

GAHC010028032018



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

Case No. : Review.Pet./60/2018

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE COMMISSIONER AND SECY. TO THE GOVT. OF
ASSAM, EDUCATION (ELEMENTARY) DEPTT., DISPUR, GUWAHATI 781005

2: THE DIRECTOR OF ELEMENTARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI-1

VERSUS

SMTI SIKHA DAS GUPTA (ROY) AND 24 ORS
W/O SUMALAY DAS GUPTA, R/O VILL. LAKSHMI CHARAN ROAD, P.O.
KARIMGANJ, DIST. KARIMGANJ, ASSAM.

2:SMT. MADHUMITA GOSWAMI
ASSTT. TEACHER
577 NO. JOYKALI L.P. SCHOOL
DIST. KARIMGANJ
ASSAM.

3:SRI SHRESENDU SHEE
ASSTT. TEACHER
KANKANABASTI LP. SCHOOOL
DIST. KARIMGANJ
ASSAM.

4:SRI RAJ SEKHAR DEB
ASSTT. TEACHER 198 LAMAPUR SINGARIA LP. SCHOOL
DIST. KARIMGANJ
ASSAM.

5:SMTI ARPITA DAS

ASSTT. TEACHER
901 KRISHNAPUR LP. SCHOOL
DIST. KARIMGANJ
ASSAM.

6:SRI ASHIM BHATTACHARJEE
ASSTT. TEACHER
1097 NUNIABASTI LP SCHOOL
DIST. KARIMGANJ
ASSAM.

7:SRI KAMALESH KAR
ASSTT. TEACHER 912 NO. BAGHMONI TRIBAL LP SCHOOL
DIST. KARIMGANJ
ASSAM.

8:SRI SANJOY KUMAR DAS
ASSTT. TEACHER
913 NO. HARI NARAYAN LP SCHOOL
DIST. KARIMGANJ
ASSAM.

9:SRI RUPAK DEB
ASSTT. TEACHER
774 NO. SUBARNASINGH LP SCHOOL
DIST. KARIMGANJ
ASSAM.

10:SRI SUBRATA SEKHAR DAS
ASSTT. TEACHER
955 NO. SRIRAMPUR TRIBAL LP SCHOOL
DIST. KARIMGANJ
ASSAM.

11:SMTI SUPARNA PAUL
ASSTT. TEACHER
1265 NO. JOYNAPURI LP SCHOOL
DIST. KARIMGANJ
ASSAM.

12:SMT. SUMITRA DEB ROY
ASSTT. TEACHER 35 NO. SINGARIA L.P. SCHOOL
DIST. KARIMGANJ
ASSAM.

13:SMT. ANJANA GUPTA (SINHA)
ASSTT. TEACHER
1230 NO. LALCHERRA JANATA LP. SCHOOL

DIST. KARIMGANJ
ASSAM.

14:SRI RAHUL DEB
ASSTT. TEACHER
481 NO. SATHKORAGOOL LP SCHOOL
DIST. KARIMGANJ
ASSAM.

15:SRI KAMALA KANTI BAISHAB
ASSTT. TEACHER 912 NO. BAGHONI TRIBAL LP SCHOOL
DIST. KARIMGANJ
ASSAM.

16:SRI SANJIB CHOWDHURY
ASSTT. TEACHER 889 NO. KULCHARRA LP SCHOOL
DIST. KARIMGANJ
ASSAM.

17:JAHURA KHANAM
ASSTT. TEACHER 219 NO. UTTAR SRIGAURI BALAK BALIKA LP SCHOOL
DIST. KARIMGANJ
ASSAM.

18:SRI SWAROOP DUTTA

ASSTT. TEACHER 913 NO. HARI NARAYAN LP SCHOOL
DIST. KARIMGANJ
ASSAM.

19:SMTI NILANJANA DEB
ASSTT. TEACHER
774 NO. SUBARNA SINGH LP SCHOOL
DIST. KARIMGANJ
ASSAM.

20:SMT. MADHUCHANDA BANK
ASSTT. TEACHER
1080 NO. ULUKANDI LP SCHOOL
DIST. KARIMGANJ
ASSAM.

