

GAHC010277412023



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

Case No. : Review.Pet./91/2024

NAREN CH BORO
S/O LT. KALA RAM BORO R/O VILL- BARKHARUA P.O.KHARUA, DIST.
BAKSA BTAD ASSAM, PIN - 781346.

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
EDUCATION SECONDARY DEPARTMENT, DISPUR, GUWAHATI, KAMRUP
M, ASSAM, PIN - 781006.

2:THE SECRETARY

FINANCE SIU DEPARTMENT
DISPUR
GUWAHATI
KAMRUP M
ASSAM
PIN - 781006.

3:THE BODOLAND TERRITORIAL COUNCIL

REP. BY THE PRINCIPAL SECRETARY
BODOLAND TERRITORIAL COUNCIL
KOKRAJHAR
ASSAM
PIN - 783370.

4:THE COMMISSIONER AND SECRETARY
TO THE WPT and BC DEPARTMENT
GOVT. OF ASSAM
DISPUR
GUWAHATI
ASSAM
PIN - 781006.

5:THE DIRECTOR OF EDUCATION

BODOLAND TERRITORIAL COUNCIL
KOKRAJHAR
ASSAM
PIN - 783370.

6:THE INSPECTOR OF SCHOOLS

B.D.C. MUSHALPUR
BAKSA
DIST. BAKSA
BTAD
ASSAM
PIN - 781333

7:THE PRINCIPAL
BARAMA HIGHER SECONDARY SCHOOL
P.O. BARAMA
DIST. BAKSA
BTAD
ASSAM
PIN - 781346

Advocate for the Petitioner : MRS A BUJARBARUAH, MS A.SARMA,MS N DAS
Advocate for the Respondent : SC, SEC. EDU., SC, WPT AND BC,SC, BTC,SC, FINANCE

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

31.07.2024

Heard Ms. A. Bujorbaruah, learned counsel for the review applicant, who by means of this application has prayed for review of the order dated 13.05.2023 passed by this Court in WP(C)/7878/2017. The learned counsel has submitted that at no point of time, any order of termination of service of the applicant was communicated to him and therefore, the order is required to be reviewed.

2. Ms. RB Bora, learned Standing Counsel, BTC as well as Shri R. Dhar, learned State Counsel have submitted that exercise of powers of review is limited only if an applicant is able to make out the grounds for such review. It is submitted that unless an error apparent on the face of the records is made out or it is able to be demonstrated that the findings arrived by this Court are perverse to the materials on record and any other sufficient grounds, a review would not be maintainable. The principal submission made by the learned counsel for the applicant is on the aspect of communication of the order of termination of appointments.

3. This Court has however noticed that in paragraph 12 of the judgment, the aforesaid aspect has not only considered but also dealt with. This Court has also taken into consideration the contemporaneous materials including the communication dated 26.03.2018 issued by the Inspector of Schools, BTC. The appointment of the petitioner in a provincialized school by the School Management Committee has also been taken into consideration.

4. The exercise of review by a Writ Court is permissible as the powers under Article 226 of the Constitution of India is plenary in nature. However, such review should be in the lines of those mentioned under Section 114 of the CPC read with Order 47 Rule 1. The grounds provided are limited in nature and an appeal cannot be filed in the guise of a review. The submissions made by the learned counsel for the applicant, as observed above, were dealt with and this Court cannot go into the merits of the decision taken.

5. The principles governing review are well settled. In a 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.”

6. In view of the above, the review application is dismissed.

JUDGE

Comparing Assistant