

GAHC010191472021



2024:GAU-AS:8189

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

Case No. : Review.Pet./59/2023

THE REGIONAL DIRECTOR (NORTH EASTERN REGION)
STAFF SELECTION COMMISSION
HOUSEFED COMPLEX
LAST GATE BASISTHA ROAD
P.O. ASSAM SACHIVALAYA
DISPUR
GUWAHATI- 6.

VERSUS

ASMOT ALI AND 5 ORS.
S/O- ABDUL ROSHID
VILL. 2 NO. JARAGURI
P.O. SIDAL TALI
P.S. MANIKPUR
DIST.- BONGAIGAON
ASSAM
PIN- 783383.

2:THE UNION OF INDIA
REP. BY THE SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF HOME AFFAIRS (MHA)
NEW DELHI- 110003.

3:THE DIRECTOR GENERAL CRPF (RECRUITMENT BRANCH)
EAST BLOCK-7
LEVEL-4
SECTOR- 01
RK PURAM
NEW DELHI- 110066.

4:THE ASSISTANT COMMANDANT
BORDER SECURITY FORCE
DHUBRI

BSF CAMPUS ALOMGANJ
P.O. ALOMGANJ
DIST.- DHUBRI
ASSAM
PIN- 783339.

5:THE COMMANDANT-CUM-PRESIDING OFFICER
CENTRAL ARMED POLICE FORCES (CAPFS) BOARD
GROUP CENTRE
CRPF
NINE MILE
GUWAHATI- 22.

6:THE DETAILED MEDICAL EXAMINATION BOARD
HEADED BY ITS PRESIDING OFFICER
GROUP CENTRE
CRPF
NINE MILE
GUWAHATI- 22.

Advocate for : MRS. A GAYAN
Advocate for : N CHAKRABARTY (R-1) appearing for ASMOT ALI AND 5 ORS.

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the applicant : Ms. A. Gayan, CGC

Advocate for the respondents : Shri R. Islam

Date of hearing : **16.08.2024**

Date of Judgment : **16.08.2024**

JUDGMENT & ORDER

The instant review application has been preferred *qua* the judgment and order dated 05.02.2021 passed by this Court in WP(C)/2104/2020. The applicant herein was the principal respondent in the writ petition. The review application has been filed with respect to one part of the judgment whereby

appointment was directed to be offered to the opposite party no. 1 / writ petitioner.

2. To appreciate the grounds of review, it would be convenient to recapitulate the facts projected in the writ petition.

3. The writ petitioner was an aspirant for the post of Constable (GD) in various Paramilitary Forces which was initiated by an advertisement dated 21.07.2018. The age of the candidates was to be within 18-23 years as on 01.08.2018. It was projected that the cut-off mark for unreserved category candidate in which the writ petitioner belonged was 35% and the writ petitioner claimed to be successful in the Physical Test which was held after the Written Test scheduled on 18.02.2019. After completion of the Physical Test, a Medical Test was held on 01.02.2020 and as per the writ petitioner, he was found to be fit in all respects. However, a rejection slip was issued on 19.02.2020 on the ground of mismatch of the date of birth in the online application which was the subject matter of challenge in the writ petition. The said writ petition was allowed by the aforesaid order dated 05.02.2021 whereby this Court had noticed that there was certain trivial anomaly so far as the date of birth is concerned and the said anomaly otherwise did not materially affect the eligibility of the petitioner so far as the prescription of age. Since this Court was apprised that 35% was the cut-off mark for being appointed, this Court, while setting aside the rejection slip dated 19.02.2020 had directed the respondents to offer appointment letter to the writ petitioner. It is the second part of the judgment which is the cause for review.

4. I have heard Ms. A. Gayan learned CGC. I have also heard Shri R. Islam, learned counsel for the opposite party / writ petitioner.

5. Ms. Gayan, the learned CGC for the applicant has, at the outset, clarified that so far as setting aside the rejection slip dated 19.02.2020 is concerned, the applicant is not aggrieved. She however submits that it is only the part of the order by which direction has been given to offer appointment to the writ petitioner in respect of which, review has been sought for. It is submitted by the learned CGC that under the notice for recruitment, the mode of selection has been clearly stated. Under Clause 11 pertaining to mode of selection, it was clearly reflected that selection would be based on the aggregate marks scored by the candidates in the Computer Based Examination. Attention of this Court has also been drawn to the Clause 9 (xii) wherein the cut-off for eligibility to selection was laid down. It is stated that for General Category candidates, the cut-off was 35%. The learned CGC has also drawn the attention of this Court to the enumeration of candidates done in a Tabular Form in paragraph 9 of the review application. It is submitted that in terms of the directions of this Court, a reconsideration of 5 nos. of candidates was made and 3 candidates namely Shahanur Ali, Abu Kasem and Zakir Hussain Ahmed were found to have obtained more marks than the cut-off mark. However so far as the writ petitioner is concerned, he had obtained marks of 43.79038 whereas the cut-off mark for general category was 45.44732. The learned CGC has submitted that an error apparent on the face of it had crept in the judgment under review whereby this Court was given the impression that 35% mark was the cut-off for being appointed. She reiterates that 35% mark for General Category candidates would only bring such a candidate within the zone of consideration and depending on the ratio of number of candidates vis-à-vis the vacancies, cut-off mark is worked out and in this case, the opposite party / writ petitioner had secured less marks than the cut-off mark. The learned CGC has also submitted

that the aforesaid exercise has been done fairly and without any *mala fide* inasmuch as, 3 other similarly situated candidates were found to be eligible for appointment as they had secured more marks than the cut-off mark and were in fact appointed. In this connection, the learned CGC has referred to the specific averments made in the aforesaid paragraph 9 of the review application.

