

GAHC010243802022



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

Case No. : Review.Pet./7/2023

THE STATE OF ASSAM AND ANR.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOV.T OF ASSAM,
SOCIAL WELFARE DEPARTMENT, DISPUR, GUWAHATI -6, KAMRUP (M),
ASSAM.

2: THE DIRECTOR OF SOCIAL WELFARE
ASSAM
GUWAHATI - 781001
KAMRUP (M)
ASSAM

VERSUS

BOBBY DEKA AND 16 ORS.
W/O SANJAY TALUKDAR R/O VILL- NANARA UNDER P.O.KARARA IN THE
DIST. OF KAMRUP (R), ASSAM, PIN -781381.

2:MS. RINA PAUL
W/O PRANAB KUMAR DAS
R/O WARD NO. 3
HOSPITAL ROAD

RANGIA IN THE DIST. OF KAMRUP (R)
ASSAM
PIN - 781354.

3:MS. KENIJA FATEMA SARKAR
W/O SHAHIB ULLAH
R/O VILL- PANBARI UNDER P.O. SHALKATIPATHER IN THE DIST. OF
NAGAON
ASSAM
PIN - 782126.

4:MS. MIRA BEGUM

W/O SAMSUL HAQUE
R/O VILL- MARANJANA
UNDER P.O. MARANJANA IN THE DIST. OF KAMRUP (R)
ASSAM
PIN - 781354.

5:MS. RANJU DEVI
W/O TAPAN CHANDRA SHARMA
R/O VILL- BHALUKI UNDER P.O. BHALUKI IN THE DIST. OF BARPETA

ASSAM
PIN -781371.

6:MS. BIBHA SALOI
W/O RANJIT DAS
R/O VILL- MEDHIPARA
UNDER P.O. JAROBARI IN THE DIST. OF KAMRUP (R)
ASSAM
PIN - 781122.

7:MS. ASMINA KHATUN
W/O FAKRUL ISLAM
R/O VILL- LAHARIPAM
UNDER P.O. GORAIMARI IN THE DIST. OF MORIGAON
ASSAM
PIN - 782104.

8:MS. BIJULI KALITA
D/O DEBESWAR KALITA
R/O VILL- PURAN KATAHI
UNDER P.O. CHHAYGAON
IN THE DIST. OF KAMRUP (R)
ASSAM
PIN - 781124.

9:MS. PARUL HAJONG
W/O PRANAB DAS
R/O VILL- SIMLITOLA UNDER P.O. SIMLITOLA IN THE DIST. OF GOALPARA
ASSAM
PIN - 783130.

10:MS. KHIRADA DEKA
W/O MONESWAR DAIMARI
R/O VILL- TENGAJHAR UNDER P.O. TENGAJHAR IN THE DIST. OF BAKSA
ASSAM
PIN - 781364.

11:MS. HACHIINA KHATUN

W/O ABU BAKKAR SIDDIQUE
R/O VILL- KHOLABANDHA
UNDER P.O. KHOLABANDHA IN THE DIST. OF BARPETA
ASSAM
PIN - 781127.

12:MS. HAMIDA BEGUM
W/O DIN ISLAM
R/O VILL- JOGIPARA UNDER P.O. BALABARI IN THE DIST. OF DARRANG
ASSAM
PIN - 784146.

13:MS. RANJU SAUD
W/O JAYDEV SAUD
R/O VILL- BUDHUCHAR
UNDER P.O. DALGUMA IN THE DIST. OF GOALPARA
ASSAM
PIN - 783125.

14:MS. ANISHA BEGUM
W/O MANJUR RAHMAN
R/O VILL- NO. 1 PUTHIMARI UNDER P.O. MANGALDAI IN THE DIST. OF
DARRANG
ASSAM
PIN - 784125.

15:MS.MINA DEKA
D/O JINA RAM DEKA
R/O VILL- MAHARIPARA
UNDER P.O.MAHARIPARA IN THE DIST. BAKSA
ASSAM

PIN - 781364.

16:MS. DEEPA DEVI
D/O DIGABAHADUR PARAJULI
R/O VILL- NO. 1 BORDIKRAI
UNDER P.O. RANGACHAKUWA IN THE DIST. OF SONITPUR
ASSAM
PIN - 784185.

17:MS. MINA ARA BEGUM
W/O TAZIRUDDIN AHMED
R/O VILL- DAMPUR UNDER
P.O. DAMPUR IN THE DIST. OF KAMRUP (R)
ASSAM
PIN - 781102

Advocate for the Petitioner : SR. GA, ASSAM

Advocate for the Respondent : MR. S KATAKI (R- 1, 3-6, 8-11, 13-15, 17)

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

07.09.2023

Heard Shri D. Nath, learned Senior Government Advocate, Assam appearing for the applicants – State of Assam and the Officers, who have filed this application for review of the judgment and order dated 20.06.2022 passed in WP(C)/7215/2018. By the said judgment, the State respondents were directed to provide the service benefits to the writ petitioners, who were working as Supervisors in the Social Welfare Department from the date of their initial appointment made on 06.02.2016 along with other benefits.

