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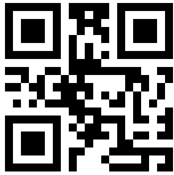

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Review Pet. 149/2019 in WP(C) 5002/2012 (D/O)

1. The State of Assam, represented by the Commissioner & Secretary to the Government of Assam, Education (Elementary) Department, Dispur, Guwahati-781006.

2. The Director of Elementary Education, Assam, Kahilipara, Guwahati-19

………**..Review Petitioners/respondents**

-Versus-

1. Kamrup District Siksha Sarathi (I) Association, represented by its President and General Secretary namely Sri Surjya Kumar Boro, Son of Late Pulin Chandra Boro, Village-Batakuchi,
P.O.-Digaru, District-Kamrup (Metro), Assam,
PIN-782401, President,
Kamrup District Siksha Sarathi (I) Association

2. Khiralal Boro,
Son of Late Arjun Boro,
Village & P.O.-Malaybari, District-Kamrup, Assam,
PIN-782403, General Secretary,
Kamrup District Siksha Sarathi (I) Association

…**…….Respondents/writ petitioners**

B E F O R E

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HON'BLE MR. JUSTICE KALYAN RAI SURANA
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioners	:	Mr. D. Saikia, learned A.G., Assam Mr. N. J. Khataniar, Advocate
For the respondents	:	Mr. K. N. Choudhury, Sr. Advocate Mr. N. Gautam, Advocate
Date of hearing	:	09.05.2024
Date of Judgment	:	13.06.2024

JUDGMENT AND ORDER (CAV)

(M. Zothankhuma, J)

1. Heard Mr. D. Saikia, learned A.G., Assam, assisted by Mr. N. J. Khataniar, learned counsel for the review petitioners. Also heard Mr. K. N. Choudhury, learned Senior Counsel, assisted by Mr. N. Gautam, learned counsel for the respondents.

2. This review petition has been filed against the judgment and order dated 26.10.2017 passed in WP(C) 5002/2012, on the ground that when the State Government was in the process of complying with the direction passed by this Court that a scheme should be framed for Siksha Sarathis working for more than 10 years, to be allowed to work till their normal retirement age, the State Government found that no Siksha Sarathis had worked for more than the 11

months contractual period.

3. The learned AG, Assam submits that this Court had directed the State Government to frame a scheme for Siksha Sarathis, to get the same benefits given to Muster Roll workers, worked charged workers and casual workers, as had been directed in the case of ***State of Assam vs. Sri Upen Das (WA 45/2014)***, which was decided on 08.06.2017. He submits that the scheme was to be framed for Siksha Sarathis, who had worked for the last 10 years, in terms of the direction passed in the order dated 26.10.2017 in WP(C) 5002/2012. This direction had been made on the basis of the finding of this Court in para 52 of the impugned judgment and order, wherein it has been stated that the engagement of the Siksha Sarathis is now in the second decade.

4. The learned AG, Assam submits that this finding of the Court was ex-facie erroneous and not based on any fact or document. As such, the subsequent direction passed by this Court for framing a scheme for Siksha Sarathis, who had worked for more than 10 years, could not be implemented. He accordingly submits that as the direction made for framing a scheme has been made on an apparent error of fact, which was palpable from the pleadings, the subsequent direction was accordingly un-implementable.

5. The learned AG, Assam submitted that this Court was not made aware of the order dated 17.11.2005 passed in WP(C) 6739/2005, wherein the Single Judge had recorded the submission of the Mission Director, Assam Sarba Siksha Abhijan Mission, who had stated that the scheme for appointment of Siksha Sarathis had been discontinued and by and large no Siksha Sarathis were in

service except a few cases, whose period of contractual appointment was not over. As such, the impugned judgment and order was not implementable.

6. The learned AG, Assam accordingly prays that the review petition should be allowed and the impugned judgment and order should be recalled.

