

Th. Tongneilal Vaiphei & Ors.

v.

The State of Manipur & Anr.

[Review Pet. No. 14 of 2021]

MARCH 22, 2024

[A. Guneshwar Sharma, J.]

Headnotes

Graduate Teachers on contract basis under Director of Education (S), Government of Manipur in 2006 – extended from time to time – contractual agreement discontinued in 2008 – called for submission for re-verification of the 772 contract teachers in 2019 - fresh appointment for 923 post of Graduate Teachers and 120 Pre-Primary Teachers at Government Schools on contract basis in 2021 – MoU signed in 2006 – subsequent MoU signed in 2019 which could not be produced during the writ proceedings – Contract service replaced by regularly appointed teachers – Review petition filed on errors apparent on the face of the record and discovery of new facts – no material for review within the meaning of Order 47 CPC – all grounds raised in the review petition are to be taken in an appeal:

Held: Referring to *Inderchand Jain v. Motilal*: (2009) 14 SCC 663, *Sanjay Kumar Agarwal v. State Tax Officer*: MANU/SC/1198/2023= (2024) 2 SCC 362 and *N. Anantha Reddy v. Anshu Kathuria*: (2013) 15 SCC 534 it is clear that the review petition has a limited scope and the same can be entertained only in case of patent error on the face of it which does not require any inquiry; on discovery of new facts/documents which could not be produced before with due diligence; and for any sufficient reasons. It has been cautioned that review is not an appeal in disguise and cannot be resorted to as re-hearing of the matter on merits.

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In the case in hand, it is pleaded that there were errors in recording of facts that the contractual services were not extended and MoU No.2 could not be produced during the writ proceedings. Besides, the doctrine of promissory estoppel and legitimate expectation have also been raised during the hearing of the review petition.

This Court does not find any force in the submission of the petitioners that MoU No.2 was not placed on record. If that be so, there would be no occasion for the learned Single Judge to discuss about MoU No.2 in Para 16 of the judgment. The petitioners have miserably failed to disclose any other sufficient cause to entertain the review petition within the limited ambit of the provisions of Order 47 CPC. The grounds raised by the petitioners such as promissory estoppel and legitimate expectation, are to be taken in an appeal and the same cannot be grounds for review.

[Paras 17, 18, 19]

Case Law Cited

Inderchand Jain v. Motilal: (2009) 14 SCC 663; *Sanjay Kumar Agarwal v. State Tax Officer*: MANU/SC/1198/2023= (2024) 2 SCC 362; *N. Anantha Reddy v. Anshu Kathuria*: (2013) 15 SCC 534 – referred to.

List of Acts

Code of Civil Procedure, 1908

List of Keywords

Engagement of Contract Teachers; Memorandum of Understanding; Review Petition is when there is mistake apparent on the face of record; Review is not an appeal is disguise.

Case Arising From

From the judgment and order dated 28.10.2021 passed by the High Court of Manipur in WP(C) No. 518 of 2021.

Digital High Court of Manipur Reports**Appearances for Parties**

Anjan Prasad Sahu, Adv. for the Petitioners.

S. Nepolean, G.A. with Mrs. RK Emily, Deputy GA for the Respondents.

Judgment / Order of The High Court**JUDGMENT & ORDER*****A. Guneshwar Sharma, J.***

[1] Heard Mr. Anjan Prasad Sahu, learned counsel for the petitioners and Mr. S. Nepolean, learned GA assisted by Mrs. R K Emily, learned Deputy GA for the State respondents.

[2] The brief facts leading to filing of the instant Review Petition are that the petitioners were appointed as teachers on contract basis under various orders starting with the one dated 19.05.2006 and their services were extended from time to time and were last extended in December, 2008. On 15.12.2011, a letter was tendered to the Principal Secretary, Education (S), Government of Manipur by the Director of Education (S), Government of Manipur for the re-engagement of 772 contract teachers including the petitioners herein for the period of at least 1 (one) academic year and verification in regard to 772 teachers including the petitioners was also done. After a lapse of 8 (eight) years, a notification dated 14.11.2019 was issued by the State Government whereby necessary orders/documents were called for submission for re-verification of the 772 contract teachers and in pursuance of the said notification, re-verification of 546 contract teachers including the petitioners were done and forwarded to the Commissioner Education (S), Government of Manipur for necessary action.

