

GAHC010118972023



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

Case No. : Review.Pet./73/2023

THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
FINANCE DEPTT., DISPUR, GUWAHATI- 781006.

VERSUS

BHUBON CHANDRA DAS AND 4 ORS.
S/O LATE GOLAP DAS, R/O KURUABAHI NOGAYAN GAON SATRA,
BOKAKHAT, DIST.- GOLAGHAT, ASSAM.

2:THE STATE OF ASSAM
REP. BY COMMISSIONER AND SECRETARY
GOVT. OF ASSAM
IRRIGATION DEPTT.
DISPUR
GUWAHATI- 6.

3:THE CHIEF ENGINEER (I)
ASSAM
CHANDMARI GUWAHATI-3
ASSAM.

4:THE EXECUTIVE ENGINEER

GOLAGHAT DIVISION (IRRIGATION)
GOLAGHAT.

5:THE TREASURY OFFICER

GOLAGHAT

Advocate for the Petitioner : MR. B GOGOI

Advocate for the Respondent : MS. B BHUYAN (r-1)

**BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO**

ORDER

12.10.2023

Heard Mr. B. Gogoi, learned Standing Counsel, Finance Department for the review petitioner and Ms. B. Bhuyan, learned Senior Counsel, assisted by Ms. B. Borah appearing for the respondent No. 1/ writ petitioner.

By filing this application under Article 215 of the Constitution of India, read with Section 114 and Order 47 Rule 1 of the Code of Civil Procedure, 1908 (CPC), the applicant seeks review of the judgment dated 22.02.2019 passed by this Court in WP (C) No. 4381/2013.

The case of the writ petitioner before the writ Court was that he was engaged as Muster Roll Worker w.e.f. 01.05.1991 under the establishment of Executive Engineer, Golaghat (Irrigation). Pursuant to the decision taken by the State Cabinet, the Finance Department sanctioned the creation of posts for regularizing Muster Roll Worker, who were engaged prior to 01.04.1993, vide communication dated 22.08.2005. Accordingly, the Irrigation Department, vide communication dated 03.10.2005 conveyed creation of posts to the Accountant General, Assam. Amongst the list of names of Muster Roll Workers to be regularized, the name of one Sri Bhuban Das

(respondent No. 6 in the writ petition) was mentioned at Sl.No. 49. According to the writ petitioner, the name was wrongly reflected and that it should have been his name instead. Since all the particulars such as date of entry in to service, date of birth and date of retirement were his particulars.

The respondent No. 6 was then regularized vide office order No. 172 dated 06.10.2005 w.e.f. 22.07.2006 and it was provided that the post will be personal to the incumbent concerned and that it will be abolished once the person relinquishes the post in any manner.

The writ petitioner being unaware about the regularization approached this Court for regularization of his service by filing WP (C) No. 4133/2007 and the same was disposed of on 22.01.2009 in terms of the Full Bench decision of this Court rendered in ***Jitendra Kalita & Ors. Vs. State of Assam & Ors. 2006 (2)GLT 654.***

As per the said decision, it was held that regularization of Muster Roll and Work Charge Employees engaged prior to 10.04.1993 as provided by the Office Memorandum dated 20.04.1995 was not a valid policy decision of the State Government and therefore, no further regularization should be made as per the said Office Memorandum. However, as for those who were already regularized, the same was not disturbed in view of the human factor involved.

The writ petitioner upon coming to learn that he has been deprived for regularization of his service on account of the mistake

committed by the respondent authorities concerned, submitted his representation to the Executive Engineer, Golaghat (Irrigation) on 02.09.2010 and the said authority in turn, wrote to the Chief Engineer, Irrigation stating that altogether, 85 Muster Roll Workers were regularized as per the proposals submitted by the Golaghat, Sub-Division and the name of the writ petitioner was one amongst them. However, inadvertently, the name of the private respondent No. 6 in WP (C) No. 4381/2013, which was similar to the name of the writ petitioner was reflected instead. Therefore, it was suggested that necessary instructions may be issued for regularization of the services of the writ petitioner.

