



GAHC010256842022

Page No.# 1/16



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

Case No. : Review.Pet./183/2022

DR. MITHUN PAUL
S/O LATE HRIDAS PAUL, R/O GOBINDAPALLY, P.O. AND P.S. HOJAI, DIST.
HOJAI, ASSAM, PIN 782435

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECY. GOVT. OF ASSAM,
DEPTT. OF EDUCATION (HIGHER) DISPUR, P.O. ASSAM SACHIVALAYA,
GUWAHATI 781006, DIST. KAMRUP (M), ASSAM.

2:THE PRINCIPAL SECY.
GOVT. OF ASSAM
DEPTT. OF EDUCATION (HIGHER) DISPUR
P.O. ASSAM SACHIVALAYA
GUWAHATI 781006
DIST. KAMRUP (M)
ASSAM.

3:THE DIRECTOR OF HIGHER EDUCATION

ASSAM
KAHILIPARA
GUWAHATI 19

4:THE PRESIDENT OF THE GOVERNING BODY
PANDIT DEENDAYAL UPADHAYA GOVERNMENT MODEL COLLEGE
KATLICHERRA
P.O. SULTANICHERA
PIN 788162
DIST. HAILAKANDI



5:THE PRINCIPAL CUM SECY. OF PANDIT DEENDAYAL UPDHAYA GOVT.
MODEL COLLEGE

KATLICHERRA
P.O. SULTANICHERA
PIN 788162
DIST. HAILAKANDI

6:DR. (MD.) SARWAR JAHAN

C/O PRINCIPAL
PANDIT DEENDAYAL UPADHAYA GOVT. MODEL COLLEGE KATLICHERRA
HAILAKANDI
DIST. HAILAKANDI

7:THE PRINCIPAL

GOVT. MODEL COLLEGE
BORKHOLA
P.O. JARAITOLA
DIST. CACHAR
ASSAM
PIN 78812

Advocate for the Petitioner : MR. S K MEDHI

Advocate for the Respondent : SC, ELEM. EDU

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

Date of hearing : 18.07.2023

Date of judgment : 08.09.2023

JUDGMENT & ORDER

The present application has been filed praying for review of a judgment & order dated 17.02.2022 passed by this Court in WP(C)/4660/2021 along with IA(C)/2298/2021. The review applicant was the writ petitioner in the aforesaid

writ petition.

2. I have heard Shri SK Medhi, learned counsel for the review-applicant. Also heard Shri FZ Mazumder, learned counsel for the respondent no. 6 whereas the Education Department is represented by Shri K. Gogoi, learned Standing Counsel. Shri Gogoi has also produced the original records of the case.

3. It may be mentioned that in the aforesaid writ petition, the I.A. was filed by the private respondent no. 6 and while considering the said I.A., the entire writ petition was taken up for consideration and accordingly dismissed.

4. Before going to the issue which has arisen for consideration as to whether a case for review has been made out, it would be convenient if the facts of the case is narrated in brief.

5. An advertisement was issued for filling up the post of Assistant Professor in the Department of Education in the Pandit Deen Dayal Upadhyaya Government Model College, Katlichera in the district of Karimganj with last date of submission as 26.08.2020. There were three vacancies out of which one was reserved for OBC. The applicant who belongs to the OBC category had applied for the said post along with the respondent no. 6. The respondent no. 6 had declared himself to be an OBC from the State of West Bengal. At the stage of the recruitment, the applicant had lodged a complaint before the Director of Higher Education on the candidature of the respondent no. 6 mainly with regard to his category as OBC. It was mentioned that the respondent no. 6 had also applied in another College as a general category candidate. Ultimately, vide an order dated 18.08.2021, the Principal of the college was informed by the Director regarding the appointment of the respondent no. 6.

6. It is therefore the selection and appointment of the respondent no. 6,

which was the subject matter of challenge in the writ petition. Initially, the learned Single Judge had passed an interim order of stay. However, an interlocutory application was filed by the respondent no. 6 for vacation of the interim order which was also objected to by the petitioner.

7. It is the categorical case of the applicant that the respondent no. 6 had also applied in other Colleges where he had declared himself to be an unreserved candidate. While in another College he stated to be an OBC category candidate of the State of West Bengal.

