



GAHC010178182020

Page No.# 1/8



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

Case No. : Review.Pet./37/2022

THE STATE OF ASSAM AND 3 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY
GOVT. OF ASSAM
DEPARTMENT OF HEALTH AND FAMILY WELFARE
DISPUR
GUWAHATI-06
DIST-KAMRUP(M)
ASSAM

2: THE PRINCIPAL-CUM-CHIEF SUPERINTENDENT
FAKHRUDDIN ALI AHMED MEDICAL COLLEGE AND HOSPITAL
BARPETA
DIST-BARPETA
ASSAM
PIN-7810301

3: THE DIRECTOR
DIRECTORATE OF MEDICAL EDUCATION
ASSAM
SIX MILE
KHANAPARA
GUWAHATI-22
DIST-KAMRUP(M)
ASSAM

4: THE DIRECTOR OF HEALTH SERVICES (FW)
ASSAM
SWASTHYA BHAWAN
HENGRABARI
GUWAHATI-36
DIST-KAMRUP(M)
ASSAM
VERSUS



BANAJIT BARMAN AND ANR.
S/O SUREN BARMAN
VILL-BARKHETRI BARNI
P.O.-BANAGRAM CHOWK
P.S.-BELSOR
DIST-NALBARI
ASSAM
PIN-781303

2: BANAJIT DAS
S/O SRI PRABIN DAS
R/O VILL-BARBHALA
P.O.-GOBINDAPUR
P.S.-PATACHARKUCHI
DIST-BARPETA
ASSAM
PIN-781326

Advocate for : MR. D P BORAH
Advocate for : MR. S BARMAN appearing for BANAJIT BARMAN AND ANR.

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocates for the petitioners : Shri DP Borah, SC- Health Dept.

Advocates for the respondents : Shri S. Hoque

Date of hearing & judgment : **24.07.2023**

JUDGMENT & ORDER

Heard Shri DP Borah, learned Standing Counsel, Health & Family Welfare Department – review applicant, who have filed this petition for review of an order dated 12.10.2020 passed by this Court in WP(C)/1036/2020. Also heard Shri S. Hoque, learned counsel for the opposite party / writ petitioner.

2. The writ petition was instituted by the opposite party with regard to a

recruitment process initiated vide an advertisement dated 04.10.2017 issued by the Fakruddin Ali Ahmed College & Hospital, Barpeta (hereinafter called the Hospital) for appointment to, amongst others, a post of Medical Record Officer. It is the case of the opposite party (hereinafter called the writ petitioner) that he had applied along with other candidates whereafter, the applications were considered and the writ petitioner was allowed to participate in the same wherein a written test was held. It is the specific case of the writ petitioner that in the said written test, the writ petitioner as well as the respondent no. 5, one Shri Banajit Das had secured the same marks and for that reason, the appointments were held up. In this connection, the information received under the RTI Act has been referred to. It was further averred that the said respondent no. 5 had no objection if the writ petitioner was given the appointment as, in the meantime, the respondent no. 5 therein was appointed as an Assistant Teacher on regular basis. The respondent no. 5 therein, in fact had filed an affidavit-in-opposition on receipt of notice and in the said affidavit-in-opposition, the respondent no. 5 had made a categorical averments in paragraph 6 which has been quoted in the order dated 12.10.2022 of this Court which has been prayed to be reviewed. The case of the writ petitioner was that since the respondent no. 5 had made such categorical statement on affidavit, the case of the writ petitioner for appointment be considered. This Court had also recorded the stand of the learned Standing Counsel of the Department in the aforesaid order in the following manner:

“Shri D.P. Bora, the learned Standing Counsel has also fairly submitted that in view of such categorical stand of respondent no. 5, the department may be directed to consider the case of the petitioner.”

3. Accordingly, this Court had passed the following direction-

“In view of the aforesaid consensus arrived at in the Bar, this writ petition is disposed of by directing the Principal-cum-Chief Superintendent, Fakhruddin Ali Ahmed Medical College & Hospital, (respondent no. 2) and the Director,

Directorate of Medical Education, Assam, (respondent no. 3) to duly consider the case of the petitioner for appointment as Medical Record Officer in the Fakhruddin Ali Ahmed Medical College & Hospital, Barpeta in terms of the recruitment exercise initiated vide the advertisement dated 04.10.2017. The exercise may be completed preferably within a period of 6(six) weeks from the date of receipt of copy of this order.”

4. The said direction not having been complied with, the writ petitioner had filed a contempt petition on 03.12.2020 which was registered as Cont.Cas(C)/583/2020 in which the notices were issued and the two respondents had appeared. Long thereafter, on 14.12.2021, the present review petition has been filed.

