

GAHC010149552024



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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Review.Pet./137/2024

DR RUHUL AMIN BEPARI
S/O M U BEPARI, RESIDENT OF LAKHIMARI, DIST DHUBRI ASSAM, 78334

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, HIGHER EDUCATION DEPARTMENT, DISPUR, GUWAHATI 6

2:DIRECTOR OF HIGHER EDUCATION
ASSAM

KAHILIPARA
GUWAHATI 19

3:PRINCIPAL
BHOLANATH COLLEGE
DHUBRI

4:BHOLANATH COLLEGE.
DHUBRI
REPRESENTED BY ITS PRINCIPAL AND SECRETARY
DIST DHUBRI
ASSAM

5:SELECTION COMMITTEE

CONSTITUTED BY THE BHOLANATH COLLEGE
DHUBRI FOR INTERVIEW HELD ON 10.12.2020 FOR SELECTION OF
ASSISTANT PROFESSOR OF CHEMISTRY IN BN COLLEGE
DHUBRI

REPRESENTED BY ITS PRINCIPAL
DHUBR

Advocate for the Petitioner : MR D MAHANTA,

Advocate for the Respondent : SC, HIGHER EDU, MR. A BORUA (R-3)

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the applicant : Shri D. Mahanta

Advocate for the respondents : Shri K. Gogoi, SC- Education Deptt.
Shri A. Borua, R. Nos. 3 to 5.

Dates of hearing : **26.05.2025 & 29.05.2025**
Date of Judgment : **04.06.2025**

JUDGMENT & ORDER

Heard Shri D. Mahanta, learned counsel for the applicant. Also heard Shri K. Gogoi, learned Standing Counsel, Education Department as well as Shri A. Borua, learned counsel for the respondent nos. 3 to 5.

2. By the present application, the applicant, who was the petitioner in the WP(C)/5578/2020 has prayed for review of the order dated 09.03.2022 by which the said writ petition, along with certain other writ petitions were dismissed.

3. Before going to the grounds set forth in the application for review, it would be apposite to remind ourselves the parameters and contours in which an application for review may be held to be maintainable.

4. The ambit and powers which a review Court can exercise have been well defined. It is needless to reiterate that it is only on limited grounds where a review Court could exercise its powers which are-

- a. Discovery of new and important facts which were not within the knowledge of the party even by exercise of due diligence
- b. Detecting an error apparent on the face of the record,
- c. Any other sufficient reasons.

5. Though the third ground is subjective in nature, the requirement of sufficiency has to be construed in a strict manner as otherwise the object to bring litigations to a finality would be defeated.

6. It is no longer *res integra* that a Court in exercise of powers under Article 226 exercises plenary jurisdiction in which the power of review is inbuilt. In this regard, one may gainfully refer to the case of **MM Thomas Vs. State of Kerala and Ors.** reported in **(2000) 1 SCC 666** wherein the following observations were made:

“14. The High Court as a court of record, as envisaged in Article 215 of the Constitution, must have inherent powers to correct the records. A court of record envelops all such powers whose acts and proceedings are to be enrolled in a perpetual memorial and testimony. A court of record is undoubtedly a superior court which is itself competent to determine the scope of its jurisdiction. The High Court, as a court of record, has a duty to itself to keep all its records correctly and in accordance with law. Hence, if any apparent error is noticed by the High Court in respect of any orders passed by it the High Court has not only power, but a duty to correct it. The High

Court's power in that regard is plenary. In Naresh Shridhar Mirajkar v. State of Maharashtra a nine-Judge Bench of this Court has recognised the aforesaid superior status of the High Court as a court of plenary jurisdiction being a court of record."

In a subsequent case of ***Municipal Corpn. of Greater Mumbai v. Pratibha Industries Ltd.***, reported in ***(2019) 3 SCC 203***, similar views have been expressed.

7. In the backdrop of the aforesaid discussion, let this Court deal with the grounds of review which would also require of brief narration of the background facts.

