

GAHC010187912024



2025:GAU-AS:16657

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

Case No. : Review.Pet./166/2024

THE STATE OF ASSAM AND 2 ORS
REP BY THE SECRETARY TO THE GOVT OF ASSAM DEPTT OF SCHOOL
EDUCATION DISPUR GUWAHATI 781006

2: THE DIRECTOR OF SECONDARY EDUCATION ASSAM
KAHILIPARA GUWAHATI 19

3: THE INSPECTOR OF SCHOOLS
KAMRUP DISTRICT CIRCLE
KDC
PANBAZAR
GUWAHATI 78100

VERSUS

KALPANA DEVI AND ANR
W/O SRI LALIT KUMAR NATH, SEOJPUR, KAHILIPARA GUWAHATI 19, DIST
KAMRUP M ASSAM

Deepjyoti
Sarkar

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Deepjyoti Sarkar
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2: KISHORE KUMAR DEKA
ASSISTANT TEACHER SABITRI BHARALI HIGH SCHOOL
ODALBAKRA
GUWAHATI 34
DIST KAMRUP M ASSA

Advocate for the review petitioners : Ms. D. Musahary

Advocate for the opposite party/respondent : Mr. M. Chanda.

Date on which judgment is reserved : **04.12.2025**

Date of pronouncement of judgment : **06.01.2026**

Whether the pronouncement is of the
operative part of the judgment? : N/A

Whether the full judgment has been pronounced? : Yes

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

JUDGEMENT & ORDER (CAV)

Heard Ms. D. Musahary, learned standing counsel, Education (Secondary) Department, appearing for the review petitioners. Also heard Mr. M. Chanda, learned counsel for the opposite party/respondent No.1.

2. This review petition is preferred by the petitioners – (1) State of Assam, represented by the Secretary to the Govt. of Assam, Department of School Education, Dispur; (2) The Director of Secondary Education, Assam, Kahilipara; and (3) The Inspector of Schools, Kamrup District Circle, KDC, Guwahati, under Article 215 of the Constitution of India, read with Chapter X of the Gauhati High Court Rules praying for review of the order, dated 28.11.2018, passed by this Court in WP(C) No.5914/2014.

3. Notably, vide order dated 28.11.2018, a Co-ordinate Bench of this Court had held as under:-

“15. In view of the above, the judgment and order dated 31.08.2016 in WP(C) 4053/2013 would hold its force and the provision thereof that for the purpose of

provincialisation of Assistant Teacher Science the basis would be seniority and not the subject combination would also have to be followed. In the event, the said proposition is followed, the petitioner is senior to the respondent No.6 in the manner as indicated above. It being so, the Court is of the view that the order of provincialisation, provincialising the service of the respondent No.6 would have to be declared to be contrary to the requirement of Section 4 of the Act of 2011. Having declared so, it is directed that the Director of Secondary Education, Assam would pass necessary order thereto by taking into consideration that the petitioner is senior to the respondent No.6 and being senior, the provision of Section 4 of the Act of 2011 would be applicable in favour of the petitioner. In doing so, the Director shall follow necessary procedure under the law as required.

16. While dealing with the respondent No.6, it is further provided that in the event, the provincialisation of the respondent No.6 is withdrawn, the benefits that had already been accrued to him shall not be recalled and further the case of the respondent No.6 be again considered under the provision of Section 13(6) of the Act of 2017.

17. Writ petition is allowed to the above extent.”

4. The background facts, leading to filing of the present review petition, are briefly stated as under:-

“The opposite party/respondent No.1, had instituted a writ proceeding, being W.P(C) No.5914/2014, for issuance of direction to the respondent authorities to provincialise her service in the post of Assistant Teacher (Science) in Sabitri Bharali High School, Odalbakra, Guwahati, by

setting aside the impugned order dated 22.09.2014, by which the service of respondent No.6 therein, namely, Kishore Kumar Deka was provincialised in the said school.

