

GAHC020002282023



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

Case No. : Review.Pet./3/2023

THE STATE OF NAGALAND AND 4 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF
NAGALAND

2: THE COMMISSIONER AND SECRETARY TO THE GOVT. OF
NAGALAND
DEPARTMENT OF SCHOOL EDUCATION
NAGALAND KOHIMA

3: THE PRINCIPAL DIRECTOR
DEPARTMENT OF SCHOOL EDUCATION
NAGALAND KOHIMA

4: THE DIRECTOR
DEPARTMENT OF SCHOOL EDUCATION

5: THE SUB-DIVISIONAL EDUCATION OFFICER
MOKOKCHUNG
NAGALAN

VERSUS

SMTI. B CAROLYN IMCHEN
GRADUATE TEACHER, GMS, TEACHERS COLONY, MOKOKCHUNG,
NAGALAND. DIMAPUR NAGALAND

Advocate for the Petitioner : GOVT ADV NL

Advocate for the Respondent :

**BEFORE
HON'BLE MR. JUSTICE NELSON SAILO**

ORDER

31.10.2023

Heard Ms. V. Soukhrie, learned Addl. Advocate General, Nagaland for the applicants (respondents in the writ petition) and Mr. Tongpok Pongener, learned counsel for the respondent/writ petitioner (hereafter referred to as writ petitioner). The applicant i.e., the State of Nagaland, Department of School Education has filed the instant Review Petition by invoking Section 114 r/w Order XLVII Rule 1 of the Code of Civil Procedure, 1908 (CPC) seeking review of the Judgment & Order dated 28.06.2022 passed by this Court in WP(C) No. 61(K)/2020.

[2.] Brief facts of the case is that the writ petitioner was appointed as adhoc Graduate Teacher at GMS Teachers Colony, under the establishment of Dy. Inspector of School, Mokokchung vide Order dated 29.04.1998 and continued as such ever since her appointment. According to the writ petitioner, as per the Memorandum dated 18.02.2004 issued by the Department of Personnel and Administrative Reforms (Administrative Reforms Branch) [DP&AR(ARB)], Govt. of Nagaland, the criteria for regularization of contract/adhoc appointments has been framed and as per Category-1(b) of the Memorandum, employees having 5 to 10 years of service can be considered for regularization provided that there is a

sanctioned post and the employee, fulfills the eligibility criteria for the post including educational qualification and further, the performance of the employee is satisfactory. In terms of the said provision, the Directorate of School Education published a list of 339 adhoc/contract, Government Teacher who had completed 5 to 10 years of service as on 16.01.2004 to appear for eligibility test. In the said list, the writ petitioner's name was listed at Serial No. 260 and she was informed to appear for the test on 13.07.2005. According to the writ petitioner, although she appeared for the test on the given date, her services have not been regularized while all the candidates, who were called for the test, were either regularized vide Order dated 04.12.2009 or vide Order dated 08.06.2011.

[3.] It is the further case of the writ petitioner that as per the Nagaland Right of Children to Free and Compulsory Education Rules, 2010, notified on 21.03.2011 (Annexure-F), she is eligible to be considered for regularization in terms of Rule 14(4)(b). The writ petitioner having not been regularized, approached the respondent authorities and the Principal Director of School Education, Govt. of Nagaland vide his Letter dated 29.05.2017 (Annexure-H) forwarded all the relevant documents in respect of the writ petitioner for her regularization to the Principal Secretary to the Govt. of Nagaland, Department of School Education. Despite the same, she has not been regularized.

[4.] This Court after hearing and considering the stand taken by the rival parties disposed of the writ petition vide Judgment & Order dated 28.06.2022 by directing the respondent authorities to consider the case of the writ petitioner for regularization in terms of the Memorandum dated 18.02.2004 within a period of three (3) months from the date of receipt of a certified copy of the Order. It was further directed that the Order shall not be treated as a precedent in view of the fact the case of the writ petitioner was found to be left out at the relevant time while all other similarly situated teachers had been given the benefit of regularization.

[5.] Against the above direction, the applicants have filed the instant review petition and the main ground taken for review is that the Office Memorandum dated 18.02.2004 was superseded by Office Memorandum dated 23.08.2007 which was in turn superseded by Office Memorandum dated 04.08.2008. Since the Office Memorandum dated 04.08.2008 was declared to be unconstitutional by the Division Bench of this Court by an Order dated 07.02.2019 in W.A No. 16(K)/2018 by upholding the Judgment & Order of the learned Single Judge dated 03.08.2018 passed in WP(C) No. 145(K)/2017, it has now become impossible for the applicants to consider the case of the writ petitioner under the Office Memorandum dated 18.02.2004 as directed by this Court. The applicants have also taken the stand that the superseded Office Memorandum dated 18.08.2004 appearing in both the

Office Memorandums dated 23.08.2007 and 04.08.2008 should be read as 18.02.2004 as it was a typographical mistake.