8. A batch of writ petitions were filed including WP(C)/5578/2020 which was by the present applicant. The issue involved a recruitment process for the post of Assistant Professor in various subjects in different Colleges across the State of Assam and the challenge was primarily based on the ground that the mode of selection was changed midway which is not permissible in law. This Court, after hearing the learned counsel for the parties had however dismissed the writ petitions vide the order dated 09.03.2022. Certain observations made would be relevant for the adjudication of the present application which are as follows:

"43. Though, the sheet-anchor of the petitioners is the proverbial 'Rules of the game cannot be changed after the game has begun', to answer the issue, this Court is required to go to the depth of the issue to the extent of examining what is the change in the Rules which has been brought in. The question of sufferance of prejudice by the petitioners would also be relevant factor to be decided to answer the issue.

44. *The Office Memoranda in question governs the allotment of marks for the purpose of selection of Assistant Professors in various Colleges. The discernible change in the Office Memorandum dated 08.11.2018 which was existing at the time of publication of the advertisement and the one which came into operation by the time when the interview was held is mainly the marks allotted for the Head 'Interaction with the Selection Committee'. The OM dated 08.11.2018 had allotted 5 (five) marks for the said Head. It is needless to state that the said 5 (five) marks were subjective in nature and left to the total discretion of the Selection Committee members. Once, the concept of discretion is there, bias and nepotism cannot be totally ruled out from the public perception. The conscious decision of the Government to remove the said aspect was to delete the said 5 (five) marks and include 3 (three) marks for NCC (C) certificate holder (1 mark), Gold Medal in any event of University / Youth Festival (one mark) and representing the State in any Olympic Sport Event at the National Level (1 mark). A negligible change for the marks in the HSSLC, Degree and Master Degree has also been made. Since, in the intermediate Office Memorandum dated 17.11.2020, there was a mistake in the total marks under the Head of Research Contribution and Experience which was wrongly calculated as 20 instead of 18, the further rectification was made in the form of Office Memorandum dated 25.11.2020.*

...

46. *On a careful consideration of the aforesaid OMs, this Court is of the opinion that deletion of 5 (five) marks from the Head of*

Interaction with Selection Committee which is wholly subjective in nature cannot be faulted with and rather such deletion is prima facie in the interest of a public service to cast aside the scope of any nepotism or bias in the selection process. This Court is further of the opinion that allotment of 3 (three) marks under the Heads of NCC (C) certificate, Gold Medal and representing the State in any Olympic Sport at the National Level (one mark each) are relevant factors which have been brought under consideration.

...

48. The law prohibiting change of Rules of the game after the game has begun, as indicated above is also presently pending consideration before a larger Bench in the Hon'ble Supreme Court as referred in the case of Tej Prakash Pathak (Supra). Since there is no declaration of the law by the larger Bench till date, this Court would normally follow the existing law. This Court is of the opinion that though the law regarding the aforesaid issue is general in nature, it is still the burden of the petitioner to prima facie establish that the change is going to cause prejudice to them. This Court also has a corresponding duty to examine what is the nature of the change sought to be brought and simply, by the jargon "Rules of the game cannot be changed", this Court cannot be swayed away with.

49. What has been noticed by this Court in the present cases is that though admittedly, there is a change in the marking pattern from the Office Memorandum existing at the time of publication of the advertisement and the new Office Memorandum which came in the operation at the time of the interview, the change is only of

reduction / doing away with the marks to be given in the viva-voce. This Court finds force in the submissions made by the Departmental counsel that such change has been brought in to remove the scope of bias and nepotism and to make the selection process more transparent and fair. This Court is of the view that apart from the fact that no prejudice, whatsoever would be suffered by the petitioners, the said change would be in the interest of public service and to usher in a sense of trust in the selection process which is wholly in objective basis."

9. In paragraph 45 of the aforesaid judgment, a comparative chart of the two Office Memoranda has also been made.

10. Shri Mahanta, the learned counsel for the applicant has submitted that against the aforesaid judgment, Writ Appeal No. 278/2022 was preferred by the applicant which was dismissed on withdrawal vide an order dated 20.06.2024, however with liberty to file a review petition before the Single Bench and accordingly, the review has been filed.

