
(2015) 04 GAU CK 0049
In the Gauhati High Court
Case No : Writ Petition (C) No. 5073 of 2010

Abhi Ram Boro

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision : 23-04-2015

Acts Referred:

Citation : (2015) 04 GAU CK 0049

Hon'ble Judges : Tinlianhang Vaiphei, J

Bench : Single Bench

Advocate : M.U. Mahmud and A.T. Sarkar, for the Appellant; R.B. Bora and N. Sarma, S.Cs., Advocates for the Respondent

Final Decision : Dismissed

Judgement

Tinlianhang Vaiphei, J—This writ petition is directed against the order dated 30-3-2004 issued by the Director of Elementary Education, Assam (respondent 2) refusing to regularize the service of the petitioner as Assistant Teacher of Krishak Mukti M.E. School.

2. The facts leading to the filing of this case, as pleaded by the petitioner, may be briefly noticed at the outset. He was appointed as Assistant Teacher of Krishak Mukti M.E. School on honorary basis on 11-4-1996 by the Managing Committee, and joined the post on the next day itself. His appointment was also approved by the District Elementary Education Officer, Darrang by the order dated 17-9-1996. He has since then been rendering his service to the school without any remuneration. By the Notification dated 21-6-2000, the Government of Assam constituted a Task Force under the Chairmanship of the Additional Secretary to the Government of Assam to streamline the procedure of regularization, adjustment of dropped and honorary teachers in High School, M.E. and L.P. Schools of various districts. When nothing was done by the Task Force for regularisation of his service, he approached this Court in WP(C) No. 5212/2001 for regularization of his service in view of the said notification dated 21-6-2000. This Court by the order dated 1-8-2001 disposed of the writ petition by directing

the respondents to consider his case and pass an appropriate order in terms of the said notification dated 21-6-2001. The petitioner thereafter communicated the order of this Court to the respondent No. 2 for compliance.

3. In the meantime, one post of Assistant Teacher was lying vacant due to the retirement of one Narayan Chandra Das of the same School. He, therefore, filed a representation to the respondent authorities praying for appointment to this vacant post. The Headmaster of the School vide his letter dated 2-9-2002 also requested the District Elementary Education Officer, Darrang to adjust the petitioner to that post but in vain. After considerable delay, the respondent No. 2 finally took up the case and issued the impugned order dated 30-3-2004 refusing to regularise his service on the ground that he was not a dropped teacher inasmuch as he was appointed by the Managing Committee long after provincialization of the school. His contention is that he is subjected to hostile discrimination inasmuch as the respondent No. 6, who was also working as honorary teacher of Atul Baruah L.P. School in the Nalbari district like him has been adjusted against one permanent vacant post at Dakhin Ulubari L.P. School. Aggrieved by this, he is once again approaching this Court by way of this writ petition.

4. The writ petition is opposed by the BTC-respondents by filing their affidavit-in-opposition. It is asserted by the answering respondent that the petitioner had never disclosed the filing of W.P.(C) No. 4486/2006 before this Court, which amounts to suppression of material facts: the writ petition is liable to be dismissed for this reason alone. The writ petition is filed after the lapse of six years of issuing the impugned order and is, therefore, barred by the principles of laches. According to the answering respondent, the petitioner was appointed by the Managing Committee after provincialization of the school i.e. after 23-2-1980, but the Managing Committee has no power to make such appointment after provincialization of the school. These are the main contentions of the answering respondent in defending the impugned order.

5. After hearing Mr. M.U. Mahmud, the learned counsel for the petitioner and Mr. A.K. Bhuiyan, the learned Standing Counsel for BTC as well as Mr. N. Sarma, the learned Standing Counsel for Education (Elementary) Department, Assam, I have no hesitation to say that this writ petition has no merit nor is it maintainable. In the first place, the question as to whether the Managing Committee of a school has the power to appoint teachers after its provincialization is no longer res integra. This was decided long ago by the Division Bench of this Court in Abdul Bari (Md.) Vs. State of Assam and Others, (1999) 3 GLT 31 (a case cited by the learned counsel for BTC authorities) wherein it was held that a honorary teacher appointed by the Managing Committee in a provincialized school and approved by the Inspector of Schools has no claim for regularization. The approval given by the Inspector of Schools does not change the nature of irregular appointment. Secondly, the writ petition has been filed by the petitioner after an inordinate delay. No satisfactory explanation could be offered by the petitioner for

challenging the impugned order issued in 2004 only in the year 2010. Therefore, the writ petition is also not maintainable being barred by the principles of laches. It is, however, contended by the learned counsel for the petitioner that when the respondent authorities could appoint the respondent No. 6, who was also appointed as honorary Assistant Teacher after provincialization of the school, they cannot deny regularization the same benefit to the petitioner. Refuting this contention, the learned standing counsel for the BTC authorities contends that even if the service of the respondent No. 6 has been illegally regularized also, such past illegal action cannot be used by the petitioner to claim similar relief. To fortify his contention, he places reliance upon the decision of the Apex Court in Chandigarh Administration and another Vs. Jagjit Singh and another, AIR 1995 SC 705 : (1995) 2 BC 191 : (1995) 1 JT 445 : (1995) 110 PLR 176 : (1995) 1 SCALE 131 : (1995) 1 SCC 745 : (1995) 1 SCR 126 . I find force in the contention of the learned standing counsel. It will be instructive to reproduce below the relevant paragraph of the said decision:

"8. We are of the opinion that the basis or the principle, if it can be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length. Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent-authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law -- indeed, wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law -- but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent-authority to repeat the illegality, the Court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioners' case is similar to the other persons"

case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the Court and seeking the relief. Is it not more appropriate and convenient to examine the entitlement of the petitioner before the Court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the case nor is his case. In our considered opinion, such a course--barring exceptional situations -- would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world. (What is the position in the case of orders passed by authorities in exercise of their quasi-judicial power, we express no opinion. That can be dealt with when a proper case arises.)"

6. The result of the foregoing discussion is that this writ petition is not maintainable and is otherwise devoid of merit. The writ petition is, therefore, dismissed, but by directing the parties to bear their respective costs.