



Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Review Pet. No. 11 of 2023

Date of Decision: 01.05.2025

Smti Jesmin Jahir
Wife of Yousuf Mollah
Resident of Vill. Namabila
P.O. Rajabala, P.S. Phulbari,
West Garo Hills District,
Meghalaya

..... Petitioner

-Versus-

1. State of Meghalaya,
Represented by the Chief Secretary,
Govt. of Meghalaya, Shillong
2. The Principal Secretary
Govt. of Meghalaya
Education Department, Shillong
3. The Commissioner and Secretary
Govt. of Meghalaya,
Education Department, Shillong
4. The Under Secretary,
Govt. of Meghalaya,
Education Department, Shillong
5. The Director School Education and Literacy,
Govt. of Meghalaya, Shillong
6. District School Education Officer,
Govt. of Meghalaya,
Tura, Meghalaya



7. Smti. Sonia Sultana Sarker,
Daughter of (L) Abdur Rezzak Sarker,
R/o Vill Shiyalkandi
P.O Rajabala,
P.S. Phulbari
West Garo Hills District,
Meghalaya
8. Rajabala Higher Secondary School, Rajabala
Represented by its Principal
P.O. Rajabala, P.S. Phulbari,
West Garo Hills District,
Meghalaya
9. Secretary, Managing Committee
Rajabala Higher Secondary School, Rajabala
P.O. Rajabala, P.S. Phulbari
West Garo Hills District,
Meghalaya

..... Respondents

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Review Petitioner	:	Mr. S. Jindal, Adv. with Mr. I. Kharmujai, Adv. Ms. T. Pohlong, Adv.
For the Respondent(s)	:	Mr. H. Kharmih, Addl. Sr. GA (For R 1-6) Mr. K.P. Bhattacharjee, Adv. (For R 7) Ms. B. Ghosh, Adv. (For R 8 & 9)

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| i) | Whether approved for reporting in
Law journals etc.: | Yes/No |
| ii) | Whether approved for publication
in press: | Yes/No |
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JUDGMENT

1. Judgment and Order dated 20.06.2023 passed by this Court in WP(C) No. 114 of 2015 in the case of Smti. Sonia Sultana Sarker v. The State of Meghalaya and Ors. is sought to be reviewed by this instant review petition preferred by Smti Jesmin Jahir, the respondent No. 9 therein.

2. In this petition, the review petitioner has narrated the background story of the case to say that on 06.01.2015, an advertisement was brought out in the local newspaper, “The Shillong Times” issued by the Secretary, Rajabala Higher Secondary School, West Garo Hills District inviting applications for filling up the post of Asstt. Teacher (Arts) in the said school.

3. The review petitioner along with others had accordingly responded to the said advertisement and was made to appear in the interview consisting of written test as well as viva voce. She was eventually declared successful in the process and was thereafter appointed to the post with the condition that she is to acquire the requisite qualification of having a B.Ed degree within three years of her appointment, which she did so when



she attained the B.Ed degree in the year 2017 and continued to work as the Asstt. Teacher for another five months.

4. In the meantime, the respondent No. 7 herein has approached this Court with the said writ petition being WP(C) No. 114 of 2015 challenging the appointment of the review petitioner and also seeking appointment in her place.

5. This Court after hearing the parties, has vide judgment dated 20.06.2023, set at nought the said advertisement dated 06.01.2015 and has consequently quashed the appointment of the review petitioner.

6. Mr. S. Jindal, learned counsel for the review petitioner has submitted that the records would show that the respondent No. 7 herein who is the writ petitioner in the related proceedings before this Court, has at no point of time made any averment as regard the said advertisement dated 06.01.2015, except a very vague mention of the same at para 10 of the petition.

7. Again, the learned counsel has submitted that on perusal of the affidavit-in-opposition of the State respondents as well as the affidavit of the review petitioner as respondent No. 9 in the writ proceedings also



revealed that there was no reference made to the said advertisement dated 06.01.2015. Even in the rejoinder to the affidavit filed by this review petitioner in the said writ petition, the writ petitioner/respondent No. 7 herein has not made any pleadings as regard the said advertisement. The fact is that the said advertisement was never in question before this court in such proceedings, submits the learned counsel.

8. The learned counsel has further submitted that the said advertisement not being put to challenge before this Court, the parties, including the review petitioner herein was at a disadvantage as far as response to the same is concerned and as such, this Court by setting aside the appointment of the review petitioner, such appointment being made pursuant to the selection process initiated by the issuance of the said advertisement, therefore, there has occurred a mistake or error apparent on the face of the record.

9. To buttress his contention on the issue of absence of pleadings without which the court could not have come to the conclusion and finding manifested in the impugned judgment, the learned counsel has cited the case of *Akella Lalitha v. Konda Hanumantha Rao & Anr.*, 2022 SCC Online SC 928, para 16 and 17 which reads as follows:



“16. Coming to address the second issue, while this Court is not apathetic to the predicament of the Respondent grandparents, it is a fact that absolutely no relief was ever sought by them for the change of surname of the child to that of first husband/son of respondents. It is settled law that relief not found on pleadings should not be granted. If a Court considers or grants a relief for which no prayer or pleading was made depriving the respondent of an opportunity to oppose or resist such relief, it would lead to miscarriage of justice.