[3] On 28.08.2020, a letter was tendered by the Deputy Secretary (Education-S), Government of Manipur to the Director (Education-S), Government of Manipur whereby it was requested that the proposal for re engagement/regularization of the aforesaid

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contract teachers be deliberated upon and comments/view be submitted to the Government for further examination and consideration. No action was taken with respect to 546 contract teachers till date despite multiple communications having been tendered.

[4] While the matter is pending for consideration, fresh appointment has been advertised by the Director of Education (S), Government of Manipur vide impugned notifications dated 19.07.2021 advertising 923 post of Graduate Teachers and 120 Pre-Primary Teachers at Govt. Schools on contract basis. During the pendency of the cases, written examinations were proposed to be conducted without resolving petitioners' cases.

[5] Being aggrieved, the petitioner filed a writ petition being WP(C) No. 518 of 2021 before this Court for quashing or setting aside the impugned notification dated 19.07.2021 issued by the Directorate of Education (S), Government of Manipur and the said writ petition was listed along with WP(C) No. 53 of 2021. Vide order dated 28.10.2021 passed by this Court in WP(C) No. 518 of 2021 and WP(C) No. 53 of 2021, both the writ petitioners were dismissed as there was no merit in the case of the petitioners and that the petitioners have no vested right to question the impugned notifications.

[6] The Memorandum of Understanding (MoU) was signed between the Government and the All Tribal Student Union (ATSUM) whereby it is stated that *"the service of the teachers appointed on contract basis will be utilized until the posts are filled up on regular basis through normal recruitment of special drive through normal recruitment of special drive as the case may be"*. The said MoU was signed on 20.09.2006, but there was a subsequent MoU (herein referred as MoU No.2) whereby mutual agreement was reached between the representatives of the petitioners (ATSUM, ANSAM, KSO – GHQ) and the Hon'ble Chief Minister of Manipur on 13.08.2019 and MoU No.2 was

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signed on 18.09.2019 the Chief Secretary. The MoU No.2 inter-alia recorded for “Regularization of Contract Teachers 2006 Batch engaged by Education (S) Department within 2 months”. It is stated that instead of abiding by and taking necessary action within the stipulated period of two months, the State Govt. issued notifications dated 19.07.2021 for conducting written tests for recruitment to various teaching posts in violation of their own standing instructions. It is also mentioned in the notifications that “pending cases shall be resolved in due course before the commencement of the written examination”.

[7] The review petition has been preferred mainly on the grounds that- (i) Single Judge was wrong in holding in para 17 of the judgment under review that nothing has been produced to show that the authorities were proposed to re-engage the teachers working in various hill districts and also nothing on record to show that the services of the petitioners has been extended and utilized by the competent authorities till date; (ii) In para 18, it has been wrongly held that the contract services rendered by the petitioners were already replaced by the regularly appointed graduate teachers; (iii) MoU of 2006 is superseded by MoU of 2019 and the second MoU was not produced before the Court and was not considered; (iv) In para 20, it was wrongly held that no evidences were produced and the services of the contract teachers have not been extended since the year 2008 and the contract teachers were already replaced by regularly appointed teachers and so the petitioners had no right to question the notifications impugned in the writ petition; and (v) the contract teachers were replaced by teachers appointed on temporary basis but not as regularly appointed teachers.

