

(2017) 02 MAN CK 0006
In the Manipur High Court
Case No : 555 of 2015

The State of Manipur & ANR.

APPELLANT

Vs

Smt.Kshetrimayum Aneshwori Devi & ORS.

RESPONDENT

Date of Decision : 14-02-2017

Acts Referred:

[Constitution of India](#), [Article 226](#) -
Power of High Courts to Issue certain writs
[Code of Civil Procedure, 1908](#), [Order 47 Rule 1](#)

Citation : (2017) 02 MAN CK 0006

Hon'ble Judges : N. Kotiswar Singh

Bench : Single Bench

Advocate : R.S.Reisang, Sukumar, Iswarlal, Bisheshwari Devi

Judgement

1. Heard Mr.R.S.Reisang, learned Sr. Government Advocate assisted by Mr. Sukumar, learned counsel for the review petitioners as well as Mr.Iswarlal, learned counsel for the respondent Nos. 1 and 14, 16 and 19 and Ms. Bisheshwari Devi, learned counsel for the remaining respondents.

2. The present review petitions have been filed seeking certain modification in the common judgment and order dated 9.3.2016 passed in W.P(C) No.493 of 2012 and W.P(C) No.555 of 2015.

3. The said two writ petitions were disposed of by a common judgment and order dated 9.3.2016 which involved inter seniority as notified in the seniority list dated 15.6.2012, amongst two sets of teachers, namely, Science Graduate teachers/Assistant Science Graduate teachers and Arts Graduate teachers/Assistant Arts Graduate teachers who were earlier working on ad-hoc basis and whose services were regularised in pursuance of a Government policy decision as contained in the Office Memorandum dated 31.5.1986. The said Office Memorandum provides for regularisation of ad-hoc employees who were appointed upto 31st December 1984 against the vacancies in direct recruitment

quota in Class-I and Class-II and who continued to hold their respective posts on ad-hoc basis on 24.5.1986 and who fulfilled the requirement excepting the age limits laid down under the relevant recruitment rules for appointment to the said posts. It was further provided in the said Office Memorandum that seniority of such ad-hoc appointments who were regularised in pursuance of the aforesaid decision will be counted with effect from the date of their regularisation i.e. with effect from 24th May, 1986. The said batch of Arts Graduate teachers/Assistant Arts Graduate teachers were regularised in terms of the aforesaid Office Memorandum by an order issued on 30.8.1986. On the other hand, the other batch of Science Graduate teachers/Assistant Science Graduate teachers who were also regularised under the said Office Memorandum by a latter order dated 18.12.1986. In other words, though these two batches of teachers were regularised under the same policy decision as contained in the said Office Memorandum dated 31.5.1986 with same effective date of regularisation of 24.5.1986, the regularisation orders were issued on different dates as mentioned above. Because of the difference in the dates of issuance of regularisation orders, these two groups of teachers were placed differently in the inter se seniority list because of which a dispute arose amongst them. It is to be noted that inter-se seniority list of these batches of teachers, Science & Arts stream, was contained in the seniority list dated 15.6.2012, which was the subject matter of dispute in the said two writ petitions. The dispute as regards the seniority positions of these teachers was from Sl.No.241 onwards of the said seniority list and there was no dispute about the seniority positions of those teachers who were placed upto Sl.No.240 as they were appointed earlier to these two batches of teachers. In other words, the dispute as regards the seniority list was from Sl.No.241 onwards and there was no dispute about the seniority position from Sl.No. 1 to Sl. No.240. Accordingly, while disposing the said two writ petitions, this Court made these observations in para Nos.(xii) and (xiii) of para No.1 as follows:- "(xii) Accordingly, the petition is disposed of by setting aside the impugned seniority list dated 15.06.2012 with the direction to the official respondents to redraw the seniority list of the Graduate Teachers in terms of the criteria mentioned above in para (ix), in respect of those teachers who have been regularized by orders dated 30.08.1986 and 18.12.1986 in terms of the Office Memorandum dated 31.05.1986, viz., from serial no. 241 onwards.

