

**HIGH COURT OF TRIPURA
AGARTALA**

Review Pet. No.15/2023

The State of Tripura and others

----Petitioner(s)

Versus

Smt. Ratna Rani Debnath and others

-----Respondent(s)

For Petitioner(s) : Mr. Mangal Debbarma, Addl. G.A.

For Respondent(s) : Mr. Somik Deb, Sr. Advocate,
Mr. B. Majumder, CGC
Mr. D. Sarkar, Advocate.

Along with

Cont.Cas(C) No.98/2022

Smt. Ratna Rani Debnath and another

----Petitioner(s)

Versus

Chandni Chandran, IAS

-----Respondent(s)

For Petitioner(s) : Mr. Somik Deb, Sr. Advocate,
Mr. D. Sarkar, Advocate.

For Respondent(s) : Mr. Mangal Debbarma, Addl. G.A.
Whether fit for report : **YES**

Final order dated 4th April, 2023

HON'BLE THE CHIEF JUSTICE (ACTING)
_O_R_D_E_R_

The present review petition and the contempt case are taken up together since they arise in common background and would be disposed of by this common judgment.

[2] Heard Mr. Mangal Debbarma, learned Addl. Government Advocate appearing for the review petitioners. Also heard Mr. Somik Deb,

learned senior counsel assisted by Mr. D. Sarkar, learned counsel appearing for the respondents No.1 to 3-petitioners and Mr. Biswanath Majumder, learned CGC appearing for the respondent No.4-Union of India.

[3] This review petition is filed by the review petitioners under Order XLVII Rule 1 read with Section 114 of the Code of Civil Procedure and Article 226 of the Constitution of India seeking review of the order dated 10.09.2021 passed by this Court in WP(C) No.1548 of 2017.

[4] The brief facts of the case is that the respondent-writ petitioners are the part-time teachers of Kasturba Gandhi Balika Vidyalaya (KGBV, for short) under SSA and they have completed 7 to 9 years of service without any regularization. They claimed that since the teachers under the SSA were given regularization by the directions of this Court, they being similarly situated to those SSA teachers are also entitled for regularization. This Court vide order dated 10.09.2021 passed order in their favour being covered by the decision of Division Bench of this Court dated 23.02.2021 in case of *Shri Sajal Deb vrs. The State of Tripura and others* in WP(C) No.329 of 2015 and connected petition. But the review petitioners claimed that the writ petitioners were not similarly situated as that of the SSA teachers. Accordingly, they preferred this review petition.

[5] Mr. Mangal Debbarma, learned Addl. Government Advocate appearing for the review petitioners, contends that in the *Sajal Deb* case (supra), the SSA teachers were contract teachers but in the present case the writ petitioners are part-time teachers. Referring to a memorandum dated 28.04.2010 issued by the Addl. State Project Director, SSA Rajya Mission, learned counsel has also pointed out the difference between the fulltime teachers and part-time teachers contending that the fulltime teachers of

KGBVs will have to take classes in schools whereas the part-time teachers shall take classes in the hostel, not in schools. Accordingly, he prays for review of the order dated 10.09.2021 passed by this Court in WP(C) No.1548 of 2017.

[6] He has further submitted that a group of contract teachers appointed under SSA have filed writ petitions seeking regularization of their service and accordingly, writ petitions have been allowed by this Court with certain directions to the State Government. For the purpose of reference, the operative portion of the judgment and order dated 23.02.2021 passed in WP(C) No.329 of 2015 may be reproduced hereunder:

“53. We are, therefore, of the view that the petitioners must receive the remuneration in regular scale of pay assigned to the primary/upper primary Government teachers. The State Government also has a policy of initial appointment of a teacher on fixed pay basis for a period of 5 years. The same rule can be applied in the present case also. In case of all the petitioners thus from the date of the petitions or upon completion of 5 years of service whichever is later, they shall be placed in regular corresponding scales of pay for the Government teachers. However, this pay fixation would be for a notional purpose from the appropriate date till the date of this judgment, of course with notional release of increments as per the rules. Actual difference in salary would be paid effective from the date of this judgment.