2. Also heard Shri S. Kataki, learned counsel for the respondent nos. 1, 3 to 6, 8 to 11, 13 to 15 & 17 and Shri BP Borah, learned counsel for the respondent nos. 2, 7, 12 and 16, who were the writ petitioners.

3. Before going into the merits of the case, this Court vide an order dated 10.04.2023 after noting the date of the judgment and the date of filing of the review application had passed the following order:

*“Heard Shri D. Nath, learned Senior Govt. Advocate, Assam who has appeared for the Review applicants in this petition filed for review of an order dated 20.06.2022 in WP(C) No. 7215/2018. Evidently, the filing date as per the office is 10th of January, 2023 which is beyond the period prescribed for filing review. Though the **Limitation Act, 1963**, per se may not be applicable in a writ proceedings, the spirit of the same is*

*applicable which is clarified by the Constitution Bench of the Hon'ble Supreme Court in the case of **State of MP Vs Bhailal Bhai** reported in **1964 0 AIR SC 1006**.*

Therefore, keeping the question of maintainability open, let a notice be issued returnable on 10.05.2023.

Steps be taken for service of notice upon the respondents by registered post with A/D within 3 (three) days."

4. On receipt of notice, the respondents (writ petitioners) had appeared through their learned counsel.
5. It is the contention of the learned counsel for the respondents that contempt petitions were filed *qua* the judgment dated 20.06.2022 as the period prescribed by this Court of 60 days was over and no action was taken for compliance of the judgment and only as a counter blast, the review application has been filed.
6. Shri Nath, learned Senior Government Advocate however submits that there were circumstances for which the review could not be preferred within the period of one month. He further submits that the review application was presented for filing earlier and due to certain defects, the date of filing has been given as 10.01.2023.
7. On the other hand, both Shri Kataki and Shri Borah, learned counsel for the respondents (writ petitioners) have contended that following the ratio in the aforesaid case of **Bhailal Bhai** (supra), the question of delay and laches *qua* the Limitation Act would essentially arise and even if a separate application is not filed for condonation of the delay, pleadings were necessary to be made supported by an affidavit to explain the delay which is conspicuously absent in

the instant case. It is submitted that there is not even a single statement in the application explaining the delay.

8. Though certain oral explanations have been tried to be given by Shri Nath regarding defective filing and certain circumstances causing the delay, this Court would not take a different view other than the date of filing which according to the Office Stamp is 10.01.2023. In any case, a defective filing cannot be construed to be a proper filing and therefore would not save the limitation.

9. Shri Nath, learned State Counsel, at this stage, has prayed for some time to file an affidavit in this regard. However, the initial order pointing out the aspect of limitation having passed on 10.04.2023 and no affidavit / application being filed till date, this Court is not inclined to grant any further time.

10. Though it is pointed out by the learned counsel for the respondents (writ petitioners) that the grounds sought to be urged in support of the review application were extensively considered and decided in the judgment and order dated 20.06.2022, since this Court is not inclined to entertain the review application on the ground of delay, this Court would not enter into the merits of the grounds urged.

11. The Constitutional Bench of the Hon'ble Supreme Court in the aforesaid case of **Bhailal Bhai** (supra) has laid down as follows:

“21. ... Mr. Andley has argued that the delay in these cases even is not such as would justify refusal of the order for refund. He argued that assuming that the remedy of recovery by action in a Civil Court stood barred on the date these applications were made that would be no reason to refuse relief under Article 226 of the Constitution. Learned counsel is right in his submission that the provisions of the Limitation Act do not as

such apply to the granting of relief under Art 226. It appears to us however that the maximum period fixed by the legislature as the time within which the relief by a suit in a Civil Court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured. The court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the court to hold that it is unreasonable. ..."

12. The aforesaid decision is also followed by a Division Bench of this Court in the case of ***Mori Riba and Ors. Vs. Yomkar Riba and Ors.*** reported in **2011 (3) GLT 66.**

13. This Court is of the view that even if a separate application is not filed to explain the delay in filing a review *qua* an order passed by a Writ Court, it is incumbent at least to explain the delay in the review application itself. This Court has noticed that in the instant case there is no explanation at all regarding the delay. Therefore, this Court is of the opinion that on the ground of delay itself, this application praying for review is not maintainable.

14. The review application accordingly stands dismissed.

JUDGE

Comparing Assistant