[8] The respondents filed counter affidavit whereby it is stated that the petitioners were initially appointed as Science Graduate Teachers and Arts Graduate Teachers on contract basis for a period of 85 days and their contractual services were extended from time to time till 2008 and thereafter, their services have not been

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extended. It is also stated that since the contractual services of the petitioners have not been extended from the year 2008, the pleas of the petitioners are that their services have been utilized by the competent authorities from time to time without any break till date is absolutely incorrect. During the contractual services of the petitioners, a notification was issued inviting all eligible candidates for appointment of Graduate Teachers on regular basis and a duly constituted DPC was held from 20.10.2006 to 21.10.2006. The result of the said DPC was declared on 19.12.2006 recommending 663 candidates for appointment to the post of Graduate Teachers in the Department of Education-S and all the recommended candidates were appointed as Graduate teachers on 19.04.2007. It is stated that the contract services rendered by the petitioners were already replaced by the regularly appointed Graduate Teachers and the petitioners have no locus to file the writ petitions and the writ petitions are liable to be dismissed. It is also stated that the MoU No.2 dated 13.08.2019 with Chief Minister and signed on 18.09.2019 by the Chief Secretary has been discussed/mentioned in para 6, 7 and 16 of the judgment and order dated 28.10.2021 under review. The contractual engagement of the petitioners was discontinued in the year 2008. Vide order dated 19.12.2006, 663 post graduate teachers were declared successful and were appointed temporary basis vide order dated 19.04.2007 replacing the contract service of the petitioners by regular appointees. It is further averred that the petitioners have no right to challenge the recruitment process after the expiry of 13 years. It is stated that there is no error apparent on the face of it nor new document and the review petition is not maintainable.

[9] In the rejoinder affidavit, the petitioners reiterated that the Notification dated 18.09.2019 signed by the Chief Secretary, ie, MoU No.2 could not be placed on record due to non-availability at the time of filing of the writ petition WP(C) No. 518 of 2021. It is stated that the MoU No.2 dated 13.08.2019 notified on 18.09.2019 superseded MoU dated 20.09.2006.

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[10] Mr. Anjan Prasad Sahu, learned counsel for the review petitioners pleads two main grounds in the review petition. First, there are errors apparent on the face of the record and secondly, discovery of new facts. With regard to the first point, it is submitted that learned Single Judge was wrong in holding that the contract service of the petitioners was not extended and their places were replaced by regularly appointed teachers. It is pointed out that the appointment order dated 19.04.2007 mentioned on 'temporary basis' and not as 'regular' held in the judgment under review. The second point is the MoU No.2 inter-alia recording regularization of Contract Teachers 2006 batch, could not be placed on record of the writ petition and hence the judgment requires re-consideration.

[11] During the course of hearing and in his written submission, learned counsel for the petitioners raises the plea of the doctrine of promissory estoppel [AIR 1986 SC 806; 2023 Livelaw 10 (JK)], doctrine of legitimate expectation [AIR 1999 SC 1801] and utilizing service without extension of contractual service was subsequently regularized by this Court in **WA No. 34 of 2021: State of Manipur v. Yaikhom Joykumar Singh**. It is submitted that the impugned order be recalled and the writ petition be allowed.

[12] Per contra, Mr. S. Nepolean, learned GA submits the MoU No.2 [Annexure R-3 to review petition] is not a new document and was considered by learned Single Judge in Para 16 of the impugned order. It is clarified that in letter dated 23.09.2020 [Annexure R-5] sent by the Director, Education (S) to the Commissioner Education (S), it was mentioned that there was no extension of contract engagement till date since December 2008 and hence there is no question of continuous serving beyond contract period. It is pointed out that temporary basis as mentioned in appointment order dated 19.04.2007 indicates appointment on regular basis in temporary posts. It is submitted that there are no materials for review within the meaning of Order 47 CPC. All the grounds raised in the review

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petition are to be taken in an appeal. It is prayed that the review petition be dismissed being devoid of any merit.

[13] This Court has considered the materials on record, the submissions made at bar and case law referred herein. It will be apt to discuss the scope of review with the help of judgments.

[14] In the case of **Inderchand Jain v. Motilal: (2009) 14 SCC 663**, Hon'ble Supreme Court held that power review can be exercise only in case of gross error apparent of the face of it, discovery of new documents or for any sufficient reason. Relevant para are reproduced below:

8. An application for review would lie inter alia when the order suffers from an error apparent on the face of the record and permitting the same to continue would lead to failure of justice. In *Rajendra Kumar v. Rambail* this Court held: (SCC p. 514, para 6)

“6. The limitations on exercise of the power of review are well settled. The first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and permitting the order to stand will lead to failure of justice. In the absence of any such error, finality attached to the judgment/order cannot be disturbed.”