7. Mr. K. N. Choudhury, learned Senior counsel, on the other hand, submits that the review petition is not maintainable though he admits that the finding of this Court in para 42 that Siksha Sarathis were in their second decade of engagement was a wrong finding. He submits that the Siksha Sarathis had worked for 7 to 8 years. He however submits that as the said wrong finding of facts made by this Court required scrutiny of the documents and was a long drawn process, the conditions required for allowing a review petition was absent. It is submitted that there being no error apparent on the face of the record, the review petition should be dismissed.

8. We have heard the learned counsels for the parties.

9. The prayer for review of the impugned judgment and order is only on two grounds:- (i) That on trying to implement the direction of this Court to frame a scheme for Siksha Sarathis, who had been working for the last 10 years, the State Government found that no Siksha Sarathis had worked for 10 years, and (ii) That the direction for implementation of a scheme for the Siksha Sarathis was based on a finding made by this Court in para 42 of the impugned judgment and order dated 26.10.2017, that the initial engagement of Siksha Sarathis for 11 months had been extended for more than a decade. The review

petitioners’ case is thus confined to the fact that the Siksha Sarathis had not worked for 10 years.

10. Para 42 of the impugned judgment and order 26.10.2017 states as follows:-

> “***42.*** *Reverting back to the case of Siksha Sarathi, we find that notwithstanding their initial engagement for 11 months, their engagements have continued for more than a decade now; as a matter of fact, their engagement is now in the second decade, which clearly indicates the necessity and utility of Siksha Sarathis as assistants to the teachers”*

11. The fact that the Siksha Sarathis (writ petitioners) had not worked for 10 years as Siksha Sarathis has not been disputed by the counsel for the respondents. The question that arises is whether the review petition should be allowed due to this Court having made a wrong finding of fact, which was without any basis.

12. In the case of ***M.M. Thomas vs. State of Kerala and Anr.,*** reported in ***(2000) 1 SCC 666,*** the Supreme Court has held that 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 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.

13. In the case of ***Municipal Corporation of Greater Mumbai and Anr. vs. Pratibha Industries Ltd. and Ors.,*** reported in ***(2019) 3 SCC 203,*** the Supreme Court has held that the High Courts being Courts of record, the jurisdiction to recall their own orders is inherent by virtue of the fact that they are superior Courts of record.

14. In the case of ***Shivdeo Singh vs. State of Punjab,*** reported in ***AIR 1963 SC 1909,*** the Constitution Bench of the Supreme Court observed that nothing in Article 226 of the Constitution precludes 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.

15. In the case of ***Aribam Tuleshwar Sharma vs. Aribam Pishak Sharma,*** reported in ***(1979) 4 SCC 389,*** the Supreme Court has held that though the Constitution Bench held in ***Shivdeo Singh(supra)*** that nothing in Article 226 of the Constitution precludes 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, 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 powers, which may enable an appellate Court to correct all manner of errors committed by the subordinate Court.

16. In the case of ***State of Rajasthan and Anr. Vs. Surendra Mohnot and Ors.,*** reported in ***(2014) 14 SCC 77,*** the Supreme Court held that when the application for review did not require a long-drawn process of reasoning and any advertence on merits, besides citation of a wrong authority which did not have anything to do with the lis and by ignoring a binding precedence, the error was self evident. When such self evident error comes to the notice of the Court and they are not rectified in exercise of review jurisdiction, which is a facet of plenary jurisdiction under Article 226 of the Constitution, a grave miscarriage of justice occurs.

17. In the case of ***Board of Control for Cricket in India and Anr. Vs. Netaji Cricket Club and Ors.,*** reported in ***(2005) 4 SCC 741,*** the Supreme Court held that the application for review would also be maintainable if there was a mistake on the part of the Court, which would include a mistake in the nature of the undertaking. What would constitute sufficient reason would depend on the facts and circumstances of each case. The words "sufficient reason" in Order 47 Rule 1 CPC are wide enough to include a misconception of fact or law by a Court or even by an advocate. It further held that an application for review may be necessitated by way of invoking the doctrine of *actus curiae neminem gravabit.*

18. In the case of ***Lily Thomas Vs. Union of India,*** reported in ***(2000) 6 SCC 224,*** the Supreme Court held that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. If the Court

finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in a miscarriage of justice, nothing would preclude the Court from rectifying the error. It further held that the power of review can be exercised for correction of a mistake, but not to substitute a view. The review cannot be treated like an appeal in disguise.