8. Both the writ petition as well as the interlocutory application was taken up for consideration on 17.02.2022 and this Court, after hearing had dismissed the writ petition, however, with liberty to challenge the issue of the OBC. The interim order was also vacated. The learned counsel for the applicant, Shri Medhi has however pointed out that in the writ petition, no affidavit was filed by the Department.

9. Being aggrieved by the aforesaid order dated 17.02.2022, the applicant had preferred a writ appeal being WA/110/2022. In the said appeal, the State had however filed the affidavit. Shri Medhi, the learned counsel for the applicant has submitted that in the said affidavit, certain significant disclosures have been made. The affidavit also contains a letter dated 22.02.2021 issued by the Director of Education wherein it has been stated that the OBC Certificate from West Bengal is treated as unreserved / general category in Assam. Therefore, there was a recommendation to re-advertise the post. However, in reply thereto, the Principal of the College had issued a letter dated 22.03.2021 with which a Certificate of the year 2005 issued by the competent authority of Assam has been referred to and annexed in which it has been stated that the respondent no. 6 belongs to the OBC category.

10. Being apprised with the aforesaid development which came into light after filing of the affidavit-in-opposition in the writ appeal stage, the Hon'ble Division Bench had passed an order dated 22.11.2022 giving liberty to the applicant to approach the Single Bench for clarification. Accordingly, the present application for review has been filed.

11. In this application, the applicant has also filed an additional affidavit on 14.02.2023. In the said additional affidavit, the objection by way of affidavit filed by the applicant in the interlocutory application for modification of the interim order has also been annexed which has certain documents as enclosures. The said documents include an application dated 29.10.2020 of the respondent no. 6 submitted for a similar post in another College namely Government Model College in the district of Cachar. The respondent no. 6 has disclosed in the application that he belongs to the OBC category and was a permanent resident of the district of Malda. However, it appears that another application dated 30.10.2020 was submitted pertaining to the same post in which the respondent no. 6 has declared himself to be a general category candidate and his permanent address was given as district Malda. The OBC certificate of the respondent no. 6 has also been enclosed wherein it has been stated that he is from the district of Malda and belongs to the "Khotta" Muslim Community.

12. Shri Medhi, the learned counsel for the applicant has submitted that firstly, the respondent no. 6 does not belong to a recognized OBC category in the State of Assam. It is submitted that even if it is assumed that the respondent no. 6 belongs to the OBC category, which is recognized in the State of West Bengal, the same will not automatically mean that such community would be regarded as an OBC in the State of Assam unless the same is notified.

Secondly, Shri Medhi submits that the stand of the respondent no. 6 pertaining to his claim as an OBC is absolutely inconsistent, as in different applications, different stands have been taken by the respondent no. 6. In this connection, the learned counsel has referred to the application submitted for a similar post in another College in Assam, wherein the respondent no. 6 had declared himself as a general category candidate. Thirdly, it is submitted that the advertisement dated 13.08.2020 has stipulated that applications were to be submitted on or before 26.08.2020. Therefore, even if it is assumed that the respondent no. 6 was indeed an OBC category candidate, such certificate was brought to light much after the last date and for that matter, even after the date of consideration. It is submitted that the Director of Higher Education vide letter dated 22.02.2021, as mentioned above, had discarded the OBC Certificate of the respondent no. 6 which pertains to the State of West Bengal. The Director had in fact recommended for re-advertising the post. It is only thereafter when the Principal of the College vide letter dated 22.03.2021 had made a reference of the OBC Certificate of Assam and all these facts were revealed only at the stage of the writ appeal in the affidavit filed by the State.

13. In support of his submission, Shri Medhi, the learned counsel has relied upon the following decisions:

- i. Bir Singh Vs. Delhi Jal Board [(2018) 10 SCC 312]*
- ii. Bedanga Talukdar Vs. Saifudaullah Khan & Ors [(2011) 12 SCC 85]*

14. The case of **Bir Singh** (supra) has been cited to bring home the contention that SC/ST in one State cannot be deemed to have the same status in another State unless there is such recognition in the State concerned.