The aforesaid W.P(C) No. 5914/2014, was allowed vide Judgment and Order dated 28.11.2018, providing that the provincialization of service of Kishore Kumar Deka is contrary to the requirement of Section 4 of the Assam Venture Educational Institution (Provincialisation of Services) Act, 2011 ('Act of 2011', for short) and accordingly, the Director of Secondary Education, Assam was directed to pass necessary order taking into consideration that the opposite party/writ petitioner is senior to the respondent No.6, as per the provision of Section 4 of the Act of 2011, and after following necessary procedure under the law as required.

In compliance of order dated 28.11.2018, passed by this Court in W.P(C) No.5914/2014, the Director of Secondary Education had passed a speaking order and requested the Government to accord approval of provincialization of services of Smt. Kalpana Devi, instead of Sri Kishore Kumar Deka. In the aforesaid backdrop approval for provincialization of service of Smt. Kalpana Devi, instead of Kishore Kumar Deka, under Section 4 of the Act of 2011 could not be given effect to as the Act of 2011 was declared as un-constitutional by this Court vide Judgment and Order dated 23.09.2016, passed in WP(C) No.3190/2012. Thus, a question has arisen as to whether the provincialization of service of Smt. Kalpana Devi under the Assam Education (Pronvincialisation of Services of Teachers and Re-organisation of Educational Institutions) Act, 2017 ('Act of 2017', for short) will contradict the direction of this Court issued in the Judgment and Order dated 28.11.2018, passed in WP (C) No.

5914/2014. Hence, this application for review/modification of the aforesaid order dated 28.11.2018, passed in WP(C) No.5914/2014.

Therefore, the present petition is preferred on the following grounds:-

- (i) The Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 having been declared ultra-vires by a Division Bench of this Court in WP(C) No.3190/2012, vide judgment and order dated 23.09.2016, and all rules, orders, notifications issued there under, shall stand repealed, and thereafter, Assam Education (Provincialisation of Services of Teachers and Re-organization of Educational Institutions) Act, 2017 was enacted. The same being applicable to the case of Smt. Kalpana Devi, the Judgment and Order dated 28.11.2018, passed in WP (C) No. 5914/2014, by this Court could not be complied with unless effective /necessary review or modification /correction is made. Her service could not be provincialized under the said Act of 2011.
- (ii) It is a settled legal principle that once a law is declared unconstitutional, it becomes inoperative from its inception and void ab-initio. As such, no mandamus can be issued under a repealed statute. On being declared the Act of 2011 unconstitutional, a new legislation namely, the Assam Education (Provincialisation of Services of Teachers and Re-organization of Educational Institutions) Act, 2017 was enacted and the case of the writ petitioner can be very well considered under the new Act of 2017. As such, Judgment and Order dated 28.11.2018 passed in WP (C) No. 5914/2014 has become un-implementable unless effective/necessary review or modification /correction

is made.

- (iii) The State authorities cannot act or proceed under the Act already struck down by this Court in WP (C) No. 3190/2012 vide Judgment and Order dated 23.09.2016 and make them liable to Contempt of Court's order against the Review Petitioners for their no fault/negligence.
- (iv) For that Section 8(6) of the Assam Education (Provincialisation of Services of Teachers and Re-Organisation of Educational Institutions) Act, 2017 does not provide any scope for taking any step as directed by this Court in Judgment and Order dated 28.11.2018, in as much as the teachers and tutors provincialized under the Act of 2017 as per Section 8(6) are declared as personal post, which ceased to exist after their retirement or exit from service. In the said Act, it is not provided to absorb any incumbent unless new post is created for such incumbent.