21:SRI BISWAJIT DAS
ASSTT. TEACHER 47 NO. BASHKALTILLA LP SCHOOL
DIST. KARIMGANJ
ASSAM.

22:SMTI LEENA DAS

ASSTT.TEACHER 424 NO. ADHARKUNA BASUDEB LP SCHOOL
DIST. KARIMGANJ
ASSAM.

23:SMTI FALGUNI DAS
ASSTT. TEACHER 1144 NO. PURBA KHAGIL LP SCHOOL
DIST. KARIMGANJ
ASSAM.

24:SMTI SUBRA DHAR
ASSTT. TEACHER
397 NO. BARIGRAM L.P. SCHOOL
DIST. KARIMGANJ
ASSAM.

25:SMTI SHIBANI NATH
ASSTT. TEACHER 1008 NO. SUKLAMOYEE LP SCHOOL
DIST. KARIMGANJ
ASSAM. C/O DEEO
KARIMGANJ
DIST. KARIMGANJ
ASSAM.PIN

Advocate for the Petitioner : MR. D SAIKIA

Advocate for the Respondent : MR. I H SAIKIA (R1, R3-R19, R21-R23, R25)

BEFORE

HON'BLE MR. JUSTICE KALYAN RAI SURANA

For the petitioners	: Mr. B. Koushik, Standing Counsel.
For the respondents	: Mr. I.H. Saikia, Advocate.
Date of hearing	: 28.04.2023.
Date of judgment	: 28.04.2023.

JUDGMENT AND ORDER

(ORAL)

Heard Mr. B. Kaushik, learned standing counsel for the Elementary Education Department, representing the two review petitioners. Also heard Mr. I.H. Saikia, learned counsel for all the 25 respondents.

2. The respondents herein are the writ petitioners in W.P.(C) 5032/2007, by which the respondents had prayed, amongst others, for a direction upon the authorities for payment of salary for the period the respondents had rendered their service. By judgment and order dated 16.06.2016, this Court had allowed the writ petition by directing as follows:-

“16. ... In view thereof, this writ petition stands to be allowed with direction to the State respondents to make payment of the arrear salary to the petitioners with effect from February, 1997 as well as to continue making payment of the current salary. In so far as the arrear salary is concerned, the same shall be paid and disbursed within a period of 6 (six) months from today and while doing so, the State respondents are also allowed to carry out a verification process to ascertain the period from which the petitioners have been discharging services as Teachers uninterruptedly until this date.

17. In view of the above, all the three writ petitions stand allowed and the impugned order dated 17.08.2007 passed by the Secretary to the Government of Assam, Education (Elementary) Department, is set aside. No costs.”

3. The learned standing counsel for the petitioners has referred to the statement made in this review petition and has submitted that the case of the respondents was that (i) following advertisement of 1991 and select list dated 22.06.1992, (ii) following advertisement of 1995 and select list dated 18.08.1995, and (iii) select list dated 24.04.1998, they were appointed as Assistant Teachers (ATs for short) in various Lower Primary Schools in Karimganj District pursuant to selection made by the Sub- Divisional Level Advisory Board for Elementary Education, Karimganj. They were paid monthly salary till January, 1997 and thereafter, their salaries were stopped. Resultantly, the respondents had filed W.P.(C) Nos. 5277/2003, 5363/2003, and 5276/2003. The said writ petitions were disposed of by order dated 18.07.2003, by directing the State authorities to examine their claim and that if on examination, the respondents were found to be legally entitled to arrear pay and allowance,

which had been held up since February, 1997, the same was directed to be released. Direction was also issued to the State to consider the case of the respondents to adjust their service against non-plan vacant post in accordance with law. The authorities had submitted a proposal in Finance (SIU) format to the Education Department for regularisation of the service of the respondents. The Government examined the proposal and the same was rejected by order dated 17.08.2007 on the ground that as per the report dated 04.09.2003 by the Inspector of Schools, the respondents were appointed in non-existent/ non-sanctioned posts and as the appointment was illegal/ irregular, there was no scope for adjusting the service of the respondents against non-plan posts since they were appointed illegally.