16. *Per contra*, Shri Mazumder learned counsel for the respondent no. 6 has submitted that no grounds for review have been made out in the instant application and rather the arguments advanced by the applicant is on the merits which is not permissible in a review application. By drawing the attention of the Court to the grounds of review, Shri Mazumder, the learned counsel has submitted that the principal ground is with regard to the knowledge about the OBC Certificate which could be obtained from the affidavit filed in the writ appeal by the State. By referring to the order dated 22.11.2022 of the Hon'ble Division Bench in WA/110/2022, it is submitted that the concession given to the applicant to approach the learned Single Judge was on a wrong submission made on behalf of the applicant. It is submitted that the Hon'ble Division Bench was given the impression that the point regarding the consideration of the Certificate which was submitted much later than the date of application was not considered by the Single Bench and therefore liberty was granted to file appropriate application for clarification of the same. It is submitted that it is an admitted case that the said information could be gathered by the applicant only at the stage of the writ appeal and therefore it is absolutely incorrect on the part of the applicant to contend before the Hon'ble Division Bench that the point was not considered by the Single Bench. He submits that the applicant is not

entitled to any relief under the equitable jurisdiction of this Court.

17. The learned counsel for the respondent no. 6 has submitted that in any case, the Certificate of OBC issued by the competent authority of the State of Assam has not been challenged in this proceeding and therefore this Court in exercise of review jurisdiction is not invited to adjudicate the said issue. With regard to the contention of late submission of the OBC certificate, Shri Mazumder has urged that benefit of reservation cannot be denied by the fact of late submission of such Certificate. He contends that such benefits accrued upon an incumbent by his birth and the certificate is only a formal recognition. With regard to the fact of possessing two different Certificates, it is also submitted that while the mother of the respondent no. 6 is from the State of West Bengal, his father is from Assam.

18. The learned counsel for the respondent no. 6 had relied upon the following case laws:

i. Ram Kumar Gijroya Vs. Delhi Subordinate Services Selection Board and Ors. reported in [(2016) 4 SCC 754]

ii. Judgment dated 24.12.1999 of the Delhi High Court in the case of Tej Pal Singh and Ors. Vs. Government of NCT of Delhi and Anr. [(2000) 83 DLT 649]

iii. Judgment dated 21.07.2016 of the Kerala High Court in Union of India Vs. Abdul Rasheed. [(2016) 3 ILR (Ker) 777]

iv. Judgment dated 29.05.2019 of this Court in the case of Taging Yaying Vs. Arunachal Pradesh Public Service Commission.

19. In the case of ***Ram Kumar Gijroya*** (supra), the Hon'ble Supreme Court has held that when a candidate appears in an examination under the OBC

category, submission of such Certificate after the last date of advertisement is also permissible.

20. In the case of **Tej Pal Singh** (supra), the Hon'ble Delhi High Court has held that Certificate of a particular category is only an affirmation.

21. The Hon'ble Kerala High Court in the case of **Abdul Rasheed** (supra) has reiterated the views of the Hon'ble Supreme Court in the case of **Ram Kumar Gijroya** (supra).

22. The learned counsel for the respondent no. 6 has also referred to the affidavit-in-opposition of the Director of Higher Education filed in WA/110/2022. He submits that in paragraphs 5, 6, 7 and 8, the position has been explained that apart from having an OBC Certificate from the State of West Bengal, the respondent no. 6 also had an OBC Certificate from the State of Assam. He submits that as per the Certificate dated 23.08.2005, the respondent no. 6 is an OBC belonging to sub caste "Jolha". Reference has also been made to the affidavit-in-opposition dated 14.03.2023 filed in the present review petition in which, the Central list of OBC for the State of Assam has been annexed and in Sl. No. 23 belonging to Tea Garden Labourers etc., there is a sub-caste at Sl. No. 40 as "Jolha" to which the petitioner belongs. The learned counsel for the respondent no. 6 accordingly submits that the instant application be dismissed.

23. Shri Gogoi, learned Standing Counsel, Education Department has submitted that the issue which is required to be decided is with regard to late submission of the Caste Certificate and the said issue is also required to be considered under the facts and circumstances of the instant case.