9. The power of review can also be exercised by the court in the event discovery of new and important matter or evidence takes place which despite exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when the order was made. An application for review would also lie if the order has been passed on account of some mistake.

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Furthermore, an application for review shall also lie for any other sufficient reason.

10. It is beyond any doubt or dispute that the review court does not sit in appeal over its own order. A rehearing of the matter is impermissible in law. It constitutes an exception to the general rule that once a judgment is signed or pronounced, it should not be altered. It is also trite that exercise of inherent jurisdiction is not invoked for reviewing any order.

*1 (2007) 15 SCC 513: AIR 2003 SC 2095

[15] In the case of **Sanjay Kumar Agarwal v. State Tax Officer: MANU/SC/1198/2023= (2024) 2 SCC 362**, Hon'ble Supreme Court laid down the principles to exercise review jurisdiction as follows:

16. The gist of the afore-stated decisions is that:

(i) A judgment is open to review inter alia if there is a mistake or an error apparent on the face of the record.

(ii) A judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.

(iii) An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of record justifying the court to exercise its power of review.

(iv) In exercise of the jurisdiction Under Order 47 Rule 1 Code of Civil Procedure, it is not permissible for an erroneous decision to be "reheard and corrected."

(v) A Review Petition has a limited purpose and cannot be allowed to be "an appeal in disguise."

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(vi) Under the guise of review, the Petitioner cannot be permitted to reagitate and reargue the questions which have already been addressed and decided.

(vii) An error on the face of record must be such an error which, mere looking at the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.

(viii) Even the change in law or subsequent decision/judgment of a co-ordinate or larger Bench by itself cannot be regarded as a ground for review.

[16] In the case of **N. Anantha Reddy v. Anshu Kathuria: (2013) 15 SCC 534**, Hon'ble Supreme Court discussed the concept of review as below:

6. The review jurisdiction is extremely limited and unless there is mistake apparent on the face of the record, the order/judgment does not call for review. The mistake apparent on record means that the mistake is self-evident, needs no search and stares at its face. Surely, review jurisdiction is not an appeal in disguise. The review does not permit rehearing of the matter on merits.

[17] From the above case laws, it is clear that the review petition has a limited scope and the same can be entertained only in case of patent error on the face of it which does not require any inquiry; on discovery of new facts/documents which could not be produced before with due diligence; and for any sufficient reasons. It has been cautioned that review is not an appeal in disguise and cannot be resorted to as re-hearing of the matter on merits.

[18] In the case in hand, it is pleaded that there were errors in recording of facts that the contractual services were not extended and MoU No.2 could not be produced during the writ proceedings. Besides, the doctrine of promissory estoppel and legitimate

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expectation have also been raised during the hearing of the review petition.

[19] On perusal of Annexure R-5, ie, letter dated 23.09.2020 sent by the Director, Education (S) to the Commissioner Education (S), it is clearly mentioned that the contractual service of the petitioners was not extended beyond December 2008 and hence there is no error of fact in the impugned judgment. Moreover, MoU No.2 dated 13.08.2019 notified on 18.09.2019 was specifically mentioned in para 16 of the judgment under review. This Court does not find any force in the submission of the petitioners that MoU No.2 was not placed on record. If that be so, there would be no occasion for the learned Single Judge to discuss about MoU No.2 in Para 16 of the judgment. The petitioners have miserably failed to disclose any other sufficient cause to entertain the review petition within the limited ambit of the provisions of Order 47 CPC. The grounds raised by the petitioners such as promissory estoppel and legitimate expectation, are to be taken in an appeal and the same cannot be grounds for review.

[20] In the circumstances, the review petition is dismissed being devoid of any merit. No cost.

Headnotes prepared by:
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Result of the case:
Review Petition dismissed.