4. It has been submitted that there were a lot of anomalies in the appointment of the respondents, which amounted to illegality because the Sub-Divisional Level Advisory Board for Elementary Education, Karimganj was constituted by notification dated 20.01.1995 and therefore, they could not have selected the respondents in the year 1992. It has been submitted that pursuant to the judgment and order dated 02.03.2010, passed the Division Bench of this Court in W.P.(C) 1048/2004 – *Manoj Kumar Sarma v. State of Assam & Ors.*, the State authorities had undertaken an exercise to screen the ATs who were appointed in Lower Primary and Upper Primary Schools during the year 1989 to 2001 and large scale illegal appointments were detected. It has been submitted that 5 (five) Screening Committees were constituted under the following zones, viz., Upper Assam Division, Lower Assam Division, North Assam Division, Hills and Barak Valley Division, and BTC Area. It was submitted that the screening exercise had involved examining 4040 teachers purportedly appointed under Operation Black Board (OBB) Scheme during 1998-99 and 7066 teachers

appointed under the same OBB Scheme during the year 2001, and that schemes were formulated to regularise deserving cases and to terminate non-deserving cases. After scrutiny of the report by the Screening Committees, the Divisional Screening Committees had categorized the teachers in following categories, viz., (i) recommended and working till date – 136 nos. of teachers; (ii) recommended but discontinued the service- 250 nos. of teachers; (iii) not recommended but working till date - 8706 nos. of teachers; (iv) not recommended and discontinued the service – 2664 nos. of teachers; i.e. total 11,756 teachers. (pg.18 of RP). It is emphatically submitted that as per the finding recorded by the Screening Committee, the names of the respondents are reflected in the list of 8706 illegally appointed teachers. It is submitted that the name of *Sikha Das Gupta* (respondent no.1) is captured in DISE Code only for the years 2004-05, 2005-06, 2012-13, 2013-14, 2014-15 and 2015-16. Similarly, the name of *Suparna Paul* (respondent no. 11) is captured in DISE Code only for the years 2012-13, 2013-14, 2014-15 and 2015-16. Similarly, it has been submitted by the learned standing counsel for the petitioners that he is in a position to show from the screening report that the names of none of the respondents are either not captured in the DISE Code, or not regularly captured in the DISE Code.

5. It has also been submitted that the respondents were not appointed in accordance with the procedure prescribed in the Assam Elementary Education (Provincialisation of Service) Rules, 1977. Accordingly, it has been submitted that there are a catena of decisions by this Court as well as by the Supreme Court that the illegal appointees do not have any enforceable right either for regularisation of service or for claim to salary.

6. In order to explain the delay in approaching the Court for

review of the judgment and order dated 16.06.2016, passed in W.P.(C) 5032/2007, it has been submitted that the review petitioners had waited for the outcome of the screening exercise and as it has been found that the respondents were also illegally appointed ATs, the petitioners had filed this review petition. It has been submitted that being illegally appointed teachers, the State cannot be burdened to pay salary to such illegally appointed teachers. It has been submitted that as the Screening Committee has found that the respondents are illegal appointees, the Government is not in a position to pay salary to the respondents.

7. Considered the materials available on record and considered the submissions made by the learned standing counsel for the petitioners and the learned counsel for the respondents. The point-wise discussions are as mentioned below.

Whether or not the judgment and order dated 16.06.2016 in W.P.(C) 5032/2007 and/or appointment of the respondents was vitiated by fraud:

8. At the outset it may be mentioned that in this review petition, it is not the pleaded ground for review that the judgment dated 16.06.2016 in W.P.(C) 5032/2007 was vitiated by fraud. It is also not the pleaded ground for review that the appointment of the respondents was vitiated by fraud. Existence of element of "fraud" is not even a pleaded ground for review.