54. The petitioners would have a right to be regularised after 10 years of continuous and uninterrupted engagement from initial appointment. It would be up to the Government to consider them for regularisation either in existing vacant posts of Government teachers or to sanction new posts as SSA teachers by creating such cadre if so advised. It would be open for the Government to frame a scheme providing for further terms and conditions on which such regularisation shall be done. However, any such scheme shall contain a clause that the service upon completion of 5 years from initial engagement or the date of filing the petition whichever is later, (when as per this judgment the petitioners would notionally start receiving pay in regular scales) till date of regularisation, the services rendered by the petitioners shall count towards their pensionary benefits.

55. We are conscious of the legal issues concerning regular teachers in the Government schools which is a fall out of the Division Bench judgment of this Court in case of *Tanmoy Nath and others vrs. State of Tripura and others* reported in (2014) 2 TLR 731, whereas per further orders passed by the Supreme Court, all those teachers who were terminated on account of the

judgment of the High Court, would have a right to compete for fresh selections with age relaxation granted to them up to 31.03.2023. We have, therefore, left for the Government to regularize these petitioners either against the existing posts or on new posts which may be sanctioned.

56. These directions shall be carried out within a period of six months from today.

57. As noted in WP(C) No.329 of 2015 petitioners espouse the cause of the class of teachers through the association. In any case, the nature of disputes and our consideration are for the entire cadre. This judgment, therefore, shall act as a judgment in rem and will apply to all similarly situated SSA teachers without any of them having to approach the Court separately.

58. Writ petitions are disposed of accordingly. Pending application(s), if any, also stands disposed of.”

[7] A group of part time teachers who were engaged on contractual basis for KGBV hostels under a separate component of SSA in different years have filed writ petition for regularization of their service in view of the judgment of Shri Sajal Deb (supra) and allowed the petition on the ground that the substantive issues raised in the writ petition are squarely covered by the judgment of the Division Bench of this Court dated 23.02.2021.

[8] After passing the said order dated 10.09.2021 in WP(C) No.1548 of 2017 by this Court which is under review, while scrutinized in department some new facts have been detected which were not placed by the respondents before the Court at the time of adjudication of the case and these facts are necessary to be discussed.

[9] Mr. Debbarma, learned Addl. G.A. appearing for the State-respondents has submitted that after passing the order in Sajal Deb case (supra), and in compliance of the verdict, the State Government had formulated a new scheme vide notification dated 30th September, 2021 whereby the Government has categorized three categories of teachers for regularization of the SSA teachers in the following manner:

“i. Category-I: Those SSA Teacher who have been qualified in the T-TET and have not joined as regular teacher till 23.02.2021;

i. Category-II: Who appointed on or after 03.09.2001 but prior to 23.08.2010, with minimum qualifications in accordance with NCTE (determination of minimum qualifications for recruitment of teachers in schools) regulation, 2001, as amended from time to time at the time of recruitment; and

iii. Category-III : SSA Contract teachers who will not be covered under the Category-I & II, i.e. Category –III (A)-SSA Contract teachers who as on date possess the requisite academic and professional qualification (D.El.Ed/B.Ed) but have not cleared T-TET , category-III (B)-SSA contract teachers who as on date have not acquired the professional qualification (D.El.Ed/B.Ed) and neither have cleared T-TET and category –III (C)-SSA contract teachers who have not yet acquired the requisite academic qualification (i.e. Class-XII passed with 50% marks for getting admission in professional qualification course (D.El.Ed/B.Ed.) and neither have cleared T-TET. All the original petitioners are not covered under this new scheme formulated by the Government.”

