
(2012) 11 GAU CK 0052
In the Gauhati High Court
Case No : WA No. 260 of 2011

Anil Ch. Saikia and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 09-11-2012

Acts Referred:

Citation : (2013) 2 GLD 568 : (2013) 2 GLT 539

Hon'ble Judges : Adarsh Kumar Goel, C.J;N. Kotiswar Singh, J

Bench : Division Bench

Advocate : M.H. Rajbarbhuyan, for the Appellant; A.D. Choudhury, for the Respondent

Final Decision : Dismissed

Judgement

N. Kotiswar Singh, J.—The present appeal arises out of the common judgment and order dated 15.2.2011 passed in three writ petitions being W.P(C) No. 4477 of 2010, W.P(C) No. 4478 of 2010 and W.P(C) No. 4479 of 2010, as common issues were raised in the said three writ petitions. The petitioners therein had sought for regularising their services as Principals of their respective schools in which the petitioners were allowed to hold charge/current charge as Principals, which was rejected by the learned Single Judge. The petitioners were serving as Assistant teachers/subject teachers/graduate teachers on regular basis. The petitioners, while serving as Assistant teachers/subject teachers/graduate teachers on regular basis, were allowed to hold the charge of Principals in their respective schools under F.R.49 (c) against the vacant posts of Principals arising out of retirement/resignation of the respective incumbent Principals from the respective posts during the period 1999-2010. It was the contention of the writ petitioners that since they were allowed to function as the Principals in-charge without any break and they continued to discharge the duties and responsibilities of the higher post in addition to their normal duties and also claiming that those who were similarly situated had been regularised and given pay benefits attached to the higher post of Principals, approached this Court by filing writ

petitions. The learned Single Judge, after hearing the parties, dismissed the writ petitions by giving the following findings at para Nos. 5 and 6:

5. Mr. S.K. Das, learned Standing Counsel, Education Department submits that