It is also clarified that this order will not affect the seniority position of the employees from serial no. 1 to 240 as their seniority is not in dispute and also in respect of other Teachers who have been appointed subsequently to the petitioners and respondents as their seniority is also not in dispute quo the petitioners and respondents. In other words, in spite of setting aside the impugned seniority list dated 15.06.2012, the seniority position of the incumbents from Sl. No. 1 to Sl. No. 240 will remain undisturbed/unaffected and so also other incumbents who had been appointed subsequently to the petitioners and the respondents and not under the Office Memorandum dated 31.05.1986.

(xii) As this matter relating to fixation of seniority has been pending since 2012, the authorities are directed to refix the seniority by adopting above criteria mentioned in para (ix) within a period of 3 (three) months from the date of receipt of a certified copy of this order. "

Similarly, as regards the other writ petition, W.P(C) No.555 of 2015, similar directions were issued which read as follows:- "(2) W.P(C) No.555 of 2015

Heard Mr. A. Jagatchandra, learned counsel for the petitioners as well as Mr. R.S. Reisang, Sr. Govt. Advocate and Ms. N.Savitri, learned counsel for respondent no. 107 and Ms. H. Bisheshwari, learned counsel for the remaining private respondents.

This writ petition is also disposed of in terms of the decision rendered in W.P.(C) No. 493 of 2012.

It is submitted by A. Jagatchandra, Ld. Counsel for the petitioners in W.P.(C) No. 555 of 2015 that this Court on 24.06.2015 had directed that though the Government may hold the DPC, promotion order shall not be issued without leave of this Court.

Since the dispute in seniority is confined only to teachers from serial No. 241 onwards in respect of those who were regularized pursuant to the Office Memorandum dated 31.05.1986, this Court is of the view that if any senior teacher who is placed in the undisputed range from serial no. 1 to 240 of the impugned seniority list is recommended for promotion to the higher post by the said DPC, the same may be given effect to. However, promotion may not be given effect to, as regards any teacher who comes within the range from serial no. 241 onwards of the impugned seniority list. In other words, the recommendation of the DPC will be given effect to as regards the recommendees, if they are placed within serial no. 1 to 240 of the impugned seniority list dated 15.06.2012, as their seniority is not in dispute, but the recommendation of the DPC shall not be given effect to as far as any other recommendee is concerned who is placed beyond serial no. 241 of the impugned seniority list dated 15.06.2012, as the inter se seniority of the teachers after serial no. 241 needs to be redrawn as directed above. For such cases, the authorities will hold fresh DPC in terms of the revised seniority list for promotion to the higher post.

As it has been submitted that many of the contesting parties are on verge of retirement, it is expected that the authorities will hold the fresh DPC as expeditiously as possible, preferably within a further period of 4 (four) months from the finalization of the seniority list.

4. Writ petitions are accordingly disposed of. "

4. Thus, while disposing of the said two writ petitions, this Court held that since the dispute in seniority list was confined only to teachers at Sl.No.241 onwards, of those who were regularised pursuant to the Office Memorandum dated

31.5.1986, the Court held that if any senior teacher who is placed in the undisputed range from Sl.No.1 to 240 of the impugned seniority list is recommended for promotion to the higher post by the DPC, the same may be given effect to.

5. The present review petitions have been filed by the State stating that due to bonafide mistake, the names of a number of teachers, though were admittedly senior to the aforesaid two batches of teachers who were regularised vide Office Memorandum dated 31.5.1986, had not been included in the said impugned seniority list dated 15.6.2012, which was the subject matter of dispute in the said two writ petitions. However, by subsequent corrigenda issued on different dates, viz., notifications dated 19.02.2015, 10.3.2015, 28.7.2012 and 02.7.2016, the names of 13 teachers, who are undisputedly senior to those contesting teachers, were added in the said seniority list dated 15.6.2012. However, due to miscommunication with the Directorate of Education (S), which was maintaining said notifications, the said notifications incorporating the 13 teachers in the seniority lists were not brought to the notice of the Court before and at the time of passing the common judgment and order dated 9.3.2016. Therefore, it has created an anomalous situation where some of them although recommended for promotion, as these notifications have not been reflected in the judgment and order dated 9.3.2016 mentioned above, their recommendation cannot be given effect to. Accordingly, the present review petitions have been filed seeking clarifications of the aforesaid judgment and order dated 9.3.2016 so that those teachers whose names had been included in the final seniority list by the aforesaid separate notifications and about whose seniority positions, there is no dispute, could be also given promotion. It has been submitted by Mr.R.S.Reisang, learned Government Advocate that making clarifications in the judgment and order dated 9.3.2016 by allowing the State respondents to read the impugned seniority list dated 15.6.2012 along with the aforesaid notifications would not create any prejudice to the private respondents nor any of the teachers in the said two batches of teachers and as such, it has been submitted that the present review petitions may be allowed.

