



GAHC010291522023

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

Case No. : Review.Pet./139/2023

THE STATE OF ASSAM AND 3 ORS.
REP. BY THE ADDITIONAL CHIEF SECRETARY TO THE GOVT. OF ASSAM,
PERSONNEL (A) DEPTT., DISPUR, GUWAHATI- 6.

2: THE SECRETARY
TO THE GOVT. OF ASSAM
PERSONNEL (A) DEPTT.
DISPUR
GUWAHATI- 6.

3: THE JOINT SECRETARY
TO THE GOVT. OF ASSAM
PERSONNEL (A) DEPTT. DISPUR
GUWAHATI- 6.

4: THE DY. SECRETARY
TO THE GOVT. OF ASSAM
PERSONNEL (A) DEPTT.
DISPUR
GUWAHATI- 6

VERSUS

MONSOON BARKAKOTI
D/O DR. SHANTANU BORKAKOTI,
R/O CHEKONIDHORA GAON, KHELMATI CLUB ROAD, P.O. AND P.S.-
JORHAT, ASSAM- 785001.

For the Petitioner(s) : Mr. D. Nath, Sr. Government Advocate

For the Respondent(s) : None appears.



Date of Hearing : 22.12.2023

Date of Judgment : 22.12.2023

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

1. The instant review application has been filed by the review petitioners seeking review of the judgment and order dated 17.02.2023 passed by this Court in WP(C) No.682/2023.
2. It is well settled that for the purpose of reviewing a judgment and order, the principles laid down in Section 114 of the Code of Civil Procedure, 1908 read with Order XLVII has to be applied into. The principles on which a review can be entertained are :-
 - (i) There is an error apparent on the face of the record.
 - (ii) Discovery of new facts which was not within the knowledge of the authorities at the time when the judgment was delivered.
 - (iii) For any other sufficient cause.
3. As regards the condition Nos. (i) and (ii), the law is well settled and would require no deliberation but as regards the condition No.(iii), it is also well settled that the said conditions for other sufficient causes have to be read in conjunction with the condition Nos.(i) and (ii). This Court further finds it relevant to take note of that the Supreme Court had in its judgment rendered

in the case of ***Beghar Foundation Vs. Justice K. S. Puttaswamy*** reported in **(2021) 3 SCC 1** observed that change in the law or subsequent decision/judgment of a Coordinate or larger Bench by itself cannot be regarded as a ground of review. It is pertinent to note that this observation was rendered by the Constitution Bench in the said case. Another important decision to be taken into consideration is that the judgment rendered by the Supreme Court in the case of ***Rajesh D. Darbar Vs. Narasingrao Krishnaji Kulkarni*** reported in **(2003) 7 SCC 219**. Paragraph 4 of the said judgment is reproduced herein under:

“4. The impact of subsequent happenings may now be spelt out. First, its bearing on the right of action, second, on the nature of the relief and third, on its importance to create or destroy substantive rights. Where the nature of the relief, as originally sought, has become obsolete or unserviceable or a new form of relief will be more efficacious on account of developments subsequent to the suit or even during the appellate stage, it is but fair that the relief is moulded, varied or reshaped in the light of updated facts. Patterson v. State of Alabama (US at p. 607) illustrates this position. It is important that the party claiming the relief or change of relief must have the same right from which either the first or the modified remedy may flow. Subsequent events in the course of the case cannot be constitutive of substantive rights enforceable in that very litigation except in a narrow category (later spelt out) but may influence the equitable jurisdiction to mould reliefs. Conversely, where rights have already vested in a party, they cannot be nullified or negated by subsequent events save where there is a change in the law and it is made applicable at any state. Lachmeshwar Prasad Shukul v. Keshwar Lal Chaudhuri falls in this category. Courts or justice may, when the compelling equities of a case oblige them, shape reliefs – cannot deny rights – to make them justly relevant in the updated circumstances. Where the relief is discretionary, courts may exercise this jurisdiction to avoid injustice. Likewise, where the right to the remedy depends, under the statute itself, on the presence or absence of certain basic facts at the time the relief

