
(2022) 05 GAU CK 0047

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 4865 Of 2021

Abdul Noor

APPELLANT

Vs

State Of Assam And 4 Ors

RESPONDENT

Date of Decision : 31-05-2022

Acts Referred:

Citation : (2022) 05 GAU CK 0047

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : S Borthakur

Final Decision : Allowed

Judgement

1. Heard Mr. S Borthakur, learned counsel for the petitioner. Also heard Mr. R Mazumdar, learned counsel for the respondents no. 1, 2 and 4 being the authorities under the Secondary Education Department, Government of Assam and Ms. M Das, learned counsel for the respondent no. 3 being the Principal Accountant General(A & G) and Mr. J Abedin, learned counsel for the respondent no. 5 being the Principal of Nilbagan Model Higher Secondary School.

2. The petitioner is an Assistant Teacher in the Nilbagan Model Higher Secondary School having been appointed as per order memo No.Pro/AAP/592/92/3312-18 dated 27.10.1993 issued by the Inspector of Schools, Nagaon. By a subsequent notification of the Inspector of Schools, Nagaon dated 19.09.2000, the service of the petitioner as an Assistant Teacher in the Nilbagan Model Higher Secondary School was provisionally regularized. The petitioner was suffering from tuberculosis (TB) and for the purpose, he was under treatment in the District TB Centre, Nagaon. The District TB Officer, Nagaon issued a certificate dated 03.08.2019 that the petitioner Abdul Noor has been suffering from TB and was under continuous treatment as per the TB No. 105/1445/19 and he was advised physical rest for a period of 90 (ninety) days on medical ground from 01.08.2019 upto 29.10.2019. In the circumstance, the Inspector of Schools, Nagaon by the

order dated 24.09.2019 had sanctioned a TB (Special Leave 1st part) to the petitioner from 01.08.2019 upto 29.10.2019. Subsequently, by another order of the Inspector of Schools, Nagaon dated 26.11.2019, a TB (Special Leave 2nd part) was sanctioned from 30.10.2019 upto 27.01.2020. Thereafter, by the order dated 16.07.2020, a TB (Special Leave 3rd part) was sanctioned from 28.01.2020 to 26.04.2020 and the TB (Special Leave 4th part) was sanctioned from 27.4.2020 to 25.07.2020 and thereafter, TB (Special Leave 5th part) was sanctioned by the order dated 26.08.2020 from 26.07.2020 to 23.10.2020 and TB (Special leave 6th part) was sanctioned by the order dated 31.10.2020 to the petitioner from 24.10.2020 to 21.01.2021.

3. A medical certificate dated 21.01.2021 was issued by the Senior Medical and Health Officer BP Civil Hospital, Nagaon certifying that the petitioner was under treatment for TB as per TB No. 105/1445/19 for long term illness from 22.01.2021 upto 40 (forty) days and he was advised bed rest for those forty days. Thereafter, the certificate dated 10.03.2021 was issued by the District TB Officer of the District TB Centre, Nagaon certifying that the petitioner who was suffering from TB and was under continuous treatment for TB vide TB No. 105/1445/19 was found to have recovered and was fit for duty. During the intervening period from 21.01.2021, the petitioner made an application for leave without pay inasmuch as he was advised further bed rest for 40 (forty) days after 22.01.2021.

4. The petitioner claims to have reported back for his duty as an Assistant Teacher in the Nilbagan Model Higher Secondary School after 10.03.2021. The allegation raised is that inspite of the petitioner having reported for duty in the school, the Principal of the school had not allowed the petitioner to enter the premises nor to sign the attendance register and even the salary and allowance of the petitioner from March, 2021 had not been paid. With the aforesaid grievances, this writ petition is instituted.

5. The respondent Principal has filed an affidavit-in-opposition. In the affidavit-in-opposition, in paragraph 5, the Principal raises an allegation that although the petitioner was on medical leave for having suffered from TB, but at the same time, the petitioner was also imparting teaching in a private school namely, KRL Vidyapth which was located about 500 meters away from the Nilbagan Model Higher Secondary School. It is stated that the local public of Nilbagan as well as the students and the guardians were aware that the petitioner was imparting teaching in a private school. As because the petitioner was in leave for a long period due to TB, the academic affairs of the school had suffered. In paragraph 6, an allegation is raised that after the TB leave was over on 21.01.2021, the petitioner did not submit any medical fitness certificate nor was desirous to join his duties. It is also stated that the petitioner visited the school on 22.01.2021 and submitted an application for leave without pay praying for leave till he recovers from illness. Accordingly, in paragraph 8, it is stated that the petitioner did not join his duties on 03.03.2021. The Principal also refers to some election

duty performed by the petitioner for the Assembly Election which was held on 01.04.2021. In paragraph 9, the Principal denies that the petitioner had joined his service in the school in March, 2021 and has stated that he was absent all along.

6. The absence of the petitioner from duty is the stand taken by the Principal to deny the salary and allowances to the petitioner.

7. We have also heard Mr. R Mazumdar, learned counsel for the authorities in the Secondary Education Department, Government of Assam and wanted to know from the learned counsel as to whether if at all the petitioner had not joined his duty, what was the course open for the Principal under the law to act against the petitioner. Was the course of not allowing the petitioner to enter the school and deny his salary was an option under the law or the law requires some other action to be taken by the Principal.

8. Mr. R Mazumdar, learned counsel for the Secondary Education Department fairly submits that if the petitioner had not reported for duty without availing proper leave, it may be a case of misconduct which requires initiating a proceeding under the Assam Services (Discipline and Appeal) Rules, 1969.

9. We are in agreement with the learned counsel for the Secondary Education Department, Government of Assam.

10. The respondent Principal also annexes certain resolution of the SMDC to justify the action but still the core issue remains as to whether the SMDC also has the power under the law to deny the salary and not to allow the petitioner to enter the school because of any alleged misconduct that he may have committed.

11. Considering the matter in its entirety, we are of the view that the allegation against the petitioner by the Principal as well as the SMDC of the school can at the best be an alleged misconduct and for such alleged misconduct, the appropriate remedy under the law is to initiate a proceeding under the Assam Services (Discipline and Appeal) Rules, 1969 and not a unilateral action by the authorities to not to allow the teacher to enter the school or to deny his salary and allowances. Any action by the school authorities in not allowing a teacher to join his duty or to deny the salary and allowances would have to be construed to be a unilateral action based upon certain allegation against which the teacher concerned would not have had an opportunity to defend himself and such action in our view would also be in violation of the principle of natural justice.

12. Considering the matter in its entirety, we interfere with the action of the school authorities of the Nilbagan Model Higher Secondary School and direct that the salary and allowances of the petitioner be paid from the date the petitioner joined the school after his treatment of TB and also to allow him to resume his duties and if the school authorities have any issues against the petitioner based on any allegation which the petitioner may have committed, the appropriate remedy under the law may be invoked and appropriate action be taken.

13. Mr. J Abedin, learned counsel for the respondent Principal has raised a serious objection as to from which date the salary will be paid inasmuch as according to the Principal the petitioner never reported for duty.

14. The answer to that would be available in the disciplinary proceeding, if initiated, against the petitioner and one of the punishments that can be imposed would be recovery of the amount unauthorizedly paid to an employee.

15. Writ petition stands allowed as indicated above.