6. The learned CGC accordingly submits that pertaining to the aforesaid direction, contempt petition has also been filed by the writ petitioner and therefore, there is an urgent need for review of the judgment in question.

7. *Per contra*, Shri Islam, learned counsel for the opposite party / writ petitioner has, at the outset, raised a preliminary objection on the maintainability of the review petition. It is submitted that the review petition has been filed after about 2 years from the date of the judgment and there is no explanation. He has also submitted that there is no error apparent on the face of the records and the review has been filed only after filing of the contempt petition only to frustrate the outcome of the writ petition. He has also submitted that for the review application to be maintainable there has to be an error apparent on the face of the records or there has to be discovery of certain things which were not within the knowledge of the review applicant even after due diligence. He has also submitted that none of the aforesaid conditions are fulfilled and the instant review is an appeal in disguise.

8. In her rejoinder, Ms. Gayan, the learned CGC has submitted that there are proper explanations for the delay. It is submitted that in terms of the order of this Court, the matter was taken up for reconsideration and the aspect of the age was rectified as per the direction. However, since the writ petitioner was found to have obtained less mark than the cut-off, a communication dated 11.03.2021 was issued that the direction of this Court was rendered infructuous.

She however candidly submits that there was a lack of proper advice in the use of the expression for which the contempt was filed. However, the initial communication was rectified by disclosing the entire facts in the subsequent communication dated 12.05.2023. She submits that there is no delay and / or *laches* in filing the review application.

9. It is no longer *res integra* that a Court in exercise of powers under Article 226 exercises plenary jurisdiction in which the power of review is inbuilt. In this regard, one may gainfully refer to the case of ***MM Thomas Vs. State of Kerala and Ors.*** reported in ***(2000) 1 SCC 666*** wherein the following observations were made:

“14. The High Court as a court of record, as envisaged in Article 215 of the Constitution, must have inherent powers to correct the records. A court of record envelops all such powers whose acts and proceedings are to be enrolled in a perpetual memorial and testimony. A court of record is undoubtedly a superior court which is itself competent to determine the scope of its jurisdiction. The High Court, as a court of record, has a duty to itself to keep all its records correctly and in accordance with law. Hence, if any apparent error is noticed by the High Court in respect of any orders passed by it the High Court has not only power, but a duty to correct it. The High Court’s power in that regard is plenary. In Naresh Shridhar Mirajkar v. State of Maharashtra a nine-Judge Bench of this Court has recognised the aforesaid superior status of the High Court as a court of plenary jurisdiction being a court of record.”

In a subsequent case of ***Municipal Corpn. of Greater Mumbai v.***

Pratibha Industries Ltd., reported in ***(2019) 3 SCC 203***, similar views were expressed.

10. At the same time, this Court is reminded that though the powers of review are available, however, the principles laid down for exercising powers of review are to be followed. The said principles are that there has to be an error apparent on the face of the records or there is discovery of relevant materials which could not be brought to the notice of this Court while the hearing was done in spite of due diligence and thirdly, if there are sufficient reasons.

11. In the instant case, a projection was made that the cut-off mark of 35% has been prescribed for appointment (unreserved category) and under those circumstances, this Court, while interfering with the rejection slip dated 19.02.2020 had also directed for offer of appointment. It however transpires that 35% cut-off mark is only to bring a candidate (unreserved category) within the eligibility for consideration for appointment and only if such a candidate secures the adequate marks, he will be offered the appointment. Fixing of a cut-off mark is an essential requirement while working out the number of vacancies vis-à-vis the number of candidates in a particular category. From the materials placed on record, including the averments made in the review application, it transpires that the cut-off mark for General Category candidates was 45.44732 whereas the opposite party / writ petitioner had secured 43.79038. The aforesaid fact is not disputed or denied by the writ petitioner. When the opposite party / writ petitioner could not secure marks more than the cut-off meant for the General Category candidates, it would not be proper or reasonable for this Court to direct offer of appointment. This Court is of the opinion that it is only the consideration for appointment which was directed by this Court and such direction cannot entitle the petitioner to have an appointment without even

securing marks more than the cut-off.

12. The principles governing review are well settled. In the recent decision dated 18.08.2022 reported in **(2022) SCC OnLine 1034, (S Madhusudhan Reddy Vs. V Narayana Reddy & Ors.)** a three Judges' Bench of the Hon'ble Supreme Court, after discussing the relevant case laws has reiterated the principles laid down in the case of **Kamlesh Verma Vs. Mayawati and Ors.** reported in **(2013) 8 SCC 320** which are as follows:

“20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1. When the review will be maintainable:

- (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;*
- (ii) Mistake or error apparent on the face of the record;*
- (iii) Any other sufficient reason.*

The words "any other sufficient reason" have been interpreted in Chhajju Ram v. Neki and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in Union of India v. Sandur Manganese & Iron Ores Ltd.

20.2. When the review will not be maintainable:

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negative.”

13. In the considered opinion of this Court, a case for review is made out and accordingly the part of the judgment which had directed the respondents to offer appointment to the opposite party / writ petitioner is reviewed. This Court accordingly holds that a direction for appointment can be granted only if the opposite party / writ petitioner secures marks more than the cut-off meant for General Category candidates.

14. The review application accordingly stands allowed.

JUDGE

Comparing Assistant