

GAHC010062222024



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

Case No. : Review.Pet./71/2024

THE ASSAM GRAMIN VIKASH BANK
HAVING ITS HEAD OFFICE AT GS ROAD, BHANGAGARH, GUWAHATI, DIST
KAMRUP M ASSAM REP. BY ITS CHAIRMAN

VERSUS

SURENDRA NATH BARMAN
S/O LATE NALIT CH BARMAN
VILLAGE NADALA, PO GAMARIMURI, DIST NALBARI, ASSAM 781306

Advocate for the Petitioner : MR SISHIR DUTTA, MS S MOCHAHARI,MR S DUTTA,MR.
SIDHANT DUTTA

Advocate for the Respondent : MR. D BHUYAN, MR SARFRAZ NAWAZ,MR. SURAJIT
DAS,MR. K N CHOUDHURY,FOR CAVEATOR

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

06.09.2024

Heard Mr. S. Dutta, learned Senior Counsel assisted by Mr. S. Dutta,
learned counsel for the review petitioner. Also heard Mr. S. Das, learned counsel
for the opposite party/writ petitioner.

2] This review petition is filed by the Assam Gramin Vikash Bank against the judgment and order dated 21.02.2024 passed in WP(C) No.5287/2012 by this Court. By the said judgment and order the punishment which was imposed on the opposite party i.e. removal from service was modified to that of compulsory retirement. The review is sought on several grounds, *inter alia*, that in cases of Bank employees, who are found to be involved in financial irregularities like that of the opposite party/writ petitioner before the Court, ordinarily punishment imposed by the Disciplinary Authority ought not be modified/alterd with. It is further submitted that merely because the financial irregularity was in respect of Re-investment Plan Certificate Account (RIPC Account) opened in the name of the writ petitioner himself, it ought not to have been a consideration for altering the punishment imposed by the Bank authorities. It is further submitted that in paragraph -20 of the judgment and order dated 21.02.2024 under review, there is a finding by the Court that there is no material placed before the Court to show that along with the petitioner there were other Officer(s) or Employee(s) of the Bank against whom Departmental proceedings had been initiated and penalty was imposed.

3] Learned Senior Counsel for the review petitioner submits that the finding arrived at by the Court is an error apparent on the face of the record as the same is contrary to the records. Learned Senior Counsel has placed the record

before the Court to submit that besides the writ petitioner, departmental proceedings were initiated against the then Manager of the Bank, namely, one Shri Bankim Sarma and the Bank authorities had also imposed punishment of reduction of basic pay by 5 stages with cumulative effect for a period of 2 years and on an appeal being filed, the appellate authority modified the punishment by imposing reduction of basic pay by two stages with cumulative effect for a period of 2 (two) years. Learned Senior Counsel, therefore, submits that in view of these facts available in the records, the finding of the Court that besides the writ petitioner no other employee was charged and no Departmental Proceedings were initiated is belied by the records and therefore, the order passed by this Court in respect of the opposite party/writ petitioner ought to be reviewed and recalled and the matter may be posted for a fresh hearing.

4] The learned counsel representing the opposite party has strongly disputed the contentions of the review petitioner. It is submitted that the judgment and order under review was rendered on several grounds besides the finding of the Court that no other officer was proceeded with departmentally, save and except the opposite party/writ petitioner in the review petition. It is submitted that even if that finding is reviewed and affected, it will not affect the final conclusion/outcome of the judgment. It is submitted that review jurisdiction can only be invoked for correcting the errors apparent on the face of the record.

Under such circumstances, since the ultimate conclusion reached by the Court will not be altered, there is no necessity for invoking the review jurisdiction and the review petition be dismissed as not maintainable.

5] Learned Counsel for the parties have been heard and the pleadings on records have been carefully perused.

6] The opposite party/writ petitioner was employed in the Gramin Vikash Bank in the Kaithalkuchi Branch. During his service period he had opened a RIPC account in his own name on 20.11.2006 for Rs.50,000/-. The charge against the opposite party/writ petitioner is that although the account was in his name but no amount was deposited. All the entries were made by the opposite party/writ petitioner in the ledger sheet and the RIPC account opened and registered. The said RIPC account was prematurely closed by the opposite party/writ petitioner on 14.12.2007 and a sum of Rs.53,593/- was credited to the account maintained by the opposite party. On detection of this irregularity the opposite party/writ petitioner refunded the amount with interest. The Department issued a show-cause notice on the opposite party/writ petitioner. Reply submitted by the Opposite party/petitioner was rejected by the Bank authorities and an enquiry was instituted against the opposite party/writ petitioner. Pursuant to the enquiry report being submitted, the Bank authorities

imposed a major penalty of removal from service which shall not be a disqualification for future employment. The appeal filed by the opposite party/writ petitioner also came to be dismissed. The petitioner thereafter approached this Court assailing the Departmental proceedings and the findings arrived at and the punishments imposed.