5. The opposite party/respondent No. 1 has filed affidavit in opposition, wherein she has questioned the very maintainability of the petition. It is stated that the order sought to be reviewed/modified, dated 28.11.2018, in WP(C) 5914/2014, is upheld by a Division Bench of this Court, vide judgment and order dated 04.03.2021, in W.A. No. 28/2019, filed by respondent No 6 of the writ petition. None of the respondents in the writ petition including the respondent No. 6 had preferred any further appeal thereafter and as such the matter has attained finality. And as such, it is beyond the competence of this Court to review/modify its order, after the same being upheld and confirmed by the Division Bench and the right to review has extinguished after the decision of the Division Bench. It is also stated that Section 114(a) and Order XLVII Rule 1 of the CPC provides for review of a judgment from which an appeal is allowed, but

no appeal has been preferred. In the instant case not only an appeal has been preferred but the same has been decided confirming the Judgment of the Ld. Single Judge. It is stated that the spirit of Section 114(a) and Order XLVII Rule 1 of CPC is applicable in the instant proceeding also. Under such circumstance, it is stated that the instant review petition is not maintainable and liable to be dismissed at the threshold.

It is also stated that the review petition has been filed after about 6 years from the judgment of the Ld. Single Judge, which is much beyond the stipulated period of 30 days for filing a review petition. And no reason, not to speak of any sufficient cause, for such inordinate delay has been assigned in the review petition. It is stated that the instant review petition is liable to be dismissed on the ground of delay and laches.

It is also stated that there is no discovery of new and important matter or evidence which was not within the knowledge or could not be produced by the review petitioner even after exercise of due diligence. The judgment and order, dated 23.09.2016, of this Court in WP(C) 3190/2012, was against the State of Assam including the Education Department. As such, the review petitioners are barred from raising the plea of non discovery of the said judgment after due diligence.

It is stated that there is no ground for review in the instant case and the review petition is liable to be dismissed. However, it is stated that the judgment and order dated 23.09.2016, is not against the respondent No. 1 and does not affect the judgment of the Ld. Single Judge sought to be reviewed. To keep things hazy and non-transparent, the review petitioners have refrained from even annexing the said judgment dated 23.09.2016, to the review petition

setting forth the circumstances under which such discovery has been made, as required under Rule 3 Chapter X of Gauhati High Court Rules.

Further, it is stated that the respondent No. 1 is senior to Sri Kishore Kumar Deka (Respondent no. 6 in the Writ Petition) not only in terms of Section 4 of the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011, but even otherwise since both of them joined service on 08.08.1994 and respondent No. 1 is senior by age. Such seniority position is even an admitted position before the learned Single Judge and doing away with the element of seniority and granting provincialisation to a junior, prior to the respondent No. 1 would also attract Article 14 and 16 of the Constitution of India.

Also it is stated that the only plea of the respondents before learned Single Judge was subject combination, not seniority. This Court by judgment dated 23.09.2016, in WP(C) 3190/2012, has held the provincialisation Act of 2011, to be unconstitutional only on the ground of restricting the number of teachers to be granted provincialisation under the schedule of the 2011 Act on the ground of being violative of the Central Act of Right to Education Act, 2005 (the Law framed for implementation of Article 21A).

It is stated that judgment dated 28.11.2018, of the Ld. Single Judge and Judgment and order dated 04.03.2021, of the Ld. Division Bench are not per incurium of the judgment dated 23.09.2016 of this Hon'ble Court in WP(C) 3190/2012. It is stated that the judgment dated 23.09.2016, does not affect the decision of the Ld. Single Judge sought to be reviewed. It is stated that the respondent No. 1 being senior, is entitled to provincialisation prior to the said respondent No. 6, not only in terms of Section 4 of the Act of 2011, but also on the basis of her admitted seniority over respondent No. 6 before Ld. Single

Judge.

