

GAHC010003962015



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

Case No. : Review.Pet./92/2020

BRAHMAPUTRA VALLEY FERTILIZER CORPORATION LTD. AND 2 ORS.
NAMRUP, P.O. PARBATPUR, DIST.- DIBRUGARH, ASSAM, REP. BY ITS
CHAIRMAN-CUM-MANAGING DIRECTOR.

2: THE CHIEF ENGINEER (INST)

BRAHMAPUTRA VALLEY FERTILIZER CORPORATION LTD.
NAMRUP
P.O. PARBATPUR
DIST.- DIBRUGARH
ASSAM.

3: THE MANAGER (HR)

BRAHMAPUTRA VALLEY FERTILIZER CORPORATION LTD.
PERSONNEL DEPARTMENT
NAMRUP
P.O. PARBATPUR
DIST.- DIBRUGARH
ASSAM

VERSUS

SRI NETRAMONI BARUAH
S/O- KERKON BARUAH, R/O- VILL.- DEOGHARIA, P.O. BENGENAGORA,
MOUZA- MACHKHOWA, DIST.- DIBRUGARH, ASSAM.

2:THE DIRECTOR OF ELEMENTARY EDUCATION

ASSAM
KAHILIPARA
GHY-19

3:THE DIST. ELEMENTARY EDUCATION OFFICER

DHUBRI
P.O.DHUBRI
DIST DHUBRI
ASSAM

4:THE DY. INSPECTOR OF SCHOOLS

SOUTH SALMARA
MANKACHAR SUB DIVN. HATSINGIMARI
DIST DHUBRI
ASSA

Advocate for the Petitioner : MR S N SARMA SENIOR ADVOCATE

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

20.02.2024.

1. Heard Mr. K. Kalita, learned counsel for the review petitioner. Also heard Mr. P. K. Roychoudhury, learned counsel for the respondent.
2. By the present review petition, the petitioner has sought for review of Judgment and Order dated 21.07.2015 passed by this Court in WP(C) No. 261/2007.
3. The background facts of the aforesaid writ petition can be summarized as follows:-
 - I. The sole respondent was appointed as Tradesman (Instrumentation) in the petitioner Corporation on 15.05.1985 and he was subsequently promoted to the post of Technician Grade-III w.e.f. 31.07.1987. It was alleged that while securing promotion to the post of Technician Grade-II

cadre, the respondent used a ST Certificate on the basis of which, he was promoted against the post earmarked for ST(P).

II. Accordingly, on 01.06.2006, a charge memo was filed against the respondent alleging using fake ST Certificate at the time of entry into the service and using the said certificate for the promotion in question.

III. The sole respondent filed reply to such charge memo and admitted that he belongs to Ahom (OBC community) but had mistakenly submitted the ST Certificate and accordingly, apologized for his lapses and applied for exoneration.

IV. Though the respondent/writ petitioner admitted such guilt, however, the employer proceeded with an enquiry. An Enquiry Officer was appointed and witnesses were examined. In the enquiry proceeding also the respondent/writ petitioner admitted his guilt.

V. After completion of enquiry, the Enquiry Officer concluded that the charges were proved. Accordingly, the employer inflicted penalty of dismissal from service upon the respondent employee. Being aggrieved, the writ petition being WP(C) No. 261/2007 was preferred.

4. This Court by the Judgment and Order dated 21.07.2015, passed in WP(C) No. 261/2007 concluded and determined the following:-

I. Though the respondent/writ petitioner by virtue of his misrepresentation, secured out of turn promotion to the Technician Grade-II on 04.12.1995 to a post earmarked for ST category persons, however, he originally entered service on merit as a General category person on 15.05.1985. Thus the misconduct was committed at the time of promotion.

II. The delinquent himself informed the Tribal Employees Association of

furnishing the undeserved ST Certificate and the falsification came to the light at first instance from delinquent himself.

III. This indicates the dawn of realization of his mistake and the respondent/writ petitioner attempt to rectify the same.

IV. In the context of the aforesaid facts and circumstances, the ends of justice will be better served by awarding any other major penalty provided under Sub-Clause (a) (b) and (c) of Clause 39(ii) of the Standing Order for the Namrup Unit of the Fertilizer Corporation of India.

V. Accordingly, the order of dismissal dated 18.12.2006 was interfered with and the Management was permitted to impose any other penalty except that of dismissal and removal from service. It was further provided that the respondent/writ petitioner shall not be paid any back wages upon reinstatement.

5. Mr. Kalita, learned counsel for the review petitioner submits that there is error apparent on the face of record for the reason that a bare reading of the charge memo clearly reveals that it was an allegation that the respondent/writ petitioner used the fake certificate in question at the entry into the service and fact also remains that not only the respondent/writ petitioner had admitted such misconduct but such misconduct was duly proved through witnesses by the Management during the course of enquiry and therefore, there is an error apparent on the face of the record in findings of this Court's Judgment and Order dated 21.07.2015 that the respondent/writ petitioner has used his certificate at the time of promotion only. Therefore, this order is required to be reviewed.

6. Though Mr. Kalita, learned counsel for the review petitioner tried to urge on the merit of the decision as regards being lenient when an employee uses or produces fake certificate, however, in the considered opinion of this Court, in the

review proceeding, this Court cannot sit as an Appellate Authority over the Judgment and Order dated 21.07.2015.

7. Mr. Kalita, learned counsel for the review petitioner further submits that the record clearly establishes that the respondent/writ petitioner while applying for the service at the initial stage relied on the same ST Certificate which was held to be faked in the enquiry report. Therefore, such punishment imposed upon such an employee could not have been reduced.
8. It is well settled that re-hearing of a matter is impermissible in law in a review. Therefore, it is equally well settled that power of review can be exercised for correction of a mistake but not to substitute a view.
9. Now coming into the case in hand, if we looked into the Judgment and Order dated 21.07.2015, the Court itself formulated an issue that whether the punishment of dismissal is proportionate to the charge of misconduct in the case. While answering the issue that the punishment of dismissal is not proportionate to the charge of misconduct, this Court, as discussed hereinabove has concluded that the respondent/writ petition had originally entered into the service on merit as General category person on 15.05.1985. No material has been brought on record to show that such conclusion that entry of the service of the respondent/writ petitioner was not as a General candidate and such materials were though available was not taken note of when the determination was made by this Court. This is also not a case that such material could be discovered later on. In fact, no such material has also been brought in the instant review. That being the position, this Court in a review jurisdiction cannot conclude that such determination was incorrect.
10. This Court by the Judgment and Order dated 21.07.2015 held the punishment to be disproportionate considering the fact that the respondent delinquent

himself informed the Tribal Employees Association of furnishing the ST Certificate in question and the respondent only obtained benefit of promotion by using such certificate and therefore, his removal from service was disproportionate.

11. This Court finds no materials which can lead to a conclusion that such determination is result of some error apparent on the face of the record. The case of the petitioner is that his entry into service of the respondent being bad, no leniency should be shown to such an employee is a matter on the merit of the determination made by this Court in its Judgment and Order dated 21.07.2015. Therefore, this Court cannot enter into the merit once again in a review petition.
12. Accordingly, this Court finds no merit in this review petition and same stands dismissed.

JUDGE

Comparing Assistant