7] Upon consideration of the materials placed before the Court and the judgments cited before the Court by the parties as well as upon perusal of the records produced before the Court by the Bank authorities, this Court on the reasons mentioned in the judgment and order dated 21.02.2024 declined to interfere with the enquiry proceedings. This Court concluded that the facts and the materials placed before the Court do not indicate any instances of procedural lapses or violation of principles of natural justice and consequently, rejected the prayer of the opposite party/writ petitioner to interfere with the enquiry proceedings and the conclusion arrived at and to, set aside and quash the same. However, in view of the fact that the allegation of non-deposit of the amount by the opposite party/writ petitioner was in respect of the RIPC account maintained in his name and the said amount being already adjusted by the Bank authorities in respect of another RIPC account and pursuant to which an amount of Rs. 5660/- was required to be paid back by the petitioner and also taking into consideration that the opposite party/writ petitioner was employed

as a messenger and he was not entrusted with any managerial or supervisory functions or even functions relating to book-keeping and accounts and that the nature of work of the petitioner is comparable to that of a Grade-IV employee ordinarily in a Government Department as per the nature and duties prescribed under the Assam Gramin Vikash Bank (Officers and Employees) Service Regulations, 2006, this Court altered the punishment of *removal from service without disqualification from future employment to that of compulsory retirement*. Such conclusion was also arrived at by the Court taking into account the fact that ordinarily it is the employer who is required to decide and impose the adequate punishment. But in view of the fact that the matter has been pending in the Court since the year 2012, and the petitioner was removed from service in the year 2011, remitting the matter back to the Bank authorities after so many years to reconsider the punishment imposed will entail hardships not only to the petitioner but also to the Bank authorities. Under such circumstances, while refusing to interfere with the departmental proceedings initiated against the opposite party/ writ petitioner, the punishment imposed was altered. However, the Court recorded a finding in paragraph-20 of the judgment and order dated 21.0.2024 passed in WP(C) No.5287/2012 that besides the opposite party/writ petitioner no charges were framed and/or no departmental proceedings were initiated against any other employee of the Bank.

8] Records produced before the Court has been examined. From the records, it is apparent that one Shri Bankim Sarma, who was the then Manager of the Bank, was also proceeded with and the punishment of reduction of basic pay by 5 stages with cumulative effect for a period of 2 years was imposed. Subsequently, on an appeal being filed, the punishment was modified to that of reduction of basic pay by two stages with cumulative effect for a period of 2 (two) years.

9] As discussed above in paragraph -20 of the judgment and order dated 21.02.2024, there is a finding by the Court that there is no material placed before the Court to show that along with the petitioner there are other Officer or Employees of the Bank who have also been proceeded with and/or imposed with penalty.

10] This Court has given due consideration to the submissions made by the learned counsel for the parties. After perusal of the records produced, it is seen that besides the opposite party/writ petitioner, the then Branch Manager one Bankim Sarma was also charged and punishment was also imposed after due enquiry.

11] Under such circumstances, this Court is inclined to accept the submissions of the learned Senior Counsel for the review petitioner only to the extent that

the finding available in the judgment and order dated 21.02.2024 at paragraph-20 "that no material was placed before the Court to show that along with the petitioner, there were other officers or employees of the bank who were also proceeded with and/or imposed with penalty" is not a correct finding and therefore, it needs to be suitably corrected.

12] The scope of review is very limited and well settled. An order/judgment can be reviewed only to rectify certain error apparent on the face of the record or on discovery of any new and important fact, which is evident after the exercise of due diligence and was not within the knowledge of the applicant or could not be brought to the notice of the Court at the time when the order/judgment was passed. Save and except the observation that the then Manager of the Bank, namely, one Shri Bankim Sarma was also proceeded with along with the petitioner and the Bank authorities imposed the punishment of reduction of basic pay by 5 stages with cumulative effect for a period of 2 years was imposed and subsequently, on an appeal being filed, the punishment was modified to that of by imposing reduction of basic pay by two stages with cumulative effect for a period of 2 (two) years, no other error apparent on the face of the record or any correction or alteration of the judgment for any other purpose is noticed and is therefore called for. The conclusions arrived at in the judgment under review was arrived at on several other grounds as discussed in

the judgment and order dated 21.02.2024. This Court on the reasons cited declined to allow the writ petition in respect of the other prayers and only altered the punishment imposed on the opposite party/writ petitioner. However, the above changes in the judgment will not alter the conclusions arrived at by this Court. It is needless to say that while exercising review jurisdiction, the powers of the Court are extremely limited. In *S. Nagaraj and Others –Vs- State of Karnataka and Another* reported in *1993 Suppl. (4) SCC 595*, the principles laid down by the Apex Court while exercising the review jurisdiction are reiterated as under.

“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 Page No.# 11/11 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”

13] In that view of the matter, this review petition is disposed of by holding that the finding of the Court in paragraph-20 of the judgment and order dated 21.02.2024 to the extent there are no materials placed before the Court to show

that along with the petitioner there are other officers or employees who had also been proceeded with and/or imposed with penalty, does not reflect a correct position as per the records produced. The High Court is a Superior Court of record and therefore, it has a duty to itself to keep all its records correctly and in accordance in law. Therefore, the said finding is altered to the extent that the Departmental proceedings against the then Branch Manager Shri Bankim Sarma was also initiated and the penalty of reduction of basic pay by 5 stages with cumulative effect for a period of 2 years and on an appeal being filed, the appellate authority modified the punishment by imposing reduction of basic pay by two stages with cumulative effect for a period of 2 (two) years were imposed.

14] As such, in place of "*there is no material placed before the Court to show that along with the petitioner there are other Officers or Employees of the bank who have also been proceeded with and/or imposed with penalty*" as available in paragraph-20 of the judgment and order dated 21.02.2024 shall be read as "*along with the petitioner, the then Manager of the Bank, namely, one Shri Bankim Sarma was also proceeded with and the Bank authorities imposed punishment of reduction of basic pay by 5 stages with cumulative effect for a period of 2 years and thereafter, on an appeal being filed by the proceedee, the appellate authority modified the punishment by imposing reduction of basic pay*

by two stages with cumulative effect for a period of 2 (two) years.” This order passed in this review petition shall be read together with the judgment and order dated 21.02.2024 passed in WP(C) No.5287/2012.

15] With the above observations, the review petition stands disposed of. The ultimate conclusion arrived at by the judgment and order dated 21.02.2024 passed in WP(C) No.5287/2012 has not been altered and the same shall remain in force.

JUDGE

Comparing Assistant