Thereafter, when the matter was brought to the notice of the State Government in the Irrigation Department, the Under Secretary (E) to the Government of Assam, Irrigation Department, vide communication dated 06.09.2012 wrote to the Chief Engineer, Irrigation to submit a verification report. The Chief Executive, Irrigation Department, then wrote to the Executive Engineer, Golaghat Division (Irrigation) to furnish requisite information. The latter then wrote back stating that detailed information about the writ petitioner was already submitted on 11.01.2012, but nevertheless, he again sent the particulars of the writ petitioner to the Chief Engineer Irrigation Department with a copy to the Under Secretary to the Government of Assam, Irrigation Department. Since no further steps was taken, the writ petitioner filed WP (C) No. 4381/2013.

This Court upon considering the writ petition and the

counter-affidavits filed by the respondents came to the conclusion that except for the slight difference in the name of the writ petitioner and the private respondent concerned, all the particulars that was submitted, i.e. date of entry in service, date of birth and date of retirement belonged to the writ petitioner. Therefore, the Full Bench decision in ***Jitendra Kalita & Ors. (supra)*** and the decision of the Division Bench ***in State of Assam Vs. Upen Das & Ors. (2017) 4 GLR 493*** may not be a bar to grant relief to the petitioner. In view of the unusual facts and circumstances and the error committed by the respondent authorities, the respondent authorities were accordingly directed to regularize the services of the writ petitioner with effect from the date the private respondent was regularized and with arrear salary, w.e.f. from the date of filing of the writ petition, i.e. on 26.07.2013. The arrear salary was also directed to be adjusted against the wages already received by the writ petitioner and his pay should be fixed notionally. As for the services of the private respondent, in view of long passage of time, the same was not disturbed. Against the said direction, the State Government in the Finance Department is before this Court through the instant review petition.

Mr. B. Gogoi, learned Standing Counsel, Finance Department by drawing the attention of this Court to the order dated 27.03.2012 passed by the Division Bench of this Court in M.C. No. 597/2012 in WP (C) taken up No. 24/2007 (Annexure-A) submits that the State Government through the said Misc. Case sought leave of the Court to implement the policy of regularization of the State and the

Division Bench in view of the decision of the Supreme Court in ***State of Karnataka Vs. Uma Devi & Ors. (2006) 4 SCC 1***, declined to grant leave. Thereafter, the Finance Department immediately issued Office Memorandum dated 16.06.2012 directing that no more regularization of services of work charge, muster roll or similarly placed workers should be done in view of the order of the Division Bench even if such workers were engaged prior to 01.04.1993 and had rendered continuous service without break. He submits that despite due diligence, the same could not be brought to the notice of this Court at the time when the judgment dated 22.02.2019 was being passed by this Court.

The learned counsel further submits that in view of the decision rendered by the ***Hon'ble Apex in Uma Devi & Ors.*** (supra) and in the case of ***Jitendra Kalita & Ors.*** (supra), by a Full Bench of this Court and also the Division Bench decision in ***Bhuban Das & Ors.*** (supra), the judgment dated 22.02.2019 should be reviewed since there is an error apparent on the face of the record. In support of his submission, the learned counsel relies upon the case of ***State of Jammu & Kashmir Vs. R.K. Zalpuri & Ors. (2015) 15 SCC 602.***

Ms. B. Bhuyan, learned Senior Counsel appearing for the respondent No. 1/writ petitioner submits that the review petition has been belatedly filed and that it is time barred. She submits that the review petitioner has neither filed a separate application seeking condonation of delay nor made any explanation for the delay in the review petition. Therefore, the review petition is not maintainable on

account of delay. In support of her submission she relies upon the following authorities:-

(i) 2011 (3) GLT 66; and

(ii) Division Bench Judgment of Bombay High Court dated 08.02.2021 passed in Civil Application (CAO) No. 21/2021 in Misc. Civil Application ST No. 57/2020 in writ petition No. 7009/2019(D) (***Lakmikant Sambhaji Khade Vs. State of Maharashtra & Anr.***).

Referring to the above decisions, the learned Senior Counsel submits that although the provisions of Order 47 CPC and Article 124 of the Limitation Act, may not strictly apply but the High Court may not ordinarily entertain an application for review if such application is made after a lapse of 30 days on the ground of public policy not to entertain such application beyond the period of 30 days after passing of the order. However, it is open for the High Court to entertain in a given case such application provided the High Court is satisfied that sufficient cause is shown for the delay in filing the review application.