[10] The State Government had also segregated the job nature of both the posts appointed under SSA and part time teacher engaged for DGBV hostels with the following differences are given below:

Indicator	Upper primary contract teacher	KGBV Part Time Teacher
Eligibility criteria as per Recruitment Notification	As per a Recruitment notification issued for filling up posts of Upper Primary Contract Teachers under SSA, the minimum educational qualification mandated for the post is observed to be Graduation (BA/B.Sc)	As per a Recruitment notification given for filling up posts of Part Time Teachers for KGBV under SSA, the minimum educational qualification mandated for the post is observed to be Graduation (BA/B.Sc/B.Com).
Terms & Conditions of engagement	1) The engagement shall be of only 1 (one) year on a fixed monthly honorarium as given above (as per rate given in the engagement letter). 2) The person so engaged shall be terminated from the engagement automatically on expiry of 1(one) year from the date of engagement. 3) Continuation of the engagement for another year shall be subject to satisfactory performance of the person in the 1 st year of engagement.	1) The engagement shall be of only 1 (one) year on a fixed monthly honorarium as given above (as per rate given in the engagement letter). 2) The person so engaged shall be terminated from the engagement automatically on expiry of 1(one) year from the date of engagement. 3) Continuation of the engagement for another year shall be subject to satisfactory performance of the person.
Existing rate of remuneration	@.27,711/- (completed 5 years)	Rs.10,000/- vide Memo dated

	vide Memo dated 08.01.2018	16.11.2019.
Leave Provision	1. Special Leave-10 days in a completed calendar year vide Notification dated 22.05.2012. 2. Maternity leave-180 days vide notification dated 20.06.2012. 3. Medical Leave-5 days in a calendar year vide notification dated 19.07.2011. 4. Paternity leave-7 days vide notification dated 24.06.2013. 5. Quarantine Leave-21 days (30 days under exceptional circumstances) vide notification dated 08.10.2015. 6. Casual Leave-12 days in a calendar year vide Memo dated 19.07.2011.	12 days casual leave in a calendar vide Memo dated 16.07.2015.
Job Description	They impart teaching at par with departmental teachers in schools.	As per Memo dated 17.08.2015, they are required to take classes in the hostel twice daily i.e. in the morning (6.30 am to 8.30 am) and evening (5.30pm to 7.30pm) and also take extra co-curricular activities like sports, cultural activities, gardening etc. twice a week.
Salary Head	Expenditure towards remuneration is incurred from Salary Head of SSA Contract Teacher (Upper Primary).	Expenditure towards remuneration is incurred from Salary Head of Part-Time Teacher under KGBV component of Samagra Shiksha.

[11] The case of the petitioners is not squarely covered with the case of the Sri Sajal Deb (supra) and would not apply in rem in the case of the petitioners because of the fact that all part time teachers of KGBV hostel were engaged only for fulfilling the interim measures under a component scheme of SSA on the basis of Walk-in-Interviews without following the basic recruitment rules for public employment and reservation policy of State, even there is not accorded sanctioned posts of KGBV teachers for hostels in the State as like as Teachers under SSA.

[12] The policy of the State government in the matter of regularization after a period of five years is followed in different context, wherein, who appointed in Group-C and Group-D posts on fixed pay basis

by keeping abeyance the concerned regular pay scale posts, in that event, after completion of five years they will be regularized. But, in the case of the petitioners, there is no regular posts created by the State in the name of Teacher for KGBV hostels.

[13] Their salaries and other minor facilities were provided through a fund under a component scheme of SSA. Though, the government has decided to implement the verdict of this Court in the matter of the teachers appointed under SSA. However, it would not be possible on the part of the State Government that such extra huge financial burden should bear by the government alone as the scheme was launched by the Union Government of India and therefore, the Union government should fix financial liabilities in the matter of regularization of those employees who were engaged under different schemes of the Central Government.

[14] Job nature of the contract teachers under SSA (now Samagra Shiksha) and Part-Time Teacher for KGBV Hostels are quite different. Contract teachers engaged under SSA are rendering teaching duties in schools likewise other Government teachers and part time teachers engaged for KGBV are rendering part time teaching duties in KGBV hostels only. leave provisions and job descriptions of the part time teacher engaged in KGBV hostels are also different from the engaged of Contract Teacher under SSA and fund is placed for KGBV as a separate component under SSA.

