

GAHC010052762022



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

Case No. : Review.Pet./60/2022

P LANUNTHARA
S/O- VANLALRUATA, R/O- VENGLAI, DIST.- KOLASIB, MIZORAM, PIN-
796070.

VERSUS

THE STATE OF MIZORAM AND 6 ORS.
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF MIZORAM, AIZAWL,
MIZORAM- 796001.

2:THE SECRETARY TO THE GOVT. OF MIZORAM
DEPARTMENT OF PERSONNEL AND ADMINISTRATIVE REFORMS
AIZAWL
MIZORAM
PIN- 796001.

3:THE COMMISSIONER/SECRETARY TO THE GOVT. OF MIZORAM
IRRIGATION AND WATER RESOURCES DEPARTMENT
AIZAWL
MIZORAM
PIN- 796001.

4:THE CHIEF ENGINEER

IRRIGATION AND WATER RESOURCES DEPARTMENT
AIZAWL
MIZORAM
PIN- 796001.

5:THE MIZORAM PUBLIC SERVICE COMMISSION
REP. BY ITS CHAIRMAN
NEW SECRETARIAT COMPLEX

AIZAWL
MIZORAM
PIN- 796001.

6:SHRI LALZUITLUANGA
SUB-DIVISIONAL OFFICER
SERCHHIP SUB-DIVISION
IRRIGATION AND WATER RESOURCES DEPARTMENT
NEW SERCHHIP
PIN- 796181.

7:SMT. RUATKIMI VARTE
ASSISTANT ENGINEER (MONITORING)
OFFICE OF THE CHIEF ENGINEER
IRRIGATION AND WATER RESOURCES DEPARTMENT
KHATLA
AIZAWL
MIZORAM
PIN- 796001

For the Review Petitioner(s) : Mr. J. Patowary, Advocate.

For the Respondent(s) : Mr. B. Deb, AG, Mizoram.
Mr. P.D. Nair, Advocate

- B E F O R E -

HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE SOUMITRA SAIKIA

08.04.2024

(Soumitra Saikia, J)

1] This Review Petition is directed against the Judgment and Order dated 14.12.2021 passed in W.A. No. 37/2021. The review petitioner is employed

under the Minor Irrigation Department, the Government Mizoram. The review petitioner was appointed to the post of Assistant Engineer/ Sub-Divisional Officer in the Minor Irrigation Department (Irrigation Department), Government of Mizoram in the order of merit with effect from his date of joining service in terms of the recommendation of the Mizoram Public Service Commission (MPSC in short). The service is governed by the Mizoram Engineering Service Rules, 2013 which came into force with effect from 23.09.2013. For the promotion to the next higher grade which is Senior Grade, the eligibility criteria prescribed is completion of not less than five years of continuous regular service in Junior Grade and should clear the departmental examination in Engineering and Accounts conducted by the MPSC. According to the review petitioner, in spite of being qualified for promotion, his case was not considered against the available vacancy for that year for the next higher post of Senior Grade meant for graduate engineers. His case was not considered on the ground that he did not clear the departmental examinations on the crucial date which is 01.04.2017. This crucial date was brought in by way of an Office Memorandum dated 15.07.2010 as 1st January of the vacancy year. Subsequently, it was altered to 1st April of the vacancy year by Office memorandum dated 11.05.2012 issued by the Department of Personnel and Administrative Reforms (General Service Wing) (P&AR) (GSW). Being aggrieved by the non-selection, the review petitioner as one of the writ petitioners approached this Court by filing WP(C) No. 96/2017. Other similarly situated persons preferred another writ petition being WP(C) No. 90/2018. These writ petitions came to be heard together and disposed of by a common Judgment and Order dated 06.11.2020. The learned Single Judge allowed the writ petitions and set aside the office memorandums dated 15.07.2010 and 11.05.2012 fixing the crucial date for determining the

eligibility of the officers' promotions to the next higher grade. The respondent State of Mizoram was directed to convene a review DPC by including the petitioners therein in the zone of consideration along with those who are eligible to be considered on 05.07.2017 within a period of one month from the date of receipt of a certified copy of this order.