is to be ultimately granted, the court, even in appeal, can take note of such supervening facts with fundamental impact. This Court's judgment in Pasupuleti Venkateswarlu v. Motor & General Traders read in its statutory setting, falls in this category. Where a cause of action is deficient but later events have made up the deficiency, the court may, in order to avoid multiplicity of litigation, permit amendment and continue the proceeding, provided no prejudice is caused to the other side. All these are done only in exceptional situations and just cannot be done if the statute, on which the legal proceeding is based, inhibits, by its scheme or otherwise, such change in the cause of action or relief. The primary concern of the court is to implement the justice of the legislation. Rights vested by virtue of a statute cannot be divested by this equitable doctrine (see V.P.R.V. Chockalingam Chetty v. Seethai Ache)."

4. The above two judgments have been referred herein taking into account the grounds taken in the review petition. In the backdrop of the above, let this Court take note of the facts leading to the passing of the judgment dated 17.02.2023 which is sought to be renewed.

5. A perusal of the said judgment dated 17.02.2023 reveals that the Respondent herein who was the Petitioner in WP(C) No. 682/2023 was suspended in view of a recommendation being made by the State Level Scrutiny Committee who recommended the cancellation of the Petitioner's OBC Certificate vide an order dated 26.02.2021 and the consequent cancellation of the OBC Certificate. The recommendation of the State Level Scrutiny Committee as well as the consequential cancellation of the OBC Certificate was put to challenge by the Respondent herein WP(C) No.2286/2021. Vide an order dated 24.11.2022 passed by the Coordinate Bench of this Court, the recommendation dated 26.02.2021 made by the State Level Scrutiny Committee as well as the consequential actions were set aside. Subsequent



thereto, the OBC Certificate of the Respondent herein was restored. It is under such circumstances that the Respondent herein has filed the writ petition being WP(C) No.682/2023 challenging the continuation of the suspension order on the ground that the same was being continued without any justifiable basis.

6. This Court while rendering its decision on 17.02.2023 had also taken note of the submissions so made in the said writ proceedings by the Government Advocate to the effect that the Government of Assam had accepted the order dated 24.11.2022 passed by the Coordinate Bench of this Court in WP(C) No.2286/2021 inasmuch as the Deputy Commissioner, Jorhat pursuant to the said order had revoked the prior cancellation of the OBC Certificate of the Petitioner therein vide an order dated 28.12.2022. It is mentioned during the course of the hearing in the writ proceedings as would be apparent from a perusal of Paragraph No.10 of the judgment dated 17.02.2023 that a Writ Appeal being WA No.42/2023 was filed by a third party challenging the judgment dated 24.11.2022 passed in WP(C) No.2286/2021. However, the Government had not filed any appeal.

7. Taking into account the above, this Court finding that there was no justifiable reasons to continue the suspension as the Petitioner's OBC certificate was restored had by the judgment dated 17.02.2023 revoked the suspension order dated 12.03.2021 and directed forthwith reinstatement.

8. It is further relevant to take note of that the Division Bench of this Court vide an judgment and order dated 01.06.2023 after perusing the materials on record including those documents which were also produced by the State of Assam in the said proceedings as could be seen from Paragraph No.6 of the judgment passed by the Division Bench confirmed the order of the Coordinate



Bench of this Court in quashing the speaking order dated 26.02.2021 passed by the State Level Scrutiny Committee and affirming the social status of the Respondent No.1 as OBC (Koch).

9. It is further seen from the records of the Review Petition that the State Government upon further enquiry came to learn that there were certain reports which were furnished to the State Government which were not accurate and as such, there was a requirement for relooking into the evidence as to whether the Respondent herein belongs to the OBC category or not. It is also seen that on the basis of such enquiry being conducted, a review petition was filed before the Division Bench of this Court seeking review of the order dated 01.06.2023 in Writ Appeal No.42/2023 along with an application for condonation of delay in preferring the said review petition. The records also shows that on 15.12.2023, the Division Bench of this Court had condoned the delay in filing the review application and fixed the review application for consideration on 05.01.2024.

