

CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT JALPAIGURI
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

RVW/3/2023
In
WPA/311/2023

Nishumita Baraily & Ors.
-Vs-
Gorkhaland Territorial Administrative Council & Ors.

For the Petitioners:	Mr. A.K Banerjee, Adv., Mr. Ekramul Bari, Adv., Mr. S.S Mondal, Adv.
For the GTA:	Ms. Supriya Singh, Adv.,
For the Respondent No.6:	Mr. Saibal Kr. Acharyya, Adv., Mr. Debjit Kundu, Adv.
For the State:	Mr. Bikramaditya Singh, Adv.

Hearing concluded on: 04 July, 2023.

Judgment on: 22 August, 2023.

BIBEK CHAUDHURI, J. : –

1. This instant review petition is filed by one Nishumita Baraily along with others, who being aggrieved and dissatisfied with the order dated 07.02.2023 passed by this Court in W.P.A. No.311 of 2023, has prayed for permanent approval to the post of a teacher in Lower Chongtong High School, Darjeeling.

2. The petitioners were appointed as assistant teachers on 23rd May, 2016, 25th September, 2014, 10th December, 2018 and 23rd May, 2016 in Lower Chongtong High School by the school authority against the

permanently sanctioned vacant post. In 2009 in an administrative circular, the School Education Department restrained the District Inspector of School (S.E.), Darjeeling from approval of appointment to any teaching staff engaged on a contractual basis. The petitioners filed WPA 574 of 2021 which was disposed of on 23.02.2021 with a direction upon the respondents to consider the representation of the petitioner within a period of six weeks and the D.I. of Schools (S.E.) passed the following order dated 23rd March, 2021:

“In compliance with the order of the Hon'ble High Court, Calcutta in Circuit Bench at Jalpaiguri in W.P.A. No. 574/2021, dated 23/02/2021, all the 4 petitioners, namely (i) Nishumita Baraily, (ii) Neekey Ghising, (iii) Urbashi Tamang and (iv) Ujay Gurung were duly requested to attend a hearing on 23/03/2021 vide memo no. 208(4)/IV-45/Edn/GTA/2020- 21 dated 09/03/2021 before the undersigned with the certified copies of the court's order and other relevant documents in original in support of their claim. All the 4 petitioners appeared in person as requested and heard them at length.

Seen and perused the order of the Hon'ble High Court dated 23/02/2021 wherein the Hon'ble High Court has been pleased to direct the undersigned to consider the representation of the petitioner if filed within a week from the date and pass a reasoned order. All the petitioners duly filed a representation s directed by the Hon'ble High Court. During the course of hearing and perusal of the representation filed by the petitioners, it is found that all the petitioners are engaged as voluntary teachers in their respective schools by the School Managing Committee on different dates stated in the writ petition. On perusal of the engagement letters of the petitioners, it is found that the respective School Managing

Committee while issuing engagement order to the petitioners, had specifically stated in their engagement order as follows:-

1. No remuneration will be paid to you.
2. No assurance has been given by the School Managing Committee for your permanency in the future.
3. School Managing Committee abides by all rules and notifications issued by the concerned Education Department Govt. of West Bengal, but in case of the department favour, the school Managing Committee will co-operate with you.

The School Managing Committee, while issuing the engagement order, has clearly stated that in case of all appointments /regularizations, the Committee has to abide by all the rules and notifications issued by the GTA and the School Education Department, Govt. of West Bengal. Hence, without following proper rules and notifications issued by the Education Department, Govt. of West Bengal, the representation of the petitioners for regularization cannot be considered at this stage. Hence, their prayer for regularization of appointment is rejected. Inform them accordingly."

3. Through a second round of litigation vide WPA 311 of 2023, the petitioners had sought for their absorption in the vacant post in the said school in respect of the Assistant teacher. They argued that on the strength of an order dated 29th December, 2014 passed in WP 34439 (W) of 2014 similarly placed teachers posted in different schools under the administration of GTA were absorbed against the vacant post. This court passed the following order in WPA 311 of 2023 on 07.02.2023:

"...This is the second round of litigation where the petitioner has sought for his absorption in the vacant post in the said school in

respect of Assistant Teacher. On the strength of an order dated 29th December, 2014 passed in WP 34439 (W) of 2014 similarly placed teachers posted in different schools under the administration of GTA were absorbed against the vacant posts. The present petitioners are praying for the similar relief in the instant writ petition stating, inter alia, that the order of the aforesaid writ petition was not placed before the Principal Secretary, GTA along with his representation which was rejected on 23rd August, 2021.

In view of such circumstances, the instant writ petition is disposed of giving liberty to the petitioner to file a fresh representation along with the copy of the order passed in WP 34439 (W) of 2014 before the Secretary, GTA who will consider the representation afresh and pass a reasoned order within three weeks from the date of receipt of such representation after giving an opportunity to the petitioners or his authorized representative of hearing.”