[6.] Ms. V. Soukhrie, learned Addl. Advocate General supporting the statements made in the review petition submits that in view of the direction made by a coordinate Bench of this Court in WP(C) No. 145(K)/2017 directing the respondent authorities not to regularize any person in terms of the Office Memorandums dated 11.08.2016 and 04.08.2008 which was again upheld by the Division Bench in W.A No. 16(K)/2018, there is no scope for considering regularization of the writ petitioner and therefore, the review petition may be allowed as prayed for. She submits that the instant review petition is also not circumscribed by the law of limitation and therefore the review petition be considered on merits. In support of her submission, she relies upon the case of *Kanak Chandra Sarma -Vs- The Board of Secondary Education, Assam And 2 Ors. (1995) 1 GLR 116*, which was decided by a coordinate Bench of this Court.

[7.] Mr. Tongpok Pongener, learned counsel for the respondent on the other hand submits that this Court in directing the respondent authorities to consider regularization of the services of the writ petitioner did not simply rely upon the Office Memorandum dated 18.02.2004 but came to a finding that the State respondents did not totally deny that the writ petitioner appeared for the test on 13.07.2005 and it was only that the records showing

her appearance for the test was not available with them. Therefore, this Court found the writ petitioner entitled to be considered since her case was left out at the relevant time. This Court while directing such consideration had also made an observation to the effect that the Order shall not be treated as a precedent in future as the writ petitioner was found to be left out from being considered for regularization in terms of the situation prevailing at the relevant time. He therefore submits that there is no merit in the review petition and the same should be rejected. As regards the maintainability of the review petition on grounds of delay, the learned counsel submits that even if the Limitation Act does not apply in the present review proceeding but the applicants ought to have given some explanation for the belated filing the review petition. As the same has not been done, the review petition is liable to be dismissed on this ground as well.

[8.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record. The sole ground taken by the applicants for review of the Judgment & Order dated 28.06.2022 passed by this Court is that the Office Memorandum dated 18.02.2004 had already been superseded by the Office Memorandums dated 23.08.2007 and 04.08.2008. A perusal of the two (2) Office Memorandums goes to show that the earlier Office Memorandum dated 18.08.2014 has been superseded. But then, the applicants contend that the Office

Memorandum dated 18.08.2004 indicated was due to clerical mistake and the same should be read as 18.02.2004. It may be noticed that the so called clerical mistake has occurred both in the Office Memorandum dated 23.08.2007 and 04.08.2008. The same ought to have been corrected by way of a corrigendum and not simply by way of clarification addressed to the Government Counsel in view of the fact that Office Memorandums are issued for circulating certain information to all concerned and not to a particular individual. Even otherwise, the fact remains that the regularization of similarly situated persons at the relevant time was on the basis of a test conducted on 13.07.2005. In the writ petition, this Court was of the view that the State respondents did not totally deny the fact that the writ petitioner appeared for the test conducted on 13.07.2005 and only stand taken was that they did not have the records showing her appearance for the test. The further finding of this Court was that the name of the writ petitioner was also included in the list of eligible teachers published in the local newspaper dated 29.06.2005. It was under such circumstances that this Court found that as similarly situated teachers have all been considered for regularization, the writ petitioner should not be deprived of a similar benefit. Therefore, while directing the consideration of the writ petitioner for regularization, a specific observation was made that the Order should not be treated as a precedent since the case of the writ petitioner was found to be a

left out case at the relevant time while all other similarly situated teachers were given the benefit of regularization.

[9.] It may further be noticed that this Court passed the Judgment & Order sought to be reviewed on 28.06.2022 whereas, the instant review petition was filed only on 02.06.2023, after almost a year. From a perusal of the statements made in the review petition, more particularly at paragraph No. 7, it may be seen that the learned Addl. Advocate General vide her Communication dated 02.09.2022 sought for certain clarification from the Department concerned in response to the instruction given to her to file an appeal. Although the clarification sought for was given on 15.09.2022, no steps were taken to either file an appeal or a review petition since 15.09.2022 and it was only on 02.06.2023 that the instant review was filed. The case of *Kanak Chandra Sarma* (supra) relied upon by the learned Addl. Advocate General, was considered by a Division Bench of this Court in *Mori Riba Vs. Yomkar Riba & Ors. AIR 2011 Gauhati 181* and the Court observed at paragraph No. 9 as follows –

"9. Because of what has been discussed and pointed out above, while we agree with the observation, made in the case of Sri Kanak Chandra Sarma (supra), that the article 124 of the Limitation Act, would not apply to an application for review of an order passed under article 226 of the Constitution of India, we clarify that the High Court would not, ordinarily,

entertain an application for review if the same is made beyond the period of 30 days as prescribed by the Limitation Act, on the ground that the public policy is not to, ordinarily, entertain an application for review beyond the period of 30 days from the date of making of the order. It would, however, remain open to the High Court to entertain, in a given case, an application for review even if such an application is filed beyond the period of 30 days provided that the High Court is satisfied that the applicant has sufficient reasons for not being able to apply for review earlier.”

[10.] The above observing and finding of the Division Bench was also agreed upon by the Full Bench of the High Court of Meghalaya in the case of *Shella Action Committee Vs. State of Meghalaya & Ors. 2017 (2) GLT (FB) (ML) 801* where a similar issue arose and was considered.

[11.] Coming to the present case, no explanation has been made or is discernible as to why the review petition was filed on 02.06.2023 for reviewing the judgment which was passed almost a year back. Such being the position and upon due consideration of the application in its entirety, I do not find any ground to allow the review petition as is being prayed for. Accordingly, the same is dismissed.

Sd/-
JUDGE

Comparing Assistant