[15] He has further contended that the scheme i.e. Kasturba Gandhi Balika Vidyalay (KGBV) is being implemented in educationally backward blocks (EBBs) of the country where the female rural literacy is below the national average and gender gap in literacy is above the national average. The scheme was launched by the government of India in August, 2004 for

setting up residential schools at upper primary level for girls belonging predominantly to the SC, ST, OBC and minorities in difficult areas.

[16] The KGBV has been merged with the SSA programme as a separate component of that programme during the XIth Five Year Plan since 1st April, 2007 under RTE-SSA Annual Work Plan & Budget which is a Central Government Scheme run under MHRD, Government of India and the fund sharing pattern for the scheme between central and States is at present in the ratio of 90:10. The job of teaching in KGBVs is done by the teachers who are temporary or hired on temporary/contractual basis. The scheme provides options for establishment of residential schools or the addition of a girl's hostel facility to an existing upper primary school. Three different models with separate unit costs based on the number of girls has been provided. Model-I new school + residential facility for 100 girls, Model-II new school + residential facility for 50 girls, Model -III addition of hostel facility to an existing upper primary school for 50 girls.

[17] It is to be mentioned herein, that Model-III has been adopted by the State of Tripura wherein as many as 32 part time teachers were engaged as of now throughout the State and the petitioners were engaged under Model-III norms of the component of SSA wherein addition of hostel facility to an existing upper primary school for 50 girls is required in the school. The Governing Council of SSA, Rajya Mission, Tripura has also been revised with enhanced remuneration of various categories of staffs under KGBV, vide notification dated 22.08.2022 including the service of the petitioners.

[18] On the other hand, Mr. Somik Deb, learned senior counsel assisted by Mr. D. Sarkar, learned counsel appearing for the respondents No.1 to 3-writ petitioners, contends that from the impugned order dated

10.09.2021 it is clear that on agreement of learned counsel of both sides the writ petition was disposed of. Counsel also contends that the impugned order was passed way back on 10.09.2021 and the review petition has been filed after a long delay in 2023. Accordingly, he submits that the review petition is not maintainable on the ground of delay and prays for dismissal of the same.

[19] In view of above discussion, this Court feels it apposite to discuss Order-47 Rule-1 of the CPC which reads thus:

“3. Order 47 deals with the procedure with respect to the disposal of such applications for review. Rule 1 of this Order, however, mentions in Sub-rule (1) not only the grounds on which an application for review of judgment can be filed, but also the decree or orders against which such an application can be filed by a person considering himself aggrieved by the decree or order. Sub-rule (2) of Rule 1 of this Order mentions the special circumstances in which a person who has not appealed may apply for review of judgment even after an appeal has been filed by any other party. Its proper place should have been in Section 114. Rule 1 mentions the decrees and orders against which a review application can be filed, presumably on account of its being a reproduction of Section 623 of the earlier Code of Civil Procedure, Act 14[xiv] of 1882.”

[20] In a case of **Behari Lal And Anr. v. M.M. Gobardhan Lal And Ors**, reported in **AIR 1948 All 353**, the Court has held thus:

“8. It is clear from the provisions of Section 114 that an application for review of a judgment is allowed against an appealable decree or order only when no appeal has been preferred against it, and that applications for a review have been allowed in two other cases in which there is no right of appeal, the cases being decrees or orders from which no appeal is allowed by the Code or a decision on a reference from a Court of Small Causes. It authorises the Court to make such orders on the application for review as it thinks fit. I am inclined to the view that the Court's powers to pass such orders are also subject to the condition that upto the time the Court's orders are passed no appeal has been preferred against a decree or order from which an appeal was allowed. This would be consistent with the view that once an appeal is filed the appellate Court has full jurisdiction over the matter, and that, therefore, the special power of review is exercisable only upto the time that an appeal is preferred against the order or decree sought to be reviewed.”