4. The petitioners have, therefore, filed this review petition praying for permanent approval in the post and contending that the Principal Secretary, Gorkha Territorial Administration rejected the prayer of the petitioner as such the order dated 07.02.2023 with the direction for filing fresh representation before the same authority is an empty formality which is liable to be reviewed for the ends of justice. Next, the petitioners contend that the Hon'ble High Court was pleased to pass the Judgement and Order on 07.02.2023 on the same day of WPA No. 299 of 2023 (*Siddanth Rai & Ors.- V.S.- The State of West Bengal & Ors.*) whereby and whereunder the same and identical issue was involved and the prayer for permanent approval was allowed by the Hon'ble Court but the Hon'ble Court directed the petitioners in W.P.A. 311 of 2023 to file a fresh representation before the same authority without quashing the reasoned

order dated 23.03.2021 and as such the instant Review application is maintainable for review the order dated 07.02.2023 for the ends of Justice.

5. Next, the learned Advocate for the petitioners argues that during the passing of the order in WPA 311 of 2023, some material facts were not brought to the notice of this court which resulted in the conflict of judgement. In the original writ petition, it was not mentioned by the petitioners that the order of the co-ordinate bench in WP 34439 (w) of 2014, was not placed before the Principal Secretary, but in reality, it was placed before him while he decided not to grant the petitioner the post for permanent appointment. This fact was not brought to the notice of the Hon'ble Court as a result of which this court passed an order for further consideration.

6. Next, he argues that the Hon'ble Court has been pleased to observe that the Gorkhaland Territorial Administration absorbed similarly placed teachers posted in different schools on the strength of an order dated 29.12.2014 passed in W.P.No. 34439 (W) of 2014 against the vacant posts without giving direction to the GTA to absorb the writ petitioners in the vacant posts in the said School as Assistant Teachers though the petitioners have been working in the said School without any remuneration with legitimate expectation as such the multiplicity of two orders in the similar facts and circumstances will be seriously prejudiced the petitioners.

7. After hearing the arguments of the petitioner at length, this Court is of the opinion that it cannot allow this instant review petition. The law

relating to review is enumerated in Section 114 and Order 47 Rule 1 of the Code of Civil Procedure, 1908. Section 114 reads as:

“ 114. Review.- Subject as aforesaid, any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred.

(b) by a decree or order from which no appeal is allowed by this Code, or

(c) by a decision on a reference from a Court of Small Causes, may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.”

Order 47 Rule 1 reads as:

“1. Application for review of judgment (1) Any person considering himself aggrieved,-

(a) by a decree or order from which an appeal is allowed but from which no appeal has been preferred.

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes

and who, from the discovery of new and important matter or evidence which after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was or order made, or on account of some mistake or error apparent in the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate Court the case on which he applies for the review.

[*Explanation*-The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.]”

8. Therefore, the power of review may be exercised on discovering new and important evidence or where some mistake or error apparent on the face of the record is found. This position has been taken in a catena of judgements, one being **M/s. Northern India Caterers (India) Ltd. v Governor of Delhi**, reported in **AIR 1980 SC 674**, where, the apex Court held that:

“ It is well settled that a party is not entitled to seek a review of a judgment delivered by this Court merely for the purpose of a rehearing and a fresh decision of the case. The normal principle is that a judgment pronounced by the Court is final, and departure from the principle is justified only when circumstances of a substantial and compelling character make it necessary to do so. For instance, if the attention of the Court is not drawn to a material statutory provision during the original hearing, the Court will revise its judgment. The Court may also reopen its judgment if a manifest wrong has been done and it is necessary to pass an order to do full and effective justice. Power to review its judgments has been conferred on the Supreme Court by Article 137 of the Constitution, and that power is subject to the provisions of any law made by Parliament or the rules made under Article 145. In a civil proceeding, an application for review is entertained only on a ground mentioned in Order XLVII, Rule 1 of the Code of Civil Procedure and in a criminal proceeding on the ground of an error apparent on the face of the record. Order XL, Rule 1, Supreme Court Rules, 1966. But whatever the nature of the proceeding, it is beyond dispute that a review proceeding cannot be equated with the original hearing of the case, and the finality of the judgment delivered by the Court will not be reconsidered except where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility.”

In **State of Manipur v. Naga Hindi Vidyapith, Manipur** reported in **AIR 2014 Mpr 8**, it was held that the jurisdiction of review Court is limited to examine whether the order sought to be reviewed contains any apparent error within the meaning of Order 47, Rule 1 or not. If it contains, then

the order has to be recalled. But if the order does not contain any error then the Court has to simply dismiss the review petition and in turn uphold the order.

9. In this instant matter, the order neither has any grave or apparent error nor did the petitioners present before the Court any new and important evidence which has the ability to overturn the order. The contention of the petitioners that the Gorkhaland Territorial Administration has absorbed similarly placed teachers in permanent posts and that one petitioner, Siddhant Rai, in WPA 299 of 2023, was successful in getting a relief which is prayed by the petitioners in this case has no material effect in the outcome of this case. The facts, circumstances and outcome of another case, cannot be used to decide the outcome of this matter at hand.

10. Therefore, the order stands and the petitioner is directed to file a fresh application before the Secretary, GTA, who will consider the representation and pass a reasoned order.

11. This review petition is accordingly dismissed. There will, however, be no order as to costs.

(Bibek Chaudhuri, J.)