In the present case, the learned Senior Counsel submits that neither has the review petitioner filed an application for condonation of delay nor has it given any explanation for the delay in filing the same in the review petition itself and as such, the review petition should be dismissed on account of delay.

Ms. B. Bhuyan, learned Senior Counsel further submits that even on merits, there is no error apparent on the fact of the record

requiring the review of the judgment dated 22.02.2019. She submits that the decision of the Full Bench in ***Jitendra Kalita & Ors.*** (supra) and that of the Division Bench in ***Bhuban Das & Ors.*** (supra) were also considered by this Court. Further, in the case of ***Umma Devi*** (supra) was also taken into consideration by the Full Bench of this Court in ***Jitendra Kalita & Ors.*** (supra) and therefore, the grounds taken by the review petitioner seeking review of the judgment of this Court dated 22.02.2019 is not tenable. She also submits that in fact, the case of the writ petitioner is covered by the exception that was carved out in the case of ***Uma Devi*** (supra). She therefore submits that the review petition should be dismissed.

I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record including the authorities relied by the parties. As may be noticed the grounds taken by the review petitioner for seeking review of the judgment dated 22.02.2019 passed by this Court are broadly two fold.

Firstly, the order dated 27.03.2012 passed by the Division Bench in M.C. No. 597/2012 in W.P. (C) taken up No. 24/2007 was not brought to the notice of this Court. By the said Misc. Case, the State Government sought the permission of this Court to implement the policy of the State for regularizing casual workers but the same was declined by this Court in view of the Apex Court decision in ***Uma Devi*** (supra). As already narrated hereinabove, the case of the writ petitioner is that there was a mistake committed by the respondent authorities concerned in considering the right person for

regularization of service due to similarity of names. All the particulars forwarded was otherwise the particulars of the writ petitioner. It was under such peculiar facts and circumstances that this Court was of the view that the authorities relied upon may not be a bar to grant relief to the writ petitioner.

The other ground taken by the review petitioner is that this Court had failed to appreciate the decision rendered by the Apex Court in ***Uma Devi & Ors.*** (supra), ***Jitendra Kalita & Ors.*** (supra) and ***Bhuban Das & Ors.*** (supra) rendered by a Full Bench and Division Bench respectively of this Court. But again, this Court under the peculiar facts and circumstances, found that the grievances projected by the writ petitioner was legitimate and for which, relief should be granted. In coming to such a conclusion, this Court had in fact consider the authorities relied upon by the review petitioner as can be seen from Paragraph Nos. 7 and 8 of the judgment dated 22.02.2019 sought to be reviewed. Therefore, the grounds taken by the review petitioner seeking review of the said judgment, in the considered view of this Court has no merit.

As regards the delay in filing the writ petition it may be noticed that the judgment sought to be reviewed was passed on 22.02.2019 and the review petition filed only on 09.06.2023. From a perusal of the pleadings in the review petition, there is no explanation as to why the same is filed after a lapse of more than 4 years. There is also no separate application seeking condonation of the delay by explaining the delay in filing of the review petition. A Division Bench of this Court in ***Mori Riba and Ors.*** (supra) as well as the Division

Bench of Bombay High Court in ***Lakshmi Sambhaji*** (supra) held that even though the order 47 CPC & Article 124 of the Limitation Act may not strictly apply but it will be incumbent on the part of the review petitioner to satisfy the Court why the review petition has been filed after a long gap of time. As already stated no explanation has been tendered by the review petitioner in the present proceeding. Therefore, the authorities referred to hereinabove, squarely applies to the present case and even on this ground the review petition is liable to be dismissed. As for the case of State of ***Jammu & Kashmir Vs. R.K. Zalpuri & Ors. (supra)***, the Apex Court held that for the inordinate delay the writ petition ought to have been dismissed at the very threshold. As such, the order of the High Court entertaining the writ petition was set aside. Therefore, the decision relied upon does not help the present review petitioner.

Thus, upon due consideration, the review petition is found to be without any merit and accordingly, the same is dismissed.

JUDGE

Comparing Assistant