5. Shri Borah, learned Standing Counsel appearing for the review applicant has urged that there are good grounds for review. By referring to the Annexure-1 of the review petition, it is submitted that the advertisement which was issued had categorically stated that the minimum educational qualification for a candidate to apply for the post of Medical Record Officer was Graduate in Arts / Science / Commerce from a recognized Board or University with Medical Record Officer Training from a recognized institute. It is the case of the review applicant that the aforesaid qualification of having Medical Record Officer Training is not met by the writ petitioner and therefore the order dated 12.10.2020 is liable to be reviewed. He submits that offering appointment to a candidate who does not possess the minimum qualification would amount to violation of the conditions of the advertisement itself and therefore the review, as prayed for may be done. It is further submitted that the writ petition was disposed of at a stage when proper instructions could not be gathered and therefore this important fact could not be brought to the notice of the Court.

6. Seriously, controverting the aforesaid submission made by the learned Standing Counsel of the Department, Shri Hoque, learned counsel for the writ petitioner submits that the review petition itself is not maintainable as the same has been filed

only to circumvent the contempt petition. So far as the merits are concerned, learned counsel has submitted that the ground sought to be projected is not a valid ground at all. By referring to the affidavit-in-opposition dated 24.03.2022 filed in the review petition, the writ petitioner has annexed a communication dated 26.09.2016 issued by the Government of India, Ministry of Health & Family Welfare to all the Directors of various States and Union Territories. Vide this notification that a One Year Course for Medical Record Officer was introduced which includes a 6(six) months in-class training and 6(six) months project work at the place of posting. He accordingly submits that the advertisement being published on 28.09.2017, it was impossible for any candidate to have fulfilled the aforesaid condition which was notified on 26.09.2016 inasmuch as, such advertisement was issued even before completion of one year from the date of publication of the said notification. It is further submitted that if at all there was any issue with regard to the eligibility, the writ petitioner should not have been allowed to participate in the recruitment process and his candidature should have been rejected at the threshold.

7. The learned counsel for the writ petitioner further submits that the present case does not fall within the ambit to exercise the powers of review. It is submitted that there is no error apparent on the face of the records and there is no discovery of new facts which could not be brought to the knowledge of the Court in spite of exercise of due diligence. To the contrary, the order in question has been passed not only after hearing of the learned counsel of the Department but also on the concession made that a direction be given to consider the case of the writ petitioner.

8. The principles governing exercise of powers of review are well settled. Though as per Section 141 of the Code of Civil Procedure, 1908, the provisions of the Code are *per se* not applicable in a writ proceeding, the spirit of the same is applicable. Further, a Writ Court being a Court of Records under Article 215 of the Constitution of India, such powers are inherent. However, the restrictions and circumspection under which such powers are to be exercised would apply *mutatis mutandis*.

9. In a recent decision dated 18.08.2022 in the case of, ***S Madhusudhan Reddy Vs. V. Narayana Reddy & Ors.*** reported in ***(2022) SCC OnLine 1034***, a Three Judges' Bench of the Hon'ble Supreme Court has reiterated the law laid down in the case of ***Kamlesh Verma Vs. Mayawati & Ors.*** reported in ***(2013) 8 SCC 320*** wherein the following principles have been laid down:

“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 negated.”

10. In the instant case, the grounds urged cannot be said to be grounds for review of the judgment. In the opinion of this Court, no error apparent on the face of the records has been able to be demonstrated and no new facts have been discovered. To the contrary, the order was passed on the concession of the learned Standing Counsel of the Department. The learned counsel for the writ petitioner also appears to be correct in contending that the issue of eligibility vis-à-vis the requirement of having Medical Record Officer Training cannot be raised as it was not possible at all for any candidate to fulfill the said condition as the same was introduced even less than a year before the advertisement. The learned counsel for the writ petitioner has also referred to a communication dated 25.04.2019 which has been obtained under the



RTI Act, as per which the only reasons cited to keep the post of Medical Record Officer in the FAA Medical College & Hospital was due to tie of marks secured by the candidates. However, the direction of this Court being only to duly consider the case of the petitioner for appointment as Medical Record Officer, this Court would refrain from making any further observation on the said issue. The said consideration does not appear to have been made till now, for which contempt petition being Cont.Cas(C)/583/2020 is pending. It may also be inferred from the facts and circumstances that the petition for review was only a result of an afterthought when the contempt case was filed. What intrigues this Court is that instead of complying with a direction for consideration of the case of the writ petitioner, the Department has sought to file a review, that too after filing of a contempt petition by the writ petitioner. Such steps do not appear to be *bona fide* and rather appear to be one to circumvent the process of dispensation of justice.

11. In view of the above, this Court is of the considered opinion that no case for review of the order dated 12.10.2020 has been made out and accordingly, the same stands dismissed. Taking into consideration the facts and circumstances, this Court imposes a cost of Rs.10,000/- (Rupees Ten Thousand) which is to be paid in the name of the Gauhati High Court Lawyers Benevolent Fund within a period of 2(two) months from today.

JUDGE

Comparing Assistant