Further, it is stated that Section 24 of the Act of 2017 directs that the cases of the teachers provincialised prior to 23.09.2016, shall be reviewed as per the eligibility norms set forth for provincialisation under the Act of 2017. The Ld. Single Judge by order dated 28.11.2018, also directed for consideration of the case of respondent No. 6 under Section 13(6) of the Act of 2017. The said direction is also in tune with Section 24 of the Act of 2017. In the case of the respondent, is entitled to provincialisation in terms of the decision of the learned Single Judge upheld by the learned Division Bench, against the said respondent No. 6, with effect from 01.01.2013. Be it mentioned that vide order dated 22.09.2014, Sri Kishore Kumar Deka was granted provincialisation with effect from 01.01.2013. It is stated that on 01.01.2013 and also on 22.09.2014, the Act of 2011 was in force and shall govern that case of provincialisation of the respondent No. 1. It is also stated that the respondent No. 1 is entitled to provincialisation at least with effect from 01.01.2013 in terms of the decision of the learned Single Judge dated 28.11.2018, upheld by the learned Division Bench, vide its judgment dated 04.03.2021. Therefore, it is contended that the review petition deserves to be dismissed with cost.

6. Ms. Musahary, learned standing counsel for the review petitioners submits that while passing the order dated 28.11.2018, this Court has directed the Director of Secondary Education, Assam to pass necessary order taking into consideration that the opposite party/respondent No. 1 herein is senior to the respondent No.6, as per the provision of Section 4 of the Act of 2011, and after following necessary procedure under the law as required. But, Ms. Musahary submits that there is practical difficulty in passing such an order under Section 4 of the Act 2011 as the same has already been declared ultra-virus by a Division

Bench of this Court in WP (C) No. 3190/2012, vide Judgment and Order dated 23.09.2016. Ms. Musahary further submits that as all rules, orders, notifications issued there under, shall stand repealed, and thereafter, Assam Education (Provincialisation of Services of Teachers and Re-organization of Educational Institutions) Act, 2017 was enacted, now the provision of new Act will be applicable in case of Smt. Kalpana Devi and as such, the Judgment and Order dated 28.11.2018, passed in WP (C) No. 5914/2014, by this Court could not be complied with unless effective /necessary review or modification /correction is made. Her service could not be provincialized under the said Act of 2011. And as such, there is a requirement of review of the order dated 28.11.2018, passed by this Court in WP(C) No.5914/2014.

7. Per contra, Mr. Chanda, the learned counsel for the opposite party/respondent No.1, has vehemently opposed this petition. Mr. Chanda submits that the opposite party/respondent No.1 has already filed a contempt case, being Cont.Cas(c) No. 499/2021, after the said proceeding being initiated, the petitioner has filed the present petition only to circumvent the order of this Court. Mr. Chanda also submits that the present petition is filed after 6 years from the judgment of the Ld. Single Judge, which is much beyond the stipulated period of 30 days, for filing a review petition and without there being any explanation, the instant review petition is liable to be dismissed on the ground of delay and laches. Besides, Mr. Chanda submits that the judgment and order dated 23.09.2016, of this Court in WP(C) 3190/2012, was against the state of Assam including the Education Department. As such, the review petitioners are barred from raising the plea of non discovery of the said judgment after due diligence.

7.1. Further, Mr. Chanda submits that the order under review, had already been

upheld by a Division Bench of this Court, vide judgment and order dated 04.03.2021, in W.A. No. 28/2019, filed by proforma respondent No 2 herein this petition. And since no further appeal is preferred thereafter, the matter has attained finality. And as such, it is beyond the competence of this Court to review/modify its order after the same has been upheld and confirmed by the Division Bench and the right to review has extinguished after the decision of the Division Bench. It is also stated that Section 114(a) and Order XLVII Rule 1 of CPC provides for review of a judgment from which an appeal is allowed by the Code, but no appeal has been preferred, whereas in the instant case, not only an appeal has been preferred, but the same has been decided confirming the Judgment of the Ld. Single Judge. It is stated that the spirit of Section 114(a) and Order XLVII Rule 1 of CPC is applicable in the instant proceeding also. Under such circumstances, Mr. Chanda, learned counsel for the respondent No.1 has contended to dismiss the review petition with costs.