6. These review petitions, however, have been objected to by the respondents represented by Mr.H.Ishwarlal, learned counsel on the ground that the review petitions are not maintainable as the authorities never mentioned about the existence of these orders including the name of the 13 teachers in the seniority list in the earlier two writ petitions and that their seniority had been assigned above Sl.No.241. It has been also contended by Mr.Ishwarlal that these documents which have been filed are not original documents and their genuineness is doubtful. It has been further contended that the authorities have not explained satisfactorily explaining as to why they failed to annexe the documents when they filed their counter-affidavit in the earlier writ petitions. Mr. Ishwarlal further submits that if these review applications filed by the State respondents are allowed, it would amount to allowing the respondents authorities to raise a new plea which was never raised nor urged when the order dated

9.3.2016 was passed by this Court in W.P(C) No.493 of 2012 and W.P(C) No.555 of 2015 . In any event, Mr. Ishwarlal submits that these review petitions can be filed only on the ground that there is apparent error on the face of the record, which error is apparent and clearly visible which cannot be discovered on the basis of elaborate argument. He submits that in the present case, it cannot be said that review has been sought for to correct any apparent error on the face of the record which can be rectified without an elaborate argument. Accordingly, it has been submitted that the present review petitions are liable to be dismissed.

7. Mr. R.S.Reisang, learned Government Advocate has submitted that this Court, in a similar situation, had allowed a review petition i.e. Review Petition No. 8 of 2016 on 05.10.2016 whereby this Court allowed inclusion of one Irom Iboyaima Singh who was placed at Sl.No.240A of the seniority list. Mr. R.S.Reisang submits that the said Iboyaima Singh was appointed w.e.f. 01.5.1986 prior to the regularisation of the said two sets of teachers w.e.f. 24.5.1986 and the said Iboyaima Singh was placed at Sl.No.240A between the original Sl.No.240 and 241 of the original seniority list. The said Iboyaima Singh was admittedly senior to the said two batches of teachers and the said Review Petition No. 8 of 2016 filed by the said Irom Iboyaima Singh was allowed by this Court on 05.10.2016 which has not been challenged by any one till date. Accordingly, Mr.R.S.Reisang, learned Government Advocate submits that in these review petitions also, similar order may be passed for allowing the review petitions as the present review petitions have been also filed on substantially similar grounds.

8. Heard the learned counsel for the parties and perused the materials on record. As regards the objection by Mr. Ishwarlal, learned counsel, it is true that the scope of review petition is indeed a limited one and while dealing with the review applications, the Court has to consider the principles as laid down in Order 47 Rule 1 of CPC even while exercising jurisdiction under Article 226 of the Constitution. Order 47 Rule 1 CPC provides that review would lie if there be some mistake or error apparent on the face of the record or for any other sufficient reason. As regards the mistake or error apparent on the face of the record, it is well settled that such error must be easily discoverable which would not require any elaborate argument nor reference to pleadings and if such elaborate argument/reasoning and consideration of pleading is required, it cannot be said to be a mistake or error apparent on the face of the record and it will be out of scope of review. The expression "any other sufficient reason?" appearing in Order 47 Rule 1, CPC would mean a reason sufficient on grounds at least analogous to those specified in the Rule as held in Chhajje Ram Vs. Neki Ram, AIR 1922 PC 112 approved by the Supreme Court in Moran mar Bassellos Chalhodies Vs. Mon Rev. Mar Pouloze Althanasius, AIR 1954 SC 526 . Mr. Ishwarlal has further submitted that the authenticity of the said documents cannot be ascertained as the respondents have not denied the validity or grievance of the same. It is true that in the present case, the said notifications dated 19.02.2015, 10.3.2015, 28.7.2012 and 02.7.2016 were not brought on record when this Court was considering the aforesaid two writ petitions, W.P(C) No.493 of 2012 and W.P(C)