19. On coming to the facts of the present case, we find that the direction passed by this Court to the State Government to frame a scheme for Siksha Sarathis working for more than 10 years is based on a finding of facts made by this Court in para 42 of the impugned judgment and order, wherein it is held that the Siksha Sarathis' engagement is now in the second decade. However, the said finding had been made without any basis and in fact, the counsel for the respondents has also fairly submitted that the Siksha Sarathis had worked for 7 to 8 years, thereby clarifying the fact that none of the Siksha Sarathis had worked for 10 years or more.

20. When the length of engagement of the Siksha Sarathis was less than 10 years, the finding of this Court in para 42 of the impugned judgment and order that their engagement as Siksha Sarathis was now in the second decade, is clearly a mistake apparent on the face of the record. We are also of the view that review proceedings cannot be an appeal in disguise and have to be confined within the scope and ambit of Order 47 Rule 1 CPC. However, the power of review can be exercised when a mistake or error apparent on the face of the record is found. Power of review can also be exercised for any sufficient reason, which is wide enough to include a misconception of fact as held by the Supreme Court in the case of ***Inderchand Jain Vs. Motilal,*** reported in

(2009) 14 SCC 663. Further, the application for review has been necessitated, as the State Government could not implement the directions of this Court on the ground that none of the Siksha Sarathis had completed 10 years of service and as such, the doctrine of *actus curiae neminem gravabit* can be invoked, i.e., the act of the Court shall prejudice no one.

21. In view of the reasons stated above, we find that not only has there been a mistake made on the part of this Court in holding that the Siksha Sarathis had been engaged for more than a decade, the same being without any basis, the mistake on facts in our view amounts to sufficient reason for invoking the doctrine of *actus curiae neminem gravabit.* Consequently, we are of the view that ground for review of the impugned judgment and order has been made out by the review petitioners.

22. The direction to grant similar benefits to the writ petitioners, by framing a scheme in terms of the judgment dated 08.06.2017 passed in the case *of* ***State of Assam vs. Sri Upen Das, WA 45/2014***, pertaining to the concession given by the State Government not to terminate Muster Roll, Worked Charged and other similarly placed employees working for more than 10 years till the normal date of retirement, except on disciplinary ground or on ground of criminal offences, besides paying the minimum pay scale, was based on the premise that the writ petitioners had also been working for more than 10 years. As none of the writ petitioners had completed 10 years of service, the said direction was unimplementable.

23. In view of the reasons stated above, the impugned judgment and order dated 26.10.2017 passed in WP(C) 5002/2012 is recalled and as a consequence, WP(C) 5002/2012 stands dismissed. The review petition is accordingly allowed and disposed of.

Sanjay Kumar Medhi, J. *(Concurring)*

24. I have had the privilege of going through the draft copy of the judgment authored by my esteemed brother, Hon'ble Mr. Justice Michael Zothankhuma. While concurring with the judgment, I am of the view that certain more aspects would arise for consideration of the present case.

25. The controversy which is the subject matter of this petition filed for review, is the direction to prepare a scheme by assuming that the members of the respondent no. 1 Association were continuing in their service as Siksha Sarathi for about two decades. The judgment prepared by my esteemed brother has already taken into consideration that such assumption has been made without there being any materials on record and the said fact has been fairly conceded by Shri KN Choudhury, learned Senior Counsel for the opposite parties / writ petitioner.