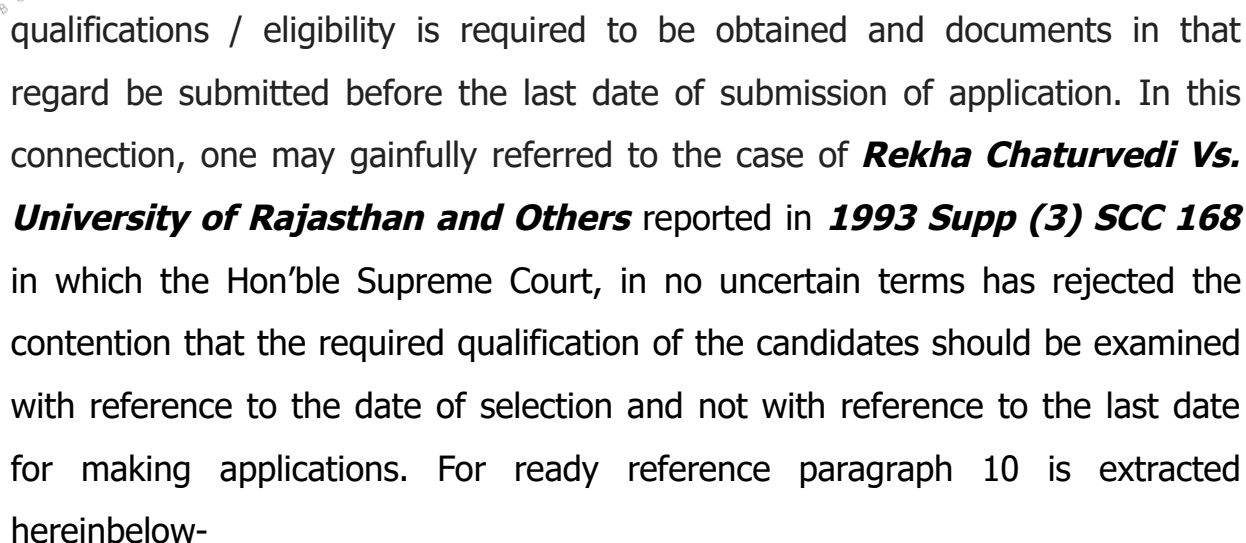
24. Shri Medhi, learned counsel for the applicant in his rejoinder has submitted that there is no dispute with the proposition of law laid down by the

Hon'ble Supreme Court in the case of **Ram Kumar Gijroya** (supra). However, the said proposition has to be considered by taking into account the peculiar facts and circumstances of this case. He submits that the respondent no. 6 is not entitled to claim benefit of two castes, one for the State of West Bengal and the other for the State of Assam. He submits that from the records of the case, whereas as per the Assam Certificate, the caste of the respondent no. 6 is "Jolha" and as per the Certificate of West Bengal, the caste is "Khotta Muslim". He submits that a person belonging to the "Jolha" community cannot be a Muslim by religion, and in any case, a person cannot have two castes.

25. The rival submissions made by the learned counsel for the parties have been duly considered and the materials placed before this Court have been carefully examined.

26. Though the role of a Court exercising powers of review is circumscribed and has to be confined by the principles governing a review application, namely error apparent on the face of the records, discovery of new facts, facts which were not within the knowledge of the applicant in spite of due diligence or any other sufficient reasons, in the instant case, the applicant is armed with an observation by the Hon'ble Division Bench to approach this Court in view of the new facts which had emerged at this stage of the writ appeal. Though a contention has been made by the respondent that such observation was based on an incorrect submission, which indeed appears to be correct, this Court is of the view that since as a matter of fact, some new materials, relevant to the issue came to light at the writ appellate stage, interest of justice would require a re-visit at the judgment.

27. The principle of law laid down in the issue is already settled by a catena of judgments of the Hon'ble Supreme Court. It is no longer *res integra* that the



Certificate is only an affirmation. Juxtaposed, the Hon'ble Supreme Court in the case of **Bedenga Talukdar** (supra) which also pertains to a reservation based on PwD has held that documents pertaining to such claim are to be submitted before the prescribed date. It is to be noted that in the said case, the claim of locomotor disability was an existing factor and not later acquired after the recruitment process had started.

30. The facts of the case in hand however do not revolve only on the issue of late submission of the OBC Certificate by the respondent no. 6 but also the mode and manner of such submission and also the contemporaneous materials of existence of another OBC Certificate of the said respondent no. 6 issued by the State of West Bengal. It is not in dispute that while applying for the post as per the advertisement dated 13.08.2020, the respondent no. 6 claimed to be an OBC and in support thereof had furnished a Certificate of OBC issued by the State of West Bengal wherein he was categorized as "Kottha Muslim". The Hon'ble Supreme Court in the case of **Bir Singh** (supra) has laid down that a reserved category candidate of one State cannot be deemed to have similar status in another State. The community of "Kottha Muslim" is not declared as an OBC in the State of Assam and therefore, the respondent no. 6 could not have been considered as an OBC candidate. This Court also cannot overlook the conduct of the respondent no. 6, as revealed from his applications in the recruitment process of other Colleges wherein he had declared himself to be the general category candidate.

