

GAHC010044572024



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

Case No. : Review.Pet./43/2024

UPEN DOLEY

S/O- LATE NAYANTARA DOLEY, R/O- VILL.- RUDWAD DOLUNG, P.O. AND
P.S.- JONAI, DIST.- DHEMAJI, ASSAM.

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, ELEMENTARY EDUCATION DEPARTMENT,
DISPUR, GUWAHATI- 06.

2:THE DIRECTOR OF ELEMENTARY EUDCATION DEPARTMENT
ASSAM
KAHILIPARA
GUWAHATI- 19.

3:THE DEPUTY COMMISSIONER
DHEMAJI
ASSAM

Advocate for the Petitioner : MR A ALI

Advocate for the Respondent : SC, ELEM. EDU

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

Judgment & Order(Oral)

Date : 27.03.2024

Heard Mr. A. Ali, learned counsel for the petitioner. Also heard Mr. A. Phukan, learned Standing counsel for the Elementary Education Department and Mr. B. Deori, learned Junior Government Advocate appearing for the State respondents.

2. The present review petition has been instituted by the review petitioner, praying for a review of the judgment and order dated 09.01.2024, passed by this Court in WP(C) No. 7307/2023, by which the claim of the petitioner therein for consideration of his case for appointment on compassionate ground was rejected as being without any merit.

3. The present review petition has been instituted by one of the petitioners in the WP(C) No. 7307/2023. The review of the said judgment and order dated 09.01.2024 is sought on the ground that in the writ petition the petitioner had not mentioned that in pursuance to the death of his mother on 09.10.2007, he had submitted an application before the competent authority within three months thereof, praying for his appointment on compassionate ground. It is contended that the said application was lost by the petitioner and accordingly he had sworn an affidavit on 26.02.2024, stating on oath the facts of submission of the said application and further to the effect that, the said application in spite of his best efforts could not be traced out. Basing on the said ground, it is the contention of the petitioner

that he having applied for an appointment on compassionate ground within the time frame prescribed; his case was to be duly considered by the empowered committees for appointment on compassionate ground.

4. It is the further contention of the petitioner in the present petition that the ground as assigned by the SLSC for rejecting the claim of the petitioner that he was below 18 years at the time of submission of his application, is clearly perverse inasmuch as by the time the consideration was made of his application, he had become major. The petitioner, on the said two grounds has instituted the present review petition and has prayed for a review of the said judgment and order dated 09.01.2024.

5. A perusal of the judgment and order dated 09.01.2024, reveals that this Court while passing the said order, had considered the fact that the petitioner immediately after the death of his mother had submitted an application for appointment on compassionate ground. This Court, further considered the manner in which the said application was considered and thereafter following the decision of the Hon'ble Supreme Court in the case of *State of West Bengal V. Debabrata Tiwari and Ors.*, reported in (2023) SCC Online SC 219, proceeded to conclude that the petitioner herein had not diligently pursued the matter pertaining to his appointment on compassionate ground after death of his mother occasioning on 09.10.2007. This Court, basing on the materials as available on records had concluded that even if the contention of the petitioner having submitted his application immediately after the death of his mother is accepted, it is clear that such belated application could not have been considered by the DLC, belatedly, on 11.02.2022, inasmuch as the right of the petitioner for being considered for

appointment on compassionate ground did not subsist as on the said date and accordingly, the recommendation made in the case by the DLC, Dhemaji is of no consequence and cannot be directed to be acted upon. Accordingly, it was held that the conclusion as raised by the SLSC in the case of the petitioner in its meeting held on 26.08.2022, did not call for any interference by this Court.

6. It was also held by this Court that the operation of a policy/scheme for compassionate appointment is founded on consideration of immediacy and the petitioner having not pursued the matter diligently after the death of the mother, at that distant point of time, no direction could be issued for consideration of such claim of the petitioner. It was also concluded by this Court that the petitioner having been able to eke out a living even though not favored with an appointment on compassionate ground, it was not a fit case to direct the respondent authority for consideration of the case of the petitioner for appointment on compassionate ground.

7. The ground as now urged by the petitioner having already been considered by this Court while passing the judgment and order dated 09.01.2024 and the review petition having not brought on record any new material, the only intention behind filling the review petition is for having rehearing on merit in the matter and the same being in a form of an appeal, which admittedly, is not permissible.

8. 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 09.01.2024.

9. 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.

10. 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.

11. 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.

12. As noticed herein above, no error apparent on the face of the records in the judgment and order dated 09.01.2024 has been pointed out in the matter in the review petition and the ground as taken in the review petition about submission of an application immediately after the death of the mother of the petitioner having already been noticed and appreciated in the said judgment and order dated 09.01.2024, this Court is of the considered view that the review petition has been filed solely for the purpose of having a rehearing in the matter, which admittedly, is not permissible.

13. In view of the above position, the review petition is held to be without any merit and accordingly, the same stands dismissed.

JUDGE

Comparing Assistant