17. In the case of Trojan & Co. Ltd. v. Rm.N.N. Nagappa Chettiar [(1953) 1 SCC 456], this Court considered the issue as to whether relief not asked for by a party could be granted and that too without having proper pleadings. The Court held as under: -

"It is well settled that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. Without an amendment of the plaint, the Court was not entitled to grant the relief not asked for and no prayer was ever made to amend the plaint so as to incorporate in it an alternative case."

10. Under such circumstances, in the light of the provision of Order 47 Rule 1 of the Code of Civil Procedure, this Court by taking into account the said advertisement dated 06.01.2015 (supra), a mistake has occurred which would then allow this Court to resort to review the same, submits the learned counsel.

11. Mr. K.P. Bhattacharjee, learned counsel for the respondent No. 7 herein who is the petitioner in the said writ petition being WP(C) No. 114 of 2015 has countered the argument advanced by the review petitioner by



submitting that apart from the issue of maintainability of this instant petition, even the grounds set out in this review petition are totally unfounded inasmuch as such grounds are available only in appeal.

12. The learned counsel has also submitted that pursuant to this Court's order dated 20.06.2023 (supra) whereby the advertisement in question was quashed and a direction was given to the concerned authorities to bring out a proper and fresh advertisement, accordingly, the fresh advertisement was issued on 23rd August, 2023 and the selection process was soon completed with the selected candidate joining the post of Asstt. Teacher of the said Rajabala Higher Secondary School. Therefore, at this point of time, third party rights have accrued which have been overlooked by the review petitioner. In fact, this review petition was filed only in the month of November 2023. Hence, the maintainability of this review petition is questioned.

13. It is reiterated that this Court has taken cognizance of the case of the writ petitioner/respondent No. 7 herein who has questioned the appointment of the review petitioner and thereby the whole selection process being scrutinized by this Court, the fact that the advertisement in question is the genesis of the said selection process which is found to be



defective, this Court has rightly quashed the same and has issued appropriate direction for a fresh advertisement to be floated in this regard. Therefore, there is no question of any error apparent on the face of record or any mistake committed by this Court in doing so.

14. Mr. H. Kharmih, learned Addl. Sr. GA appearing for the State respondent Nos. 1-6 has submitted that the appointment of the review petitioner, such appointment being challenged by the respondent No. 7 as the writ petitioner in WP(C) No. 114 of 2015, was based on the said advertisement which was set aside by this Court vide the relevant judgment dated 20.06.2023. The review petitioner did not have the requisite qualifications as per NCTE norms and as such, no approval for her appointment can be accorded by the concerned authorities.

15. The learned Addl. Sr. GA has also submitted that pursuant to this Court's judgment dated 20.06.2023, the School Managing Committee had issued a fresh advertisement dated 23.08.2023 for appointment of Asst. Teacher at the said Rajabala Higher Secondary School. It is to be noted that the review petitioner has also responded to the said advertisement, however, she did not appear before the Interview Board fixed on 09.07.2024 and eventually, the successful candidate who had participated in the selection



process was selected and proposed to be appointed. The Director of School Education and Literacy, Meghalaya vide communication No.DSEL/SEC-NG/APT/4/2024/Pt.I/117 dated 22.07.2024 issued upon the District School Education Officer, West Garo Hills had approved the appointment of the said successful candidate, Smti. Samina Yeasmin. This being the case, the attempt of the review petitioner to review the said judgment dated 20.06.2023 has lost its relevance apart from the fact that no merits could be found in such prayer.

16. Ms. B. Ghosh, learned counsel appearing for the respondent Nos. 8 and 9/Managing Committee has submitted that the argument advanced by the learned counsel for the respondent No. 7 is endorsed by these respondents.

17. This Court on consideration of the submission and contention made by the respective counsels of the parties has also perused the materials on record including the whole set of records of WP(C) No. 114 of 2015 as well as the affidavits filed by the respondents in this instant review petition.

18. What is apparent is that this is an out and out attempt by the review petitioner to circumvent factual situation by an abuse of the judicial



process to the extent of pursuing these proceedings in the face of attending factors which has negatively affected the cause of the petitioner.

19. As could be understood, when this Court has passed the order dated 20.06.2023 quashing the said advertisement dated 06.01.2015 and calling for issuance of a fresh advertisement, the same was done so by the concerned authorities floating the said advertisement dated 23.08.2023. The review petitioner was one of such applicants in response to the said advertisement and has followed through the procedure till the culmination of the same in the year 2024. In the midst of all this, the review petitioner has preferred this instant review petition in the month of September 2023. There was no mention of the subsequent selection proceedings nor was any prayer made to keep the same on hold pending disposal of this review petition. In all this, the bonafide of the review petitioner is questionable, that is, her attempt to make multiple approach to secure her cause which is impermissible both on facts and on law, the review petitioner knowing fully well that she cannot approach two separate forums to achieve the same goal. On this ground alone, this review petition is found to be not maintainable.