9. Section 114, Clause (a) does not say directly that a review application must be filed before the filing of the appeal but allows a person to file an application for review of judgment if a person feels aggrieved by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred. The section really does not lay down a condition precedent to the filing of a review application but enunciates the circumstances in which an applicant may ask for review, the circumstances being mentioned in Clauses (a), (b) and (c). In this view of the matter, it would follow very clearly that once an appeal is filed, there is no right in the applicant to seek review of the judgment in appeal and there is no jurisdiction in the Court to deal with the review application which has become incompetent. After the filing of the appeal, it cannot be said that the applicant is aggrieved by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred.”

[21] The review petition is a petition in which it is prayed before the Court of law to review its order or judgment which it has already pronounced. The Court may accept a review petition when a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. When a review takes place, the Court will not take fresh stock of the case but just correct grave errors that have resulted in the miscarriage of justice. Also, judicial review can only correct a “patent error” and not “minor mistakes of inconsequential import. The court does not entertain every review petition filed. It exercises its discretion to allow a review petition.

[22] The Hon’ble Apex Court laid down three grounds for seeking a review of a verdict viz. (i) the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the petitioner or could not be produced by him (ii) mistake or error apparent on the face of the record and (iii) any sufficient reason that is analogous to the other two grounds. The grounds of review may be the discovery of new and important matter or evidence, some apparent mistake or error on the face of the record or any other sufficient reason.

[23] In the present learned Addl. G.A. appearing for the respondents has submitted that after passing the said order dated 10.09.2021 in WP(C) No.1548 of 2017, while scrutinized in department, some new facts have been detected which were not placed by the respondents before the Court at the time of adjudication of the case. The State Government had formulated a new scheme vide notification dated 30th September, 2021 whereby the Government has categorized three categories of teachers for regularization of the SSA teachers, which have already been reproduced hereinabove.

[24] The case of the petitioners is not squarely covered with the case of the Sri Sajal Deb (supra) and would not apply in rem in the case of the petitioners because of the fact that all part time teachers of KGBV hostel were engaged only for fulfilling the interim measures under a component scheme of SSA on the basis of Walk-in-Interviews. The policy of the State government in the matter of regularization after a period of five years is followed in different context, wherein, who appointed in Group-C and Group-D posts on fixed pay basis by keeping abeyance the concerned regular pay scale posts, in that event, after completion of five years they will be regularized.

[25] Having heard the submissions of learned counsel of both sides, this Court is of the considered view that it is the case of the respondent-writ petitioners that a consent order has been passed and now the respondents/review petitioners cannot take back their version by filing this review petition.

[26] In the event the respondents/review petitioners are willing to pass any order indicating that the writ petitioners are not entitled for the reliefs sought for in the writ petition holding that the petitioners are the part-time employees, they are free to do so, to which the counsel appearing for

the petitioners pleads that direction may be given to the respondents for passing such orders since the matter was decided by this Court in batch of writ petitions in WP(C) No.329 of 2015 and another connected matter way back on 23.02.2021.

[27] This Court is of the opinion that “A person cannot take the advantage of an order to which he is not entitled to”. In view of the same, this Court finds that the review petition needs to be reconsidered and accordingly, the same is considered and it is disposed of giving liberty to the respondents/review petitioners to consider the case of the writ petitioners in accordance with law, more particularly, in the light of the memorandum dated 28.04.2010 deciding whether the petitioners are part-time employees or full-time under a contract basis and extend all benefits towards category of their employment. This exercise shall be completed within a period of one month from the date of receipt of the copy of this order.

[28] In terms of above, the review petition is allowed and accordingly disposed of. Consequently, the contempt petition [Cont.Cas(C) No.98 of 2022] also stands closed. As a sequel, miscellaneous applications pending, if any, shall stand closed.

CHIEF JUSTICE (ACTING)

A. Ghosh