

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Harish Tandon, J.

And

The Hon'ble Justice Prasenjit Biswas, J.

**RVW 81 of 2022
With
CAN 1 of 2022**

***Sanghamitra Bhattacharya
Vs.
Sudeshna Kar & ors.***

For the applicant : ***Mr. Arjum Roy Mukherjee
Mr. Sougata Mitra
Mr. Rameswar Sinha
Mr. Subhadeep Maitra***

For the State : ***Mr. Bhaskar Prasad Vaisya
Mr. Sabyasachi Mandal***

For the respondent : ***Mr. Abhratosh Majumdar
Mr. Siddhartha Banerjee
Mr. S. P. Lahiri
Mr. K. Roy***

Heard on : **15.06.2022, 08.02.2022, 11.12.2023,
15.07.2024, 05.08.2024, 20.08.2024**

Judgment on : **20th August, 2024.**

Harish Tandon, J.

1. Before we proceed to deal with an application for review, we feel it pertaining to recapitulate the scope and the jurisdiction exercised by the Court in reviewing its own order. The review is never

intended to re-write /or re-visit the Judgment which has already been delivered by the Court. The review jurisdiction cannot be stretched too far to make a roving enquiry and looking at the voluminous documents to decipher the error committed in the order under review. The review may be classified into two categories one in relation to a procedural review and other substantial review. The moment, the judgment is sought to be reviewed, the Court shall travel within the circumference of the well known parameters enshrined under order 47 Rule 1 of the Code of Civil Procedure. The said provision postulates that the Court may review its Judgment provided the Court finds that there is an error apparent on the face of the record or on discovery of new and important documents which despite due diligence was not within the knowledge of the applicant at the time when the Judgment was delivered or for some other substantial reasons. The instant application for review is filed on the first two counts namely, there is an error apparent on the face of the record and such error becomes patent the moment the new and important documents subsequently discover would corroborate the same. The point which revolves around the entire arena of dispute is the observations made by this Court in determining the question whether the transfer can be made by the State authorities to a post which is not sanctioned. After returning the findings in extenso, this Court in the Judgment

under review held that the transfer of the applicant herein to the post which is not sanctioned,+ does not satisfy the conditions enshrined under Section 10C of the West Bengal School Services Commission Act, 1997. The applicant has discovered the document subsequent to the Judgment having delivered which according to the appellant would indicate that the post to which the transfer order was passed was, in fact, a sanctioned post and, therefore, there is a patent error in the Judgment under review that the said post is not sanctioned. In the supplementary affidavit subsequently filed with the leave of the Court, the applicant has disclosed a document that since the month of August 1977, the post of the Assistant Headmistress was sanctioned in the said School and, therefore, such sanction would continue perennially until a conscious decision is taken by the Government to revoke the sanction of such post. The reliance is further made to a memo dated 02.03.1998 to the effect that the Assistant Headmistress was appointed in the said School on and from 26.02.1987 and the column relatable to the nature and vacancy revealed that the said post was created by an Education Department vide memo No. 2227/1MG dated 12.08.1977. The further reliance is placed by the applicant to the order dated 18.05.2004 issued by the office of the District Inspector of Schools (SE), Calcutta, Government of West Bengal where another Assistant Headmistress was appointed in the said

School. Further reliance is placed upon the another memo dated 17.01.2005 where an Assistant Headmistress was appointed in the said School on the demise of the erstwhile Assistant Headmistress and the scale of pay was also indicated in a memo dated 31.05.2007 in relation to the appointment of the said Assistant Headmistress. According to the counsel for the applicant, the cumulative effect of the aforesaid memos so disclosed would indicate that the post of the Assistant Headmistress in the said School received sanction since 1977 and appointment to the said post was made periodically and, therefore, the finding of the Court in the Judgment under review that there is no sanctioned post of the Assistant Headmistress in the said School is a patent error which warrants interference in exercise of power of review.

2. At the time of argument, further document as sought to be relied upon which according to the applicant is the Government order which neither finds place in the pleading nor was disclosed in any documents. The Court shall not permit the member of bar to rely upon a document in absence of any pleading made in this regard as the other side cannot be put to surprise which runs counter to the common principles followed in an adversarial system of adjudication. A new case or a further case cannot be permitted to be made at the time of an argument and the reliance

should not be permitted to a document which do not find place in the pleading or on the record of the proceedings.