2] Being aggrieved, the State of Mizoram preferred appeals being W.A. No. 37/2021 and W.A. No.74/2021. The private respondents in the writ petitions also preferred their writ appeals being W.A. No. 16/2021 and W.A. No. 20/2021. The present review petitioner was arrayed as the respondent no.1 in W.A. No.37/2021 and in W.A. No.16/2021. All these writ appeals came to be taken up together and by a common order dated 14.12.2021, the writ appeals were disposed of. The Division Bench disagreed with the view of the learned Single Judge that the cut-off date was arbitrary or not based on a rational object. The Division Bench held that the cut-off date has a purpose and it cannot be said that the decision of the concerned authority to have a cut-off date was arbitrary and therefore, unsustainable. The impugned Judgment and Order dated 06.11.2020 passed by the learned Single Judge was accordingly set aside. On the prayers of the learned counsel representing the present review petitioner, the Appellate Court also permitted him to move an application before the concerned authority seeking relaxation of the eligibility criteria as he became eligible in the month of May of 2017.

3] Being aggrieved by the Judgment and Order dated 14.12.2021 passed in W.A. No. 37/2021, W.A. No.74/2021, W.A. No. 16/2021 and W.A. No. 20/2021, the review petitioners filed an SLP being SLP No. 3401/2022. The Apex Court by order dated 25.02.2022 permitted the review petitioner (petitioner therein) to withdraw the present SLP and approach the High Court by filing a review

petition. The submission of the review petitioner was recorded by the Apex Court that there was an earlier Division Bench which had taken a different view and therefore, the SLP was permitted to be withdrawn and liberty was granted to file a review petition.

4] The learned counsel appearing for the review petitioner submits that in respect of the said notifications but pertaining to promotions of a different Department under the Government of Mizoram, a learned Single Judge of this Court had the occasion to deal with this issue and by Judgment and Order dated 05.09.2012 passed in WP(C) No. 72 of 2011 the learned Single Judge in the facts of that case upheld the eligibility of the writ petitioners therein for being considered for promotion, notwithstanding the fact that they had attained eligibility by clearing the departmental examinations after the crucial date. The learned Single Judge in the facts that case held that the approach of the respondents appears to be hyper-technical and that the objection that the petitioners were not qualified prior to the crucial date, was more of form than of substance.

5] The learned counsel appearing for the review petitioners submits that this Judgment of a Single Judge of this Court passed in W.P.(C) No. 72/2011, subsequently came to be upheld by a Co-ordinate Bench in W.A No. 3/2012 and W.A. No. 2/2013 by Judgment and Order dated 13.10.2015. It is submitted by the learned counsel for the review petitioner that the conclusions of the learned Single Judge in WP(C) No 72/2011 having been accepted by the Division Bench, it has to be held that the cut-off date in respect of the eligibility for being promoted to the next high post of Senior Grade is more of form than of substance. It is urged before the Court that in the facts of the present case, the review petitioner had cleared the departmental examinations in May, 2017,

whereas the crucial date as notified by the office memorandum dated 11.05.2012 was 01.04.2017. Admittedly, the MPSC had recommended the cases of the selected candidates well after the petitioner cleared the departmental examination. Therefore, the rejection of the review petitioner as having not attained the eligibility for being considered for promotion to the next higher grade on the ground that he failed to clear the departmental examination prior to the crucial date, which is 01.04.2017 is contrary to the view taken by the Co-ordinate Bench earlier. Such view of the earlier Co-ordinate Bench not having been considered by the later Division Bench amounts to an error apparent on the face of the record and as such, the Judgment and Order dated 14.12.2021 passed in W.A. No. 37/2021 needs to be reviewed and recalled and the matter be heard afresh .

6] Learned counsel for the parties have been heard. The Judgment of the learned Single Judge in W.P(C) No. 72/2011 which was decided on 05.09.2012 along with the Judgment and Order dated 13.10.2015 in W.A. No. 03/2012 and W.A. No. 02/2013 decided by the Co-ordinate Bench have been carefully perused. The Judgment under review as well as the Judgment of the learned Single Judge from which the appeal under review arises has also been carefully perused.