10. It is further relevant to take note of that in the meantime, the Respondent herein who was the Petitioner in WP(C) No.682/2023 had also initiated a contempt proceedings against one Tonmoy Pratim Borgohain, Secretary to the Government of Assam, Personnel (A) Department alleging willful disobedience to the judgment of this Court dated 17.02.2023 as the Respondent herein was not reinstated as directed. This contempt proceedings was registered as Cont.Cas(C) No.260/2023. In the said proceedings, it is also seen that the Coordinate Bench of this Court has drawn contempt against the said Respondent in the said proceedings and vide an order dated 18.12.2023 directed the said Respondent to show cause as to why punishment permissible



under law should not be awarded upon him for committing contempt of the Court's order dated 17.02.2023 passed in WP(C No.682/2023. The said contempt proceedings thereupon was fixed on 21.12.2023. The learned Senior Government Advocate appearing on behalf of the review Petitioners submitted that against the order dated 18.12.2023 passed in Cont.Cas(C) No.260/2023, a Contempt Appeal being Contempt Appeal No.2/2023 was filed before the Division Bench of this Court wherein the matter is fixed on 04.01.2024 for further consideration. Under such circumstances, the instant review application is filed before this Court.

11. In the backdrop of the above facts, let this Court therefore consider the submissions of Mr. D. Nath, the learned Senior Government Advocate. The learned Senior Government Advocate submitted that in view of certain materials coming into light which would indicate that the Petitioner's OBC certificate was rightly cancelled and the same being not available at the time when the judgment was passed in WP(C) No.2286/2021 on 24.11.2022 or even during the proceedings in Writ Appeal No.42/2023, a case has been made out for seeking review of the judgment passed by this Court on 17.02.2023 in WP(C) No.682/2023 as this Court had based its judgment or the order dated 24.11.2022 in WP(C) No.2286/2021 and the restoring the status of OBC by the Deputy Commissioner vide its order dated 28.12.2022.

12. Upon hearing the learned Senior Government Advocate appearing on behalf of the review Petitioners, it is the opinion of this Court that the materials on the basis of which the review Petitioners claims that the judgment passed by this Court on 17.02.2023 in WP(C) No.682/2023 is required to be reviewed is totally misconceived inasmuch as the judgment which was rendered on



17.02.2023 by this Court was on the basis of there being no justifiable reason for continuation of the suspension inasmuch as when the OBC certificate was restored in favour of the Respondent herein, the very edifice of the suspension order dated 12.03.2021 was no longer in existence. Further to that, the recommendation dated 26.02.2021 which was also one of the reasons for issuance of the suspension order was set aside and quashed by the Coordinate Bench vide order dated 24.11.2022 in WP(C) No.2286/2021. It is the opinion of this Court that there exists no reason to review the judgment dated 17.02.2023 till the basis of the suspension order dated 12.03.2021 is not restored.

13. This Court has also put a specific query upon Mr. D. Nath, the learned Senior Government Advocate as to whether even after getting information, any further enquiry has been done for the purpose of cancellation of the OBC certificate of the Respondent herein. The learned Senior Government Advocate submitted that only the process has been initiated but the OBC certificate restored in favour of the Respondent herein still holds the field. Under such circumstances, it is the opinion of this Court that unless and until the basis or the edifice on which the suspension order dated 12.03.2021 is not restored, there arises no grounds for review of the judgment passed by this Court on 17.02.2023 in WP(C) No.682/2023. Therefore, this Court rejects the instant review application at this stage. This Court however observes that the rejection of the instant review application and observation made herein shall not be construed that this Court had made any observations debarring the rights of the review petitioners to take such actions as permissible under law.

JUDGE

Comparing Assistant