9. The Court is conscious that had the petitioners demonstrated that fraud was played by the respondents, then the principle of "fraud vitiates everything" could have been applied to the benefit of the review petitioners. However, it is the pleaded case of the petitioners that the appointment of the

respondents was illegal. We may refer to the observations of this Court in paragraphs 12 to 14 of the impugned judgment and order dated 16.06.2016, which is extracted below:-

“(12) I have heard the learned counsels for the parties and have also considered the materials on record. The fact that the petitioners were appointed pursuant to Select List dated 22.06.1992 and/or the Select List dated 18.08.1995 is a fait accompli, in that, the Consolidated Statement prepared by the State authorities vindicates the stand of the petitioners. The fact that the petitioners were granted salary in regular scale of pay from the respective dates of their appointment until January, 1997 is also not disputed. The objection now raised is that the petitioners were appointed against non-existent and non-sanctioned post and they are not entitled to arrear salary. This is not the stand taken by the State respondents when the petitioners had first approached this Court in the year 2003. In fact, although the petitioners have continued to serve in respective schools on and from the year 1995-1996, no step had been initiated by the State respondents interfering or questioning the appointment orders so issued nor any such steps were taken when the matter was sent back to the Government for examining the case of the petitioners pursuant to the Order dated 18.07.2003 passed by this Court in the earlier round of litigation.

(13) The submission of Mr. Mazumdar that appointments have been made contrary to the statutory procedure and /or the prescribed procedure, in that, the same was not proceeded by any advertisement or participation of the petitioners in any selection process, the same do not find support from the materials on record. To reiterate, the Consolidated Statement prepared by the respondent authorities discloses sufficient particulars meeting the objection raised by Mr. Mazumdar. In the said Consolidated Statement, there is mention of the order when Advertisements had been issued. The allotment of interview numbers also supports that the petitioners had participated in interview process. Reliance placed in the case of Mamata Mohanty (supra) and Nazira Begum Laskar (supra) do not come to the aid of the respondent, in as much as, the present proceeding is not a case where appointments had been made by making a clear departure from the prescribed procedure or at the behest of some unseen hands. Had it been so, the State respondents would have certainly taken action against the petitioners or would have at least issued show-cause notice questioning their appointments as Assistant Teachers. On record, no such steps have been taken by the State respondents until this date.

(14) The case laid out by the petitioners against the unreasonable and arbitrary action on the part of the State respondents gains force in view of the

communication dated 16.09.2015, which had been obtained by the petitioners through the Right to Information Act. The clarification made by the Deputy Inspector of Schools, Karimganj, in response to the Government letter dated 07.08.2015, abundantly goes in favour of the petitioners, at least to the extent that the selection made by the Sub-Divisional Level Advisory Board for Elementary Education, Karimganj along with all original records had been submitted to the Government way back in the year 1998. It was so done because of the Government WT Message dated 23.04.1998. This clarification made by the Deputy Inspector of Schools, Karimganj gains significance, in that, it was well within the knowledge of the State respondents way back in the year 1998 of the selection made by the Advisory Board and also the appointments offered to the petitioners herein. As is revealed from the said communication dated 16.09.2015, there is no denying the fact that all the petitioners have been continuously rendering their services since their initial date of appointment. The exception, however, is only in respect of the petitioner no. 2 i.e. Smti Madhumita Goswami in WP(C) No. 5032/2007."

10. Thus, the herein before referred observations of this Court indicates that the points urged by the learned standing counsel for the petitioners herein had been considered by this Court while deciding the writ petition.

11. Moreover, there is total absence of pleadings in this review petition to the effect that the judgment and order dated 16.06.2016 in W.P.(C) 5032/2007 and/or appointment of the respondents was vitiated by fraud. The point is answered accordingly.