7] From a perusal of the Judgment and Order dated 05.09.2012 passed in WP(C) No.72/2011, it is seen that the departmental examinations therein were not conducted for the years 2008, 2009 and 2010 and therefore the petitioners therein could not get themselves qualified. When the departmental examinations were conducted in 2011, the Office Memorandum dated 15.07.2010 fixing the crucial date (as it then was on 1st of January of the year of the vacancy) came to be issued. The departmental examination was held in

March, 2011 and the results were declared in May, 2011 in which the petitioners therein came out successful. Therefore, when the MPSC held its meeting on 04.08.2011, the petitioners therein had already cleared the departmental examination. It was under these circumstances, the learned Single Judge held that the objection to the cut-off date is more of a form than of a substance, and the petitioners therein were found to be eligible and wrongly denied their consideration. The writ appeal preferred against the said Judgment and Order, upheld the findings of the learned Single Judge by the Judgment and Order dated 13.10.2015 passed in W.A. No.2/2012 and W.A. No.3/2013. However, a careful perusal of the Judgment and Order dated 05.09.2012 passed by the learned Single Judge does not reflect anywhere that the cut-off date fixed by the office memorandum was held to be bad or was interfered with. In fact, the Judgment and Order dated 13.10.2015 passed by the Division Bench in W.A. No. 2/2012 and W.A. No. 3/2013 also nowhere specifically upholds or reiterates the finding of the learned Single Judge that the cut-off date fixed by office memorandum is more of a form than of substance. This observation was made by the learned Single Judge in the penultimate paragraph of the Judgment and Order dated 06.11.2020 passed in WP(C) No. 96/2017 and WP(C) No. 90/2018. The Writ Appellate Court upon an overall consideration of the matter, upheld the findings of the learned Signal Judge. However, there is no specific finding that the fixation of a crucial date or a cut-off date by an office memorandum is bad in law or was held to be contrary to the provisions of the Rules. What was concluded by the Single Bench, in the facts of that case that the departmental examinations were not held for three years and subsequently when it was held, the earlier office memorandum notifying the cutoff date came into force and as the departmental examinations were not conducted for three years and by the

time the MPSC had taken a decision, the petitioners therein had already cleared the departmental examinations and were considered eligible; the office memorandum laying down the cut-off date did not persuade the learned Single Judge to reject the contentions of the writ petitioners therein. In that context the learned Single Judge therein overruled the objections of the State respondents therein that in view of the Office Memorandum dated 15.07.2010, notifying the crucial date the petitioners therein were not found eligible and held that the said Office Memorandum was more of a form than of substance.

8] In the facts of the present case, there is no such contention raised that the departmental examinations for past several years were not held and/or were clubbed together in which the petitioners appeared and cleared the examinations. The office memorandum in the present case laid down the cut-off date or crucial date as 01.04.2017. There is no dispute that the petitioner cleared the departmental examination on 01.05.2017 well after the cutoff date.

9] Under such circumstances, it cannot be held that an earlier Co-ordinate Bench by Judgment and Order dated 13.10.2015 passed in W.A. No.03/2012 and W.A. No.02/2013 had decided the issue that the cut-off date or crucial date brought in by the Government of Mizoram, is contrary to the provisions of law. There is no specific finding to that effect by the earlier Co-ordinate bench as urged by the Review Petitioner. It is well settled law that a Judgment is an authority for what it decides and not what may even logically be deduced there from^[1].