3. We thus feel that it would open a pandora box for all and sundry if such course is adopted and the Court shows leniency in this regard. In the pretext of rendering justice, the justice cannot be a one way traffic has to be imparted equally amongst all the parties. We thus do not find that any other or further document needs to be taken into consideration. Even apart, the Notification issued in view of the powers reserved under Section 10C of the said Act has to be construed in the said perspective as the executives cannot supplant the provisions contained in the parent Act by issuing a notification. Section 10C is categorical that the Government reserves the right to issue a transfer order in the interest of the education or in the interest of a Public Service on administrative grounds for any teacher including the Assistant Headmaster or the Assistant Headmistress or any non-teaching staff from one school to another school against the sanctioned post. The reading of the aforesaid provisions leaves no ambiguity in our mind that the transfer can be recommended by the State to the commission for any teacher including the Assistant Headmistress from one School to another in the sanctioned post. Even the Judgment under review is categorical that any transfer so made on the recommendation of the State to the post which is not sanctioned offends Section 10C of the said

Act and on factual matrix this Court held that the impugned transfer was bad and in contravention to the spirit and the soul of Section 10C of the said Act. Reverting to the issues as the digression was perceived because of the intervention of the Counsel for the appellant in the midst of the Judgment, we have to take into consideration the disclosure of the new and important documents after the Judgment under review was delivered by this Court. The first memo dated 12th August, 1977 is indicative of the fact that the post of the Assistant Headmistress was sanctioned temporarily for two years with effect from 1st March, 1977 on the basis of the sanctioned strength of the teaching staff of the school. It is manifest from the further memo dated 2nd March, 1988 that the appointment to the post of an Assistant Headmistress in the said school was approved as temporary/permanent measure with effect from the date and in the vacancy. There is a reference of the memo dated 12th August, 1977 in the column reserved for nature of vacancy and, therefore, one has to construe the aforesaid intention that the sanction was in effect temporarily made since 12th August, 1977. Even the memo dated 18.05.2004 is exposit of the fact that the prior permission was accorded to appoint a person to the post of Assistant Headmistress/Assistant Headmaster in the said school with the sanctioned strength. It was further followed by another memo dated 17.01.2005 where further

appointment to the said post was given on the basis of sanctioned strength.

4. We do not find from the disclosure of the aforesaid documents that the post of the Assistant Headmistress which was temporarily sanctioned for a period of two years was permanently sanctioned subsequently as the subsequent memos indicate the approval for appointment to the said post on the basis of strength of the students in the said school. There is no impediment on the part of the Government to sanctioned post for a specified period of time depending upon a certain eventualities. The post of Assistant Headmistress was sanctioned as the strength permits the creation of the said post and, therefore, depends upon the variable factors.
5. In the affidavit-in-opposition filed by the writ petitioner, the memo dated 19th May, 2004 was relied upon which postulates that no Assistant Headmaster/Headmistress should be appointed in class-X school (High/High Madrasah) unless the roll strength exceeds 750 or above for three executive years and for High Secondary institutions including Madrasah with higher secondary courses unless the roll strength exceeds 1000 or above for three executive years. The Government was conscious that the roll strength may increase or decrease and, therefore, clarify the situation where the existing Assistant Headmaster/Headmistress were appointed when the roll strength

was within the permissible limits to draw the allowances till the vacancy to the said post occurs either by retirement or resignation or in case of a death. The reliance placed upon the aforesaid memos are categorical that during such relevant period of time, the roll strength was within the permissible limits and, therefore there is no difficulty in giving an approval as to post has to be created and/or sanctioned in this regard. The post which receives sanctions on a contingency or eventualities to happen, such sanction would depend upon the happening of such eventualities or contingencies and cannot be perceived to be of permanent nature. Even a memo dated 19.05.2004 confers power upon the Director of the School Education to create the post of Assistant Headmaster/Headmistress in any School including Madrasah and the approval to be granted for the same.

6. The writ petitioner in his affidavit-in-opposition has categorically disclosed that at the relevant point of time, when the order of transfer was issued by the Commission, the roll strength in the said school was not inconsonance with the said memo dated 19th May, 2004 and, therefore, there is no error on the part of the Court in treating the post having not sanctioned. The said averments have been dealt in the reply to be a matter of record and what would not borne from the same shall be deemed to have been denied. There appears to be an evasive denial and no specific case has been made out in this regard to the disclosure

of the aforesaid facts either by corroborative evidence showing roll strength in the said school nor from any other document which would run counter to the aforesaid statements.

7. Since the beginning of the creation of the said post, it was intended to be temporary and dependent upon the eventualities and the contingencies to happen. It cannot be construed as sanctioned post the moment the roll strength decreases and comes within the purview of the memo dated 19th May, 2004.
8. We thus do not find any ground warranting the review of the Judgment.
9. Accordingly, the same is hereby dismissed without any order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)