Can events subsequent to the passing of the impugned judgment by examining of appointments made during 1991-2001 constitute a good ground for review:

12. It was submitted by the learned counsel for the petitioners that the screening exercise undertaken pursuant to the order dated 13.07.2009, passed by the Division Bench of this Court in W.P.(C) 1048/2004 and Cabinet decision dated 26.02.2011, had involved examining 4040 teachers purportedly

appointed under Operation Black Board (OBB) Scheme during 1998-99 and 7066 teachers appointed under the same OBB Scheme during the year 2001, and that schemes were formulated to regularise deserving cases and to terminate non-deserving cases. After scrutiny of the report by the Screening Committees, the Divisional Screening Committees had categorized the teachers in following categories, viz., (i) recommended and working till date – 136 nos. of teachers; (ii) recommended but discontinued the service- 250 nos. of teachers; (iii) not recommended but working till date - 8706 nos. of teachers; (iv) not recommended and discontinued the service – 2664 nos. of teachers; i.e. total 11,756 teachers. (pg.18 of RP). It has been emphatically submitted by the learned standing counsel for the petitioners that as per the finding recorded by the Screening Committee, the names of the respondents are reflected in the list of 8706 illegally appointed teachers.

13. The case of the petitioners is that after Screening Committees had submitted their report to the Government pursuant to Govt. notification no. PMA.281/2013/58 dated 04.06.2014, the same was compiled by the Elementary Education Department. However, in view of complaints received, the Commissioner and Secretary to the Government of Assam, Elementary Education Department (petitioner no.1) had ordered re-verification vide notification no. PMA.281/2013/134 dated 03.11.2016.

14. In this review petition, the petitioners have not annexed the screening committee report in respect of Karimganj District. However, in their affidavit-in-opposition filed on 07.12.2022, the respondents have annexed copy of letter no. K-DEO/2014-15/ Illegal-Irregular/Screening/ 14502 dated 24.02.2015 (Annexure R/4), wherein a list of 493 illegally/ irregularly appointed

teachers in Karimganj District has been appended. However, for reasons best known to the petitioners, the said list was not produced in W.P.(C) 5032/2007 for reasons best known to them. Nonetheless, as indicated herein before, re-verification was ordered vide notification dated 03.11.2016. Therefore, the re-verification report, if any, would prevail over the purported communication dated 24.02.2015.

15. The petitioners are heavily relying on the order under Memo No. EDN (LC)27/2016/150/Pt-II/38 dated 13.07.2018 issued by the Commissioner and Secretary to the Government of Assam, Elementary Education Department (petitioner no.1) regarding decision of the Government to issue individual notices to 8740 illegally appointed teachers and 766 including 752 terminated teachers to show cause as to why they should not be removed from service. The said order, which has been filed by the petitioners by way of an additional affidavit on 26.03.2019 does not refer to any finding regarding illegal appointment made in respect of Karimganj District. Nonetheless, in para-5 of the said additional affidavit filed on 26.03.2019, a statement has been made to the effect that "... *direction to the Director to issue individual show case (sic.) to the illegally appointed teachers including the petitioners (sic. ought to have been 'respondents'). ...*" The annexing of the copy of speaking order dated 13.07.2018 as Annexure-B has been mentioned in sub-para to para-5. The said speaking order dated 13.07.2018 does not contain a whisper that the authorities have arrived at a finding that the respondents have been illegally appointed. Therefore, the statement made in para-5 of the said additional affidavit filed on 26.03.2019 is found not supported by the contents of the speaking order dated 13.07.2019.

16. Moreover, no other material has been annexed to the review petition to show the categorical finding of the petitioner authorities that the respondents were illegally appointed. There is no pleading in the review petition or in the additional affidavit filed by the petitioners on 26.02.2019 that any opportunity was granted to the respondents of being heard and/or that pursuant to the show cause notices and replies filed, the competent authority had held that the respondents were illegally appointed.

17. It was submitted by the learned standing counsel for the petitioners that they have in their custody the screening committee reports and re-verification reports. If that be so, then there is no explanation in this review petition as to why the petitioners had withheld the screening committee reports in the writ proceeding and why the petitioners have withheld the re-verification report in this proceeding. As already indicated herein before, the communication dated 24.02.2015 containing list of 493 nos. of illegal and/or irregular teachers in Karimganj District, as produced by the respondents would be of no consequence, as re-verification report, if any, would prevail over the list which is accompanying the communication dated 24.02.2015 (Annexure R/4).

