

GAHC010057052024



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

Case No. : Review.Pet./49/2024

RUKUN UDDIN AHMED
S/O. LATE RIAZ UDDIN AHMED, VILL.- DAGAON, P.O.- DAGAON, P.S.-
JURIA, DIST. NAGAON, ASSAM, PIN-782124.

VERSUS

ZIAUL ISLAM AND 5 ORS.
S/O. SOFIQUL ISLAM, VILL. AND P.O.- ALITANGANI, P.S.- JURIA, DIST.-
NAGAON, ASSAM, PIN-782124.

2:THE STATE OF ASSAM
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM EDUCATION
(SECONDARY) DEPTT.
DISPUR
GUWAHATI- 06.

3:THE DIRECTOR SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI- 19.

4:THE DEPUTY COMMISSIONER
NAGAON
ASSAM.

5:THE INSPECTOR OF SCHOOLS
NDC
NAGAON
ASSAM
DIST.- NAGAON.

6:THE PRINCIPAL ALITANGANI OSMANIA HIGHER SECONDARY SCHOOL

VILL. AND P.O.- ALITANGANI
DIST.- NAGAON
ASSAM
PIN-782124

Advocate for the Petitioner : MR. P J SAIKIA, SR. ADV

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Judgment & Order(Oral)

Date : 05.04.2024

Heard Mr. P. J. Saikia, learned counsel for the petitioner. Also heard B. Kaushik, learned Standing Counsel for the Elementary Education Department.

2. The present review petition has been instituted by the respondent no. 6 in the connected writ petition being WP(C) No. 7192/2022, praying for review of the order dated 25.01.2024, passed by this Court in WP(C) No. 7192/2022.

3. The writ petition being WP(C) No. 7192/2022 was instituted assailing the nomination of the respondent no. 6/review petitioner, as the President of the School Managing Development Committee (SMDC) of Alitangani Osmania Higher Secondary School, vide a communication dated 08.09.2022. The nomination of the respondent no. 6/review petitioner was challenged, primarily, on the ground that the review petitioner had a career in politics and the said aspect of the matter was noticed by the Secretary to the

Government of Assam, Secondary Education Department in an order dated 03.03.2018, issued in pursuance to directions as passed by this Court in WP(C) No. 1524/2017, vide order dated 06.12.2017. Vide the said order dated 03.03.2018, upon noticing the petitioner to be an active political worker and the guidelines as notified vide the notification dated 24.06.2016, having mandated that for appointment as the President of the SMDC of a school, a non-political person is so required to be nominated, the nomination as made in respect of the respondent no. 6/review petitioner as the President of Dagaon A.K. High School was rejected.

4. This Court, vide an order dated 25.01.2024, passed in WP(C) No. 7192/2022, proceeded to dispose of the said writ petition interfering with the nomination as made in respect of the respondent no. 6/review petitioner, on the ground that the nomination of the respondent no. 6/review petitioner was not in terms of the notification dated 24.06.2016, which, while laying down the procedure for nomination of persons as President or, Vice President of a SMDC also mandates the requisite criteria for selection of such person for nomination against the said post in question. The present review petition has been instituted by the respondent no. 6 in the connected writ petition *inter-alia* on the ground that the conclusions as reached by the Secretary to the Government of Assam, Secondary Education Department in the order dated 03.03.2018, was so reached basing on the materials existing at that relevant point of time and the same cannot be said to be existing for all times to come. Accordingly, it is contended that there is an error apparent on the face of the records inasmuch as the order dated 03.03.2018, does not finally conclude that the petitioner was in fact involved in political activities or, was an active member of a particular political party. **5.** The second

ground raised in the review petition is to the effect that the order dated 03.03.2018 also had noticed a fact that the petitioner at the relevant point of time was serving as a School Teacher and accordingly, there being a bar for nomination of a School Teacher as the President of the SMDC of a school, it was contended that the order dated 03.03.2018, ought to have been understood in the said perspective only. It was further contended that the School, wherein, the review petitioner was so serving was provincialized and the review petitioner thereafter is not serving in the said School. Accordingly, there was no bar on the appointment of the review petitioner as the President of the SMDC of the Alitangia Osmania Higher Secondary School in terms of the communication dated 08.09.2022. It is submitted that the said aspect of the matter, not having been considered by this Court and the decision being based on the order dated 03.03.2018, passed by the Secretary to the Government of Assam in the Secondary Education Department, by noticing the observations made therein, an error apparent on the face of the records exist and accordingly, it is submitted that the order dated 25.01.2024, passed by this Court in WP(C) No. 7192/2022 is required to be reviewed and recalled.

6. The learned counsel for the review petitioner has made his submission in tune with the pleadings as brought on record in the present proceeding.

7. A perusal of the order dated 25.01.2024, passed by this Court in WP(C) No. 7192/2022, would reveal that the second ground as urged in the present proceeding was not taken into consideration while considering the validity of the nomination made in respect of the review petitioner herein, for the post of President of the SMDC of the said School. This Court would now consider

the 1st ground urged by the review petitioner. This Court had considered the provisions of the notification dated 24.06.2016 and upon noticing the fact that on an earlier occasion, when the review petitioner herein was under consideration for being nominated as the President of the SMDC of the Dagaon A. K. High School, and such nomination having been subsequently cancelled, he had approached this Court by way of instituting WP(C) No. 1524/2017 and this Court, vide order dated 06.12.2017 had remanded the matter back to the Secretary to the Government of Assam, Secondary Education Department to hear the parties to the proceeding and thereafter, pass a speaking order.