11. The primary ground of seeking the present review is that though the writ petition was taken up for a common hearing there was no discussion of the facts of the case unlike the other writ petitions. It is also contended that so far as the observations made by this Court that no prejudice was caused by the change in the Office Memorandum, the same was incorrect. It is submitted that from the affidavit-in-opposition filed by the Director of Higher Education in WA/278/2022 it would appear that so far as the applicant is concerned, the change in the marking pattern had indeed caused prejudice and if the earlier OM was followed, the applicant would have been the first nominee. He has also contended that the earlier OM was in consonance with the UGC guidelines.

12. *Per contra*, Shri Gogoi, the learned Standing Counsel for the Education Department has submitted that apart from the present application not meeting the requirements for review, by the subsequent developments, the present application itself has become infructuous. He has submitted that after dismissal of the writ petition vide order dated 09.03.2022, the first nominee in so far as the BN College, Dhubri is concerned did not join and therefore, on 09.12.2022 another advertisement was issued and the recruitment process had taken place in which one Shri Anup Choudhury has been selected for appointment. However, the petitioner had filed another writ petition being WP(C)/7912/2022 in which there is an interim order dated 08.12.2022 providing that the recruitment process may proceed but no appointment be made without taking leave of the Court and the writ petition is pending. He accordingly submits that the present application has mere academic and is accordingly to be dismissed.

13. The learned Standing Counsel has further submitted that by the new OM there was no change in the qualifying criteria and in fact, in the subsequent recruitment process initiated vide advertisement dated 09.12.2022, the applicant had participated and was unsuccessful and the same is the subject matter in the subsequent writ petition being WP(C)/7912/2022. Further, due to the interim order, the selected candidate had joined another College. He has also submitted that in the merit list, the applicant was at Sl. No. 4 and would otherwise also cannot have any claim. He has further informed that except the present College, appointments in the other Colleges have been made.

14. Shri A. Borua, learned counsel for the College has endorsed and supported the submissions made by the learned Standing Counsel for the Department and has contended that the instant review petition has become infructuous by subsequent developments. Though he concedes that in the

judgment, this Court did not discuss the facts of the present case specifically, the same would be in consequential inasmuch as, the law point has been discussed in details which would cover the case of the applicant. He has also contended that none of the grounds cited can be treated to be grounds for review.

15. The rival contentions of the learned counsel for the parties have been duly considered and the materials placed before this Court have been carefully perused.

16. As indicated above, the contours of a Review Court is circumscribed and should be within the ambit of the principles laid in Order 47 Rule 1 read with Section 114 of the CPC. In the case of ***Parsion Devi and Ors. Vs. Sumitri Devi and Ors.*** reported in ***(1997) 8 SCC 715*** it has been laid down that in review there cannot be examination of the reason. In the case of ***Karnataka Power Coprpn. Ltd. Vs. Alagendran Exports Ltd.*** reported in ***(2004) 13 SCC 377***, it has been laid down that only because of another view is possible, review is not permitted.

17. In a 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, after discussing the relevant case laws has reiterated the principles laid down in the case of ***Kamlesh Verma Vs. Mayawati and Ors.*** reported ***(2013) 8 SCC 320*** which are as follows:

“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 Poullose 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.”

18. As regards the first ground that the facts of the present writ petition were not specifically discussed, the same factually appears to be correct. However, the point of law involved was the same with that of the other writ petitions in which this Court had come to a conclusion after elaborate discussion. Therefore, the said ground may not be a sufficient ground to review the judgment in question.

19. As regards the second ground that prejudice was caused by the subsequent OM, the said ground is on the merits of the case and cannot be reopened and treated as a ground for review. As observed above, to maintain a review, the error has to be an error apparent on the face of the records.

20. This Court has further taken into consideration that the impugned selection process which was the subject matter of challenge in the writ petition had culminated as the selected candidate did not join the post. Thereafter, as noted above, another recruitment process was initiated vide advertisement dated 09.12.2022 in which one Anup Choudhury was selected which however is

the subject matter of challenge in WP(C)/7912/2022 instituted by the present applicant and the said writ petition is pending. It has also been brought to light that the said incumbent has also, in the meantime, joined another College. Therefore, this Court finds force in the argument advanced by the learned counsel for the respondents that for all practical purpose, the present application has otherwise also become infructuous.

21. In the conspectus of the discussions made above, this Court is of the opinion that the present application for review is without any merits and the same is accordingly dismissed.

22. No order as to costs.

JUDGE

Comparing Assistant