18. Therefore, the so called subsequent events, which had followed the judgment and order dated 16.06.2016 passed by this Court in W.P.(C) 5032/2007 is not of sterling quality which would persuade this Court in exercise of review jurisdiction to accept the same because of lack of pleading as to the outcome of show cause notice, if any issued to the petitioners.

19. Be that as it may, the review jurisdiction can be exercised within the scope and ambit of the provisions of Section 114 CPC read with the provisions of Order XLVII, Rule 1 CPC.

20. The provision of Section 114 CPC is quoted below:-

114. Review.- *Subject as aforesaid, any person considering himself aggrieved—*
(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred,
(b) by a decree or order from which no appeal is allowed by this Court, or
(c) by a decision on a reference from a Court of Small Causes, may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.

21. The provision of Order XLVII, Rule 1 is also quoted below:-

1. Application for review of judgment- *(1) Any person considering himself aggrieved—*

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of 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 decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

Explanation—The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.

22. In the said context, it may be mentioned that the petitioners have not been able to show that subsequent events that had happened long after passing of the judgment of this Court can be a ground for review.

23. The petitioners have failed to show how a mere statement by the petitioners that subsequent to the passing of the judgment and order dated 16.06.2016 in W.P.(C) 5032/2007, on re-verification, the respondents were found to be illegally appointed can constitute a ground to exercise of review jurisdiction by this Court when the authorities had decided to issue show cause notice, amongst others, to the respondents.

24. The petitioners have annexed the order dated 13.07.2018 as Annexure-B to the additional affidavit filed on 26.03.2019. The said order contains a mention that show-cause notices was contemplated to be issued to the respondents. At the cost of repetition it is reiterated that it has not been brought to the notice of this Court that there is a pleading to the effect that the show cause notices, if any, issued to the respondents have been brought to its logical conclusion.

25. Therefore, the petitioners have not been able to demonstrate that this is a case wherein the judgment and order dated 16.06.2016 of this Court in W.P.(C) 5032/2007 was vitiated by any error apparent on the face of record, or that there was discovery of any new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the petitioners or could not be produced by them at the time when the judgment and order was made. Hence, the Court is constrained to hold that none of the legal pre-requisites for exercising review jurisdiction exists in this case.

26. It is trite law that review judgment operates retrospectively. In the case of *M.A. Murthy v. State of Karnataka, (2003) 7 SCC 517*, the Supreme Court of India was considering whether the review judgment would have

retrospective or prospective effect and in the said context, it was held that as the review judgment has the effect of overruling the previous judgment, it was held that review judgment operates as the law from inception and is operative retrospectively. Para 8 thereof is extracted below:-

8. The learned counsel for the appellant submitted that the approach of the High Court is erroneous as the law declared by this Court is presumed to be the law at all times. Normally, the decision of this Court enunciating a principle of law is applicable to all cases irrespective of its stage of pendency because it is assumed that what is enunciated by the Supreme Court is, in fact, the law from inception. The doctrine of prospective overruling which is a feature of American jurisprudence is an exception to the normal principle of law, was imported and applied for the first time in L.C. Golak Nath v. State of Punjab, AIR 1967 SC 1643. In Managing Director, ECIL v. B. Karunakar, (1993) 4 SCC 727, the view was adopted. Prospective overruling is a part of the principles of constitutional canon of interpretation and can be resorted to by this Court while superseding the law declared by it earlier. It is a device innovated to avoid reopening of settled issues, to prevent multiplicity of proceedings, and to avoid uncertainty and avoidable litigation. In other words, actions taken contrary to the law declared prior to the date of declaration are validated in larger public interest. The law as declared applies to future cases. [See Ashok Kumar Gupta v. State of U.P., (1997) 5 SCC 201 and Baburam v. C.C. Jacob, (1999) 3 SCC 362]. It is for this Court to indicate as to whether the decision in question will operate prospectively. In other words, there shall be no prospective overruling, unless it is so indicated in the particular decision. It is not open to be held that the decision in a particular case will be prospective in its application by application of the doctrine of prospective overruling. The doctrine of binding precedent helps in promoting certainty and consistency in judicial decisions and enables an organic development of the law besides providing assurance to the individual as to the consequences of transactions forming part of the daily affairs. That being the position, the High Court was in error by holding that the judgment which operated on the date of selection was operative and not the review judgment in Ashok Kumar Sharma case No. II, (1997) 4 SCC 18. All the more so when the subsequent judgment is by way of review of the first judgment in which case there are no judgments at all and the subsequent judgment rendered on review petitions is the one and only judgment rendered, effectively and for all purposes, the earlier decision having been erased by countenancing the review applications. The impugned judgments of the High Court are, therefore, set aside.