8. Having heard the submission of learned Advocates of both the parties, I have carefully gone through the petition and the documents placed on record and also perused the order of this Court dated 28.11.2018, and I find substance in the submission of Mr. Chanda, learned counsel for the opposite party/respondent No.1.

9. The principles, on which review is permissible, is well settled in catena of decisions of Hon'ble Supreme Court. In the case of **Kamlesh Verma v. Mayawati**, reported in (2013) 8 SCC 320, Hon'ble Supreme Court had summarized the principles as under:-

“Summary of the principles

20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1. When the review will be maintainable:

- (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;
- (ii) Mistake or error apparent on the face of the record;
- (iii) Any other sufficient reason.

The words “any other sufficient reason” have been interpreted in *Chhajju Ram v. Neki* [(1921-22) 49 IA 144: (1922) 16 LW 37: AIR 1922 PC 112] and approved by this Court in *Moran Mar Basselios Catholicos v. Most Rev. Mar Poulse Athanasius* [AIR 1954 SC 526 : (1955) 1 SCR 520] to mean “a reason sufficient on grounds at least analogous to those specified in the rule”. The same principles have been reiterated in *Union of India v. Sandur Manganese & Iron Ores Ltd.* [(2013) 8 SCC 337 : JT (2013) 8 SC 275]

20.2. When the review will not be maintainable:

- (i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.
- (ii) Minor mistakes of inconsequential import.
- (iii) Review proceedings cannot be equated with the

original hearing of the case.

- (iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.
- (v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.
- (vi) The mere possibility of two views on the subject cannot be a ground for review.
- (vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.
- (viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.
- (ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived.”

10. Keeping the above principles in mind, now an endeavour will be made to find out if there is any discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him; if there is any mistake or error apparent on the face of the record; or if there is any other sufficient reason.

11. From the pleadings of the parties and also from the submissions of learned counsel for both the parties, following facts and circumstances emerges:-

- (i) The order under review, in WP(C) No.5914/2014, was passed by this Court on 28.11.2018.
- (ii) This review petition was filed on 10.09.2024, after almost six years.
- (iii) No statement or averment explaining the cause of delay or laches in preferring the review petition after long six years has been made in the review petition.
- (iv) Indisputably, the stipulated period for filing review petition is only 30 days. Thus, lack of due diligence on the part of the review petitioner, is writ large from the record and from its conduct.
- (v) The opposite party/respondent No.1 has already filed a contempt case being, Cont. Cas (C) No. 499/2021, and after initiation of the said proceeding, the petitioners have filed the present petition.
- (vi) The proforma respondent No.2 herein had challenged the order under review in writ appeal being W/A No. 28/2019, and the order under review, has been upheld by a Division Bench of this Court, vide judgment and order dated 04.03.2021.
- (vii) And since no further appeal is preferred thereafter, the order under review, in WP(C) No.5914/2014, dated 28.11.2018 has attained finality.

12. It is also apparent from the contention made in the review petition and also from the submission of Ms. Musahary, learned standing counsel, Education (Secondary) Department, for the review petitioners that review is being sought for basically on the ground that :-

- (i) The order under review, dated 28.11.2018, this Court has directed the Director of Secondary Education, Assam to pass necessary order

taking into consideration that the opposite party/respondent No.1 is senior to the respondent No.6 therein, as per the provision of Section 4 of the Act of 2011, but, Act of 2011 has already been declared ultra-virus by a Division Bench of this Court in WP (C) No. 3190/2012, vide Judgment and Order dated 23.09.2016. Ms. Musahary submits that all rules, orders, notifications issued there under, shall stand repealed, and thereafter, Assam Education (Provincialisation of Services of Teachers and Re-organization of Educational Institutions) Act, 2017 was enacted and now the provision of new Act will be applicable in case of Smt. Kalpana Devi and as such, the Judgment and Order dated 28.11.2018, passed in WP (C) No. 5914/2014, by this Court could not be complied with unless the same is review or modified.