8. The order dated 03.08.2018, accordingly, was passed in terms of the directions passed by this Court in WP(C) No. 1524/2017, vide order dated 06.12.2017, wherein it was recorded that the review petitioner herein is an active political worker and he had in his statement made during the hearing of the said proceeding stated that his candidature has the support of political parties as named therein, and it was further held that the guidelines as notified vide the notification dated 24.06.2016, having clearly envisaged the SMDC to be consisted of persons with non-political career, the said authority also noticing that the review petitioner was serving as a School Teacher at the relevant point of time, proceeded to hold upon consideration of all aspects and on perusal of all facts, which were recorded in the said order that the review petitioner herein, does not fulfill the criterias as stipulated in the notification dated 24.06.2016, and accordingly, it was held that the claim of the respondent no. 6/review petitioner for the post of President of the SMDC of Dagaon A. K. High School, cannot be considered.

9. It is to be noticed that the said order dated 03.03.2018, was not put to challenge by the review petitioner and the same continues to hold the field.

10. A perusal of the order dated 25.01.2024, reveals that the counsel for the respondent no. 6 had raised arguments similar to the one now pleaded in the present review petition and the same is recorded in Paragraph-8 of the said order.

11. In view of the said position, it is to be examined that if; the review petitioner has made out any ground for review of the order dated 25.01.2024.

12. It is a settled position of law that the scope of review of a judgment is very limited. It is also a settled position of law that though there is no specific provision empowering the Writ Court to entertain a review petition, there is nothing under Article 226 of the Constitution of India to preclude the High Court from exercising the power of review, which inheres in every Court of plenary jurisdiction, to prevent miscarriage of justice or, to correct grave and palpable errors committed by it. There are, however, definitive limits to the exercise of such power of review, which can be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not found within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found, or, on any analogous ground. The power of review cannot be exercised on the ground that the decision was erroneous on merits, which is within the province of a court of appeal. It is also a settled position of law that the power of review is not to be confused with

appellate powers which may enable an appellate court to correct all errors.

13. An error apparent on the face of record has been determined by various judgments of the Hon'ble Supreme Court of India and also of this Court, to be one which is self-evident and does not require a process of reasoning and which is also distinct from an erroneous decision. It would also not be an error apparent on the face of the record, if two or more views converse on the point and the view adopted by the Court in its judgment is a possible view having regard to what the record states. This Court while exercising in its review jurisdiction cannot appreciate the evidence and rejects findings of the earlier bench, which is within the domain of the Appellate Court. The review petition cannot be permitted to be an appeal in disguise.

14. Having noticed the extent of the power of this Court while considering a review petition, the contention as raised by the review petitioner in the present petition is considered.

15. Having appreciated the contentions raised in the present review petition, this Court is of the considered view that the review petition has been filed solely for the purpose of having a rehearing on merits in the matter, which admittedly, is not permissible.

16. The review petitioner had sought to present an interpretation to the order dated 03.03.2018, passed by the Secretary to the Government of Assam, Secondary Education Department and has tried to project a picture that the same does not conclude that the review petitioner herein was involved in active political activity with the further contention in the review petition in Paragraph-9 to the effect that such observations as recorded in the order dated 03.03.2018 was based on the materials as available at that

relevant point of time and the same cannot be said to be existing for all times. However, as noticed in the order dated 25.01.2024, passed by this Court in WP(C) No. 7192/2022, such observation drawn in the said order dated 03.03.2018 of the review petitioner being an active political worker was the ground along with the fact that the review petitioner was working as a teacher at the relevant point of time, considered to reject the claim of the review petitioner for his nomination as the President of the SMC of the school in question. Such a position is clear from a mere perusal of the conclusion recorded in the order dated 03.03.2018, issued by the Secretary to the Government of Assam, Secondary Education Department, the relevant portion of which is extracted herein below for a ready reference:-

“.....Rukum Uddin Ahmed is said to be an active political worker. Rukum Uddin Ahmed in his own statement on 17.01.2018 stated that his candidature had the support of the AIUDF and BJP public and political representatives respectively.

The Guidelines dated 24.06.2016 and the letter dated 07.12.2016 issued to constitute the SMDC clearly laid emphasis on a non political management committee in Secondary Schools, Criteria stipulates that the person considered for the post should be of repute and beyond any doubt or suspicion and should not be a serving teacher.

.....

Order: After careful consideration of all aspects and on perusal of all the facts and findings and as stated above and that Rukum Uddin Ahmed had been given adequate opportunity of hearing, it is observed that Rukum Uddin Ahmed does not fulfill the criteria and stipulations laid down in the Guidelines No. ASE 416/2014/116 dated 24.06.2016 and the letter dated 07.12.2016 issued by the Government to constituted the SMDC. Hence the claim of Rukum Uddin Ahmed for the post of President of the SMDC cannot be considered.”

17. Accordingly, this Court is of the considered view that the review

petitioner has not been able to establish any error apparent on the face of the record of the order dated 25.01.2024, passed by this Court in WP(C) No. 7192/2022 and accordingly, the order does not call to be reviewed.

18. In view of the above position and having noticed that grounds as urged in the present petition do not present a ground for review of the order in question, this review petition is held to be without any merit and the same accordingly, stands dismissed.

JUDGE

Comparing Assistant