Final Decision : Dismissed

Judgement

D.N. Chowdhury, J.—This review application has been filed for review of the judgment and order dated 1.4.97 passed by this Court in Writ Appeal No. 26 of 1996 and others.

2. Briefly stated the Acts are that the legality and validity of the Notification No. VFV. 152/89/92 dated 27.1.92 issued by the Commissioner and Secretary to the Govt. of Assam, Veterinary Department was under challenge in the Civil Rules. By the said notification seven officers, who were working as Assistant Rural Dairy Extension Officers were promoted to the post of Rural Dairy Extension Officers and other equivalent grades. The learned Single Judge after hearing the parties disposed of those writ petitions on 21.11.95, quashed the aforesaid notification and directed the authorities to consider the case of the Petitioner for promotion giving due consideration to his seniority and merit. Review applicants were all parties to the above Civil Rule on whom notices were served. Review applicants being aggrieved by the said order of the learned Single Judge preferred appeals before this Court and this Court by judgment and order dated 1.4.97 dismissed the writ appeals. Review applicants/writ Appellants, who were Respondents in

the writ petition were selected for promotion and in the above selection process writ Appellants were also found unsuitable. No record was produced by the Government, on the contrary, the learned Government Advocate on the date of hearing produced a copy of the affidavit-in-opposition filed on 4.4.96 on behalf of Respondents 1 to 3. This Court accepted the said copy to be a copy filed before this Court. In that affidavit a statement was made by one A.B. Roychowdhury, whose identity was not disclosed. In the affidavit, said Respondent made the following statement:

5. That with regard to the statements made in paragraphs 17, 18 and 23 of the writ petition the deponent states that the records relating to the receipt of the representation of the Petitioner stated to have been forwarded by the Director, Dairy Dev. Deptt. Assam, in January, 1992 are not available in the Department and hence no comment can be furnished and action, if any, taken on the representation cannot be ascertained in absence of record. The deponent further states that as regards promotion, it appears from the records available that there was a meeting of the Selection Board on 6.4.91, in pursuance of which 7 (seven) officers were promoted. But in absence of minutes of that meeting in the relevant file the position could not be ascertained and in absence of essential records relating to the promotion referred to by the Petitioner no verification could be made and hence no comment can be furnished.

This Court in the absence of the record after examining the affidavit-in-opposition dismissed the appeal on 1.4.97 as stated above. Hence the review application.

3. The review applicants sought to rely upon a document dated 27.12.90, a communication between the Director, Dairy Development Department, Assam and the Secretary to the Government of Assam, Vety. Dairy etc. Department, Guwahati forwarding two lists of officers from panel of the provisional gradation list for promotion to the rjmk of Asstt. Director/ SMS. According to the review applicants this documents was not available to them at the time of hearing hence they could not produce the same before this Court at the time of hearing of the writ appeals. As stated earlier, no reason was assigned as to why the above documents could not be procured by them since the Government already indicated by its affidavit that in the absence of essential records relating to promotion no verification could be made. Admittedly, the review applicants have knowledge about the statements made by the Government Respondent but no reason or description was given as to why the above documents could not be produced before hearing of the appeal.

4. We have heard Mr. A. Roy, learned Counsel for the review applicants, Mr. A.K. Bhattacharyya, Senior Counsel for Respondents and Mr. B.P. Borah, Senior Govt. Advocate, Assam.

5. A review is not an appeal in disguise. A proceeding under Article 226 of the Constitution of India though cannot be termed as a civil proceeding, a review of

a judgment of the High Court arising out of such proceeding is permissible in some exceptional case in aid of the accepted principles laid down in Order 47 Rule 1 of the CPC Code. There is a characteristic distinction between an error apparent on record justifying review of the decision. The review applicants have sought review of the judgment of this Court on the ground of discovery of new and important matter or evidence which was not within the knowledge. Admittedly, the State Government already indicated in their affidavit-in-opposition filed on 4.4.96 about the above selection process in their presence and the review applicants were very much aware of filing of this affidavit. At any rate, the review applicants even after its knowledge from the affidavit-in-opposition did not come forward to obtain the document/materials now they are trying to rely on. As stated above, a review is permissible when new and important matter or evidence which after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was passed or on account of some mistake or error apparent on the face of the record. Provisions of Code of Civil Procedure, no doubt, permit an application for review on ground of such discovery but it insist strict conditions so as to prevent litigants lying on its oar when it ought to have foraged for evidence. Public interest enjoins the Judge to insist facts as to the absence of negligence to be strictly proved. It is worthwhile to recall the maxim "Interest Reipublicae ut sity finis litium" -It concerns the State that there be an end of law suits. A party seeking a review on the ground of discovery must show that there was not remissness on its part. A review application cannot be entertained for giving another round of hearing. Argument of the learned Counsel for the review applicants was basically focussed on the merit of the case, which cannot be reopened at this stage for correcting mere error of judgment.

6. In view of the above, we do not find merit in the review application and accordingly it stands dismissed. Interim order, if any, also stands vacated.