No.555 of 2015. However, it has not been specifically pleaded that these 13 persons, who were included in the final seniority list dated 18.6.2012 through these notifications were not senior to these two sets of teachers. This Court had also allowed the Review Petition No. 8 of 2016 filed by one Irom Iboyaima Singh, whose name was included at Sl.No.240A of the seniority list, who is one of the aforesaid 13 persons. If that is so, the seniority position of these 13 persons above these private respondents who were placed from Sl.No.240 onwards cannot be said to be a finding and conclusion which requires elaborate argument or reasoning. It is also to be noted that the judgment and order dated 9.3.2016 passed in W.P(C) No.493 of 2012 and W.P(C) No.555 of 2015 was to settle the dispute between two sets of graduate teachers who were regularised under the same Office Memorandum

dated 31.5.2016. These 13 teachers whose interest has been represented by the State in these review petitions were not regularised in terms of the aforesaid Office Memorandum dated 31.5.1986 but were appointed as teachers prior to the regularisation of these two sets of teachers. Therefore, in any event, these 13 teachers do not belong to the category of these two sets of teachers and they are admittedly senior to these two sets of teachers, Science and Arts graduate teachers. The reason for filing these review petitions is only because of the fact that the final seniority list dated 15.6.2012 did not reflect the names of these 13 teachers in the respective serial numbers which were above Sl.No.241 i.e. in the undisputed range of the seniority list. Therefore, if the seniority positions of these 13 teachers are not disputed by the private respondents who were placed before Sl.No.241, the interest of the these private respondents who are placed from Sl.No.241 onwards cannot be said to be at all adversely affected. Thus, further by allowing these review petitions by permitting the State Government to include these 13 teachers in their respective posts above the Sl.No.241 in the seniority list in terms of the aforesaid notifications dated 19.02.2015, 10.3.2015, 28.7.2012 and 02.7.2016, the nature and scope of adjudication as regards the claim and counter claims made by the respective parties in W.P(C) No.493 of 2012 and W.P(C) No.555 of 2015 cannot be said to be affected at all.

9. This Court also would like to observe that as held by the Hon"ble Supreme Court in Shivdeo Singh Vs. State of Punjab, AIR 1963 SC 1909 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.

10. The present case, if the review petitions are not allowed, it may create grave injustice to these senior teachers who are above these sets of Science/Arts Graduate teachers/Assistant Science/Arts Graduate teachers who were regularised vide Office Memorandum 31.5.1986, because of the omission on the part of the State respondents to bring on record the aforesaid notifications dated 19.02.2015, 10.3.2015, 28.7.2012 and 02.7.2016 to include them in the seniority list dated 15.6.2012. Therefore, this Court does not find merit in the

submission made by Mr.Ishwarlal, learned counsel for the private respondents. Accordingly, the present review petitions are allowed by clarifying that the names of 13 (thirteen) teachers, viz., 1) Y.Manitombi Devi, B.Sc.; B.T., 2) Th. Ibotombi Singh, B.Sc., 3) Kh.Sharatchandra Singh, B.Sc.; B.T., 4) K.Ibopishak Singh, B.Sc.; B.Ed., 5) L.Brajakishore Singh, Ratana, S.Parangat, 6) Kh.Brajeshwori Devi, MA, 7) Ch.Joykumar Singh, 8) H.Dhaneshwori Devi, B.A., 9) A.Khomei Singh, B.A., B.T., 10) N.Jadumani Singh, B.Sc.; S.Visharad, 11) I.Iboyaima Singh, B.Sc.; B.T., 12) L.Thomas Kom, M.A.B.T., and 13) Tualkhanlian, B.A. were to be inserted at Sl.Nos. 47A, 87A, 144A, 146B, 168a, 168A, 184A, 218B, 228B, 234A, 240A, 146A and 234a respectively in the seniority list dated 15.6.2012. The case of Sri I.Iboyaima Singh at Sl.No. 240A had been already allowed in Review Petition No.8 of 2016.