13. But, it appears from the record that at the time of passing the order under review, no such argument was advanced, despite the declaration of the Act of 2011 as ultra-virus by a Division Bench of this Court in WP (C) No. 3190/2012, vide Judgment and Order dated 23.09.2016. The State was a party to the said proceeding and it had also filed an appeal against the said judgment and order, being WA No. 28/2019. And as such, the review petitioners could have very well pointed it out to the learned Single Judge while the order under review was passed on 28.11.2018, or in the WA No. 28/2019, before the Division Bench. Having not done so, now the review petitioners have approached this Court after long six years and that too when contempt proceeding has already been initiated against it. Mr. Chanda, the learned counsel for the respondent No.1 has rightly pointed this out and this Court find substance in his submission and also record concurrence to the same. Besides, as pointed out by Mr., Chanda,

there is inordinate delay of long six years in filing this review petition while the stipulated period is only 30 days as per Article 124 of the Limitation Act. Thus, lack of due diligence is writ large on the face of record. Admittedly, one contempt proceeding has also been initiated against the review petitioner by the respondent No.1 herein for non-compliance of the order under review. Thus, during pendency of the contempt proceeding, filing of this review petition, that too without any explanation for delay and without due diligence, goes a long way to fortify the contention of the respondent No.1 that only to circumvent the order under review this petition has been filed.

14. It is also to be noted here that the limitation period for filing a review petition against a judgment in writ proceedings under Article 226 of the Constitution, is 30 days as prescribed under Order XLVII Rule 1 of the Code of Civil Procedure, 1908 (CPC), and Article 124 of the Limitation Act, 1963. However, the Courts can condone delays beyond 30 days, if sufficient cause is shown via a separate application under Section 5 of the Limitation Act. And Rule 4 Chapter X of Gauhati High Court Rules provides that every application for review shall be filed within time.

14.1. Indisputably, no such application has been filed under Section 5 of the Limitation Act, showing sufficient cause for filing the review petition almost after six years. On this count alone, this review petition is liable to be dismissed. The learned counsel for the respondent No.1 also rightly pointed this out at the time of hearing.

15. Over and above, the proforma respondent No.2 herein this petition had preferred an appeal against the order under review being WA No. 28/2019 and the same had been dismissed by the Division Bench of this Court and there by

affirmed the order under review, vide judgment and order dated 04.03.2021. Thereafter, no appeal has been preferred by the appellant State and as such, the order under review has already attained finality. And having the order under review been stood affirmed in WA No. 28/2019, this Court afraid it is beyond the scope and ambit of this Court to review the same. The contention of the respondent No.1 in this regard appears to be justified and the same mandate an acceptance of this Court.

16. Under the given factual as well as legal matrix, this Court is of the considered opinion that the present review petition is not maintainable, for the following reasons:-

- (i) None of the grounds for maintaining a review petition, as mentioned in the case of **Kamlesh Verma (supra)** could be demonstrated by the review petitioners.
- (ii) There is no statement and averment in the petition as to why there is inordinate delay of almost six years, in filing the present petition.
- (iii) There is lack of due diligence on the part of the review petitioners.
- (iv) After dismissal of writ appeal being W/A No. 28/2019, filed by the proforma respondent No.2 herein, vide judgment and order dated 04.03.2021, and having no appeal being preferred, the order under review has already attained finality.

17. In the result, this Court finds this petition not at all maintainable and accordingly, the same stands dismissed. Since the grounds for filing this petition appears to be not bona-fide one, this Court, while dismissing the same, is

inclined to impose a cost of Rs.20,000/ (Rupees Twenty Thousand) which shall be deposited with the Gauhati High Court Legal Services Authority within a period of four weeks from today by the review petitioner No. 1. Consequent upon dismissal of this review petition, the review petitioners herein are under obligation to comply with the order dated 28.11.2018, of this Court passed in WP(C) No.5914/2014, within the period stipulated therein by this Court.

JUDGE

Comparing Assistant