26. Even on the issue of continuation of service by the members of the Association, it is found that in paragraph 10 of the amended writ petition, a statement has been made that such members were continuing in service. However, the said pleadings have been verified in the accompanying affidavit as being true to the records of the case. In absence of any provision for adducing oral evidence in a writ proceeding, the verification of pleadings by way of the affidavit is of paramount importance and the affidavit itself is sacrosanct. It is clear that even the contention that the members of the respondent no. 1 Association were continuing in service was not pleaded in the writ petition in accordance with law.

27. The direction of this Court in the judgment dated 26.10.2017, which is the subject matter of review is for framing a scheme in the lines of the judgment

passed in the case of ***State of Assam Vs. Upen Das*** reported in ***2017 4 GLR 493.*** A bare perusal of the aforesaid direction in the case of ***Upen Das*** (supra) by a Division Bench of this Court would show that the said direction was passed on a concession made on behalf of the State and the primary consideration was that the muster roll / work charged workers were working for a long period of time. The Division Bench, in the said judgment had directed framing of a scheme to give minimum scale of pay to such workers who were found to be in service for the last 10 years from the date of the judgment. The aforesaid directions passed by the Hon'ble Division Bench in the said judgment are extracted hereinbelow-

> "*22. It is, however, heartening to learn that the State Government has agreed not to terminate the Muster Roll, Work Charged and similarly placed employees working since last more than 10 years (not in sanctioned post) till their normal retirement, except on disciplinary ground or on ground of criminal offences. The State Government has also agreed to enlist such employees in Health and Accidental and Death Insurance Scheme, which will be prepared in consultation with the State Cabinet. We appreciate this positive stand of the State Government taken as welfare measures for the betterment and security of the employees, in question. We, accordingly, direct the State Government to implement the measures without further delay. Besides this, we, in the light of decision of the Supreme Court in State of Punjab vs. Jagjit Singh, (2017) 1 SCC 148, also direct the State Government to pay minimum of the pay scale to Muster Roll workers, Work Charged workers and similarly placed employees working since last more than 10 years (not in sanctioned post) with effect from 1.8.2017.*

28. In the instant case, the aforesaid direction which was otherwise given on a concession in the case of ***Upen Das*** (supra) is not applicable at all. A look into the certificates of alleged continuation in service of the members of the no. 1 Association would reveal that none of the certificates were regarding continuation as Siksha Sarathi.

29. This Court would also like to take into consideration the submissions made on behalf of the State regarding the Right to Education Act, 2009. Under the said Act, engagement of Siksha Sarathi is not even contemplated and therefore, even by operation of law from the year 2009 when the aforesaid Act came into operation, such engagement was not legally permissible.

30. There is another aspect of the matter. The writ petition was by the Association of Siksha Sarathi only of the Kamrup district. Such Siksha Sarathis, at one point of time, were engaged for the entire State of Assam. Therefore, the direction contained in the judgment dated 26.10.2017, directing a scheme to be made in respect of Siksha Sarathis for one district when Siksha Sarathis was discontinued in the entire State of Assam is an error apparent on the face of the record.

31. All the aforesaid factors would also be relevant in consideration of the present application for review.

32. The draft judgment has already considered the relevant case laws. In a recent judgment, namely, ***S Madhusudhan Reddy Vs. V Narayana Reddy & Ors***. reported in **(2022) SCC OnLine 1034,** the Hon'ble Supreme Court has reiterated the earlier principles laid down in the case of ***Kamlesh Verma Vs. Mayawati & Ors*****.** reported in **(2013) 8 SCC 320** wherein the principles laid down are extracted herein below:

"*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 Poulose 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 negatived."

33. In the opinion of this Court, since the direction passed in the judgment dated 26.10.2017 are contrary to the materials on record, which is *ex-facie*, this Court in exercise of the powers of review would be within its jurisdiction to review the aforesaid judgment. We are also of the view that there are sufficient reason for which the power of review is to be exercised.

34. The judgment dated 26.10.2017 accordingly stands reviewed and consequently, the writ petition being WP(C)/5002/2012 stands dismissed.

JUDGE **JUDGE** **JUDGE**

Comparing Assistant