10] The Apex Court in *Sow Chandra Kante and Another -Vs- Sheikh Habib*, reported in (1975) 1 SCC 674, the Apex Court explained the parameter for exercise of the review jurisdiction under the High Courts. The Judgement of the Court must be read as a whole and the ration there from is required to be culled

out in reading the same in its entirety and not a part of it. The relevant paragraphs are extracted below:-

“A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. A mere repetition, through different Counsel, of old and overruled arguments, a second trip over ineffectually covered ground or minor mistakes of inconsequential import are obviously insufficient. The very strict need for compliance with these factors is the rationale behind the insistence of counsel's certificate which should not be a routine affair or a habitual step. It is neither fairness to the Court which decided nor awareness of the precious public time lost what with a huge backlog of dockets waiting in the queue for disposal, for Counsel to issue easy certificates for entertainment of review and fight over again the same battle which has been fought and lost. The Bench and the Bar, we are sure, are jointly concerned in the conservation of judicial time for 2 maximum use. We regret to say that this case is typical of the unfortunate but frequent phenomenon of repeat performance with the review label as passport. Nothing which we did not hear then has been heard now, except a couple of rulings on points earlier put forward. May be, as Counsel now urges and then pressed, our order refusing special leave was capable of a different course. The present stage is not a virgin ground but review of an earlier order which has the normal feature of finality.”

11] In *S. Nagaraj and Others –Vs- State of Karnataka and Another* reported in 1993 Suppl. (4) SCC 595, the Apex Court held that :-

*“19. Review literally and even judicially means re-examination or reconsideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its order the courts culled out such power to avoid abuse of process or miscarriage of justice. In *Raja Prithwi Chand Lal Choudhury v. Sukhraj Rai* [AIR 1941 FC 1, 2 : 1940 FCR 78 : (1941) 1 MLJ Supp 45] the Court observed that even though no rules had been framed*

permitting the highest Court to review its order yet it was available on the limited and narrow ground developed by the Privy Council and the House of Lords. The Court approved the principle laid down by the Privy Council in Rajunder Narain Rae v. Bijai Govind Singh [(1836) 1 Moo PC 117 : 2 MIA 181 : 1 Sar 175] that an order made by the Court was final and could not be altered “

... nevertheless, if by misprision in embodying the judgments, by errors have been introduced, these Courts possess, by Common law, the same power which the Courts of record and statute have of rectifying the mistakes which have crept in The House of Lords exercises a similar power of rectifying mistakes made in drawing up its own judgments, and this Court must possess the same authority. The Lords have however gone a step further; and have corrected mistakes introduced through inadvertence in the details of judgments; or have supplied manifest defects in order to enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies.”

Basis for exercise of the power was stated in the same decision as under:

“It is impossible to doubt that the indulgence extended in such cases is mainly owing to the natural desire prevailing to prevent irremediable injustice being done by a Court of last resort, where by some accident, without any blame, the party has not been heard and an order has been inadvertently made as if the party had been heard.”

Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality. When the Constitution was framed the substantive power to rectify or recall the order passed by this Court was specifically provided by Article 137 of the Constitution. Our Constitution makers who had the practical wisdom to visualise the efficacy of such provision expressly conferred the substantive power to review any judgment or order by Article 137 of the Constitution. And clause (c) of Article 145 permitted this Court to frame rules as to the conditions subject to which any judgment or order may be reviewed. In exercise of this power Order XL had been framed empowering this Court to review an order in civil proceedings on grounds analogous to Order XLVII Rule 1 of the Civil Procedure Code. The expression, ‘for any other sufficient reason’ in the clause has been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances has been held to be sufficient ground to

exercise the power. Apart from Order XL Rule 1 of the Supreme Court Rules this Court has the inherent power to make such orders as may be necessary in the interest of justice or to prevent the abuse of process of Court. The Court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for sake of justice”

12] Having arrived at the conclusions that since there was no finding by earlier Co-ordinate Bench with regard to the decision regarding the correctness of the cut-off date, it cannot be said that the Judgment and Order dated 14.12.2021 passed in W.A. No.37/2021 presently sought to be reviewed, has decided the issue without taking into consideration an earlier decision of a Co-ordinate Bench on the issue.

13] Under such circumstances, we are not persuaded to accept the submissions of the learned counsel for the review petitioner to review or recall the impugned Judgment and Order dated 14.12.2021 passed in W.A. No.37/2021.

14] Accordingly, the review petition being devoid of any merit, the same is dismissed.

JUDGE

CHIEF JUSTICE

Comparing Assistant