31. The records also reveal that the Director of Higher Education vide the letter dated 22.02.2021 had indeed discarded the OBC Certificate of the respondent no. 6 which was issued by the State of West Bengal and had recommended for re-advertisement of the post. It was only thereafter that the

Principal of the College vide his reply dated 22.03.2021 had annexed a Certificate of OBC of the respondent no. 6 issued by the State of Assam. It may be mentioned that in the affidavit-in-opposition dated 05.05.2022 filed by the Director of Higher Education in WA/110/2022, while the reply dated 22.03.2021 of the Principal was annexed, the letter dated 22.02.2021 of the Director was not annexed. However, the records in original have been produced which contain both the letters, the extracts of which are quoted hereinbelow-

Letter dated 22.02.2021 by the Director of Higher Education to the Principal-

“With reference to your letter on the subject cited above, I would like to state that you have submitted a proposal vide letter mentioned under reference for appointment of Dr. Md. Sarwar Jahan as Assistant Professor in the Department of Education, reserved for OBC/MOBC of your college. But, it is seen that the post is reserved for OBC/MOBC category and the selected candidate Dr. Md. Sarwar Jahan is having OBC Certificate from West Bengal which is treated as general category in the State of Assam.

In view of the above, the proposal submitted you vide letter mentioned under reference is regretted for appointment as Assistant Professor in the Department of Education reserved for OBC/MOBC category of your college and request you to re-advertise the post immediately as per latest Govt. O.M.”

Reply dated 22.03.2021 by the Principal to the Director of Higher Education -

“With reference to the letter under reference on the subject cited above, I have the honour to inform you that the selected candidate Dr. Md. Sarwar Jahan submitted his OBC Certificate from the State of West Bengal and PRC from

Assam earlier at the time of applying for the post and now he has submitted his OBC certificate from the State of Assam. Therefore, he may be treated as OBC candidate from Assam. Copy of OBC certificate also enclosed herewith for your reference.”

32. From the above communications, it is apparent that while the Director had discarded the candidature of the respondent no. 6 on the ground of OBC Certificate of West Bengal and had directed initiation of a fresh process, the Principal on his own had procured another Certificate from the respondent no. 6 issued by the State of Assam and had forwarded the same to the Director. It is also not the case that the decision of the Director as conveyed vide letter dated 22.02.2021 was the subject matter of any challenge.

33. It is not in dispute that the last date for submission of application as per the advertisement was 26.08.2020 and as a matter of fact, the candidature of the respondent no. 6 was considered on the strength of the OBC Certificate issued by the State of West Bengal. When the said Certificate was found fault with at the stage of grant of approval by the Director, it was the Principal of the College, who had forwarded the OBC Certificate of Assam. An individual cannot have two different castes and equity will not permit to have an option to produce any of the Certificates to the convenience to such individual. The records also do not reveal that at any point of time the respondent no. 6 had denied the OBC Certificate of the State of West Bengal and had rather given certain explanation regarding his parents, who are stated to be from Assam and West Bengal. Such explanation apart from being wholly unconvincing also does not inspire any confidence.

34. In view of the aforesaid factual position, this Court may not even require to go to the aspect of late submission of a Certificate of eligibility regarding

reservation as in the instant case, there is apparently serious inconsistencies on the caste of the respondent no. 6, who admittedly has two OBC Certificates denoting two different castes.

35. In view of the aforesaid discussions and the facts and circumstances, this Court is of the considered opinion that a case for review has been made out. Accordingly, the judgment and order dated 17.02.2022 passed by this Court in WP(C)/4660/2021 along with IA(C)/2298/2021 stands reviewed. Consequently, the writ petition stands allowed and the selection and appointment of the respondent no. 6, Dr. (Md.) Sarwar Jahan (respondent no. 7 in the writ petition) vide letter dated 18.08.2021 as Assistant Professor in the Department of Education in Pandit Deen Dayal Upadhyaya Government Model College, Hailakandi is set aside. The respondent authorities may accordingly take steps for filling up the said post by a fresh process as per law.

36. The review petition accordingly stands disposed of.

37. No order as to cost.

38. Records, in original be returned to the learned Standing Counsel of the Department.

JUDGE

Comparing Assistant