27. In view of the ratio laid down in the hereinbefore referred case of *M.A. Murthy (supra)*, it is not envisaged that in exercise of review jurisdiction, the Court would consider materials which have come into existence after the judgment dated 16.06.2016 was passed and use it to modify/ alter/ vary the said judgment dated 16.06.2016. This is not a case where any accidental or clerical omission or error has crept in the judgment dated 16.06.2016. This is also not a case where despite due diligence any material relevant to the enquiry could not be produced by the petitioners at the time when W.P.(C) 5032/2007 was being heard. Thus, in the considered opinion of the Court, none of the ground nos. (a) to (g) are good grounds for this Court to exercise jurisdiction of review in respect of the judgment and order dated 16.06.2016 of this Court in W.P.(C) 5032/2007.

28. Therefore, this is not a case where power to review ought to be exercised by the Court in respect of the judgment and order dated 16.06.2016 of this Court in W.P.(C) 5032/2007.

Maintainability of this review petition:

29. By the impugned judgment and order dated 16.06.2016, three writ petitions were disposed of by this Court, viz., (i) W.P.(C) 5032/2007- *Smt. Sikha Das Gupta (Roy) & 24 others v. The State of Assam & 4 others*, i.e. filed by all the 25 respondents herein; (ii) W.P.(C) 5066/2007 – *Md. Salim Ahmed Choudhury & 21 others v. The State of Assam & 4 others*; and (iii) W.P.(C) 5067/2007- *Md. Sadique Ahmed & 19 others v. The State of Assam & 4 others*. However, this review petition has been filed only in respect of W.P.(C) 5032/2007. Therefore, by not filing any review petition in respect of the other two writ petitions, the common judgment and order dated 16.06.2016 passed in

W.P.(C) 5066/2007 – *Md. Salim Ahmed Choudhury & 21 others v. The State of Assam & 4 others*; and (iii) W.P.(C) 5067/2007- *Md. Sadique Ahmed & 19 others v. The State of Assam & 4 others*, have attained finality. Therefore, as the common judgment and order has attained finality in two connected writ petitions, this instant review petition preferred in respect of judgment and order dated 16.06.2016 in W.P.(C) 5032/2007 would fail and accordingly, no case for review has been made out.

30. This review petition also fails on the ground of non-joinder of necessary parties. The 5 respondents in the proceedings of W.P.(C) 5032/2007 were (1) The State of Assam through the Commissioner and Secretary to the Govt. of Assam, Education Deptt., (2) The Commissioner to the Govt. of Assam, Finance Deptt., (3) The Director of Elementary Education, Assam; (4) The Deputy Inspector of Schools, Karimganj; and (5) The Treasury Officer, Karimganj. This instant review has been filed by the two out of five respondents in W.P.(C) 5032/2007, viz., (i) The State of Assam through the Commissioner and Secretary to the Govt. of Assam, Education Deptt.; and (ii) The Director of Elementary Education, Assam. However, the other three respondents, namely, (a) The Commissioner to the Govt. of Assam, Finance Deptt., (b) The Deputy Inspector of Schools, Karimganj, and (c) The Treasury Officer, Karimganj were neither arrayed as the review petitioners, nor were they arrayed as proforma respondents. The said three parties were proper and necessary parties in the review petition, without whose presence the judgment and order dated 16.06.2016, passed in W.P.(C) 5032/2007 cannot be reviewed.

31. Therefore, in view of the discussions above this review petition fails on two points of maintainability as well as on merit. Accordingly, this review

petition stands dismissed. The parties are left to bear their own cost.

JUDGE

Comparing Assistant