20. Another aspect of the matter for this Court to examine is whether there is any legal basis made out for a review of the judgment in



question. The review petitioner has maintained that the only reference to the said advertisement dated 06.01.2015 is at para 10 of the writ petition where the petitioner/respondent No. 7 herein has faintly alluded to the said advertisement by imputing that perhaps the said advertisement was issued to suit the present review petitioner. No prayer was made as regard the said advertisement. Thereafter, even in the affidavit-in-opposition of the State respondents or the affidavit-in-opposition of the review petitioner as respondent No. 9 or even in the rejoinder affidavit filed by the petitioner/respondent No. 7, no mention or reference was ever made to the said advertisement.

21. This contention of the review petitioner that there was no pleadings or mention about the said advertisement dated 06.01.2015 is not factually correct as perusal of the materials on record would reveal that on reference being made by the writ petitioner/respondent No. 7 at para 10 as acknowledged by the review petitioner it cannot be said that no mention is made about the said advertisement in the affidavit-in-opposition filed by the respondents in the writ petition. At para 10 of the affidavit-in-opposition filed on behalf of the respondent Nos. 1, 2, 3, 4 and 6 dated 15.10.2015 the following has been stated:-



“10. In reply to Paragraph No. 10 of the Writ Petition, it is submitted here to state that the Writ Petitioner here has made misleading statements. The very advertisement as available in Annexure I of the present Writ Petition and the constitution of the Selection Board with one of the member as subject expert (Assamese) speaks otherwise. Moreover the discipline of Arts covers different field like Social Science, Literature as such to have a broader definition of the post the advertisement reflected the vacancy for the post of an Arts teacher having proficiency in Assamese. The advertisement itself indicated that the candidate must be an Arts Graduate with major in Assamese subject with consistently good academic records.”

22. In response to this, the petitioner/respondent No. 7 in her rejoinder affidavit dated 15.12.2015 has also specifically mentioned the said advertisement when at para 11 of the same she has stated that “...*It is also a matter of record that Smti. Sarotibala Hajong, Asstt. Teacher, Rajabala Higher Secondary School, Rajabala, whose post fell vacant on 12.9.2015 (Annexure – 15, page 113 of the writ petition) due to her untimely demise had B.A. B.Ed. Degree Qualification, but surprisingly when that advertisement to fill up the aforesaid post was published, it did not have B.Ed. as one of the criteria, although the same was of utmost importance as per the Govt. instruction and directions by letter dated 12.1.2007 as well as letter dated 1.2.2007 (Annexure – 12, Typed Copy at pages 105 and 104 of the writ petition) and also as per the NCTE Gazette*



of India Notification No. 238 dated 4.9.2001 (Annexure 12, page 106 to 108 of the writ petition)... ”.

23. The respondent Nos. 7 and 8 in the writ petition who are the Principal and Secretary of the Managing Committee of the Rajabala Higher Secondary School in their additional affidavit dated 05.03.2019 has also at para 3 of the same made special mention of the said advertisement in question to say that the respondent No. 9 therein who is the review petitioner herein in response to the said advertisement has applied for the post of Asst. Teacher and was found eligible and subsequently appointed to such post.

24. Even the review petitioner as respondent No. 9 in her counter affidavit dated 15.02.2022 at para 8 and 11 of the same had made reference to the said advertisement dated 06.01.2015 to say that no condition was set forth in the said advertisement.

25. The above excerpts would indicate that reference to the said advertisement dated 06.01.2015 is repleted in the body of pleadings of the respective parties. The same being the genesis of the whole selection process which was challenged in the writ petition in question, thus making



it the foundation of the litigation process initiated by the writ petitioner/respondent No. 7 herein, as such, it cannot be said that such reference does not constitute pleadings.

26. On the contention of the review petitioner that no relief has been sought for as against the said advertisement (supra), the authorities cited to support the same being the case of Akella Lalitha (supra), the response to this by the respondent No. 7 herein is that this Court exercising power under Article 226 has wide discretion to grant relief/reliefs for ends of justice though the same may not have been prayed for by the petitioner.

27. It may be mentioned that a court has ample power to review its own judgment or order after the same has been rendered quite in keeping with the doctrine of “*actus curiae neminem gravabit*” (that is, an act of court shall prejudice none). However, this power is to be exercised on three prescribed grounds, namely:-

- i. Discovery of new and important matter or evidence which after the exercise of due diligence was not within the applicant’s or petitioner’s knowledge for the same to be produced before the court at the relevant point of time;



ii. Mistake or error apparent on the face of the record; and

iii. Any such sufficient ground.

28. Yet another principle of review is that the court exercising its power is doing so to prevent miscarriage of justice or to correct judicial mistake or even grave error which has surfaced in the proceedings in question.

29. However, as has been observed hereinabove, the review petitioner has not been able to point out such error or mistake apparent on the face of the record for this Court to exercise its power of review. This being the case, this instant review petition is found to be devoid of merits and the same is liable to be dismissed as such.

30. Accordingly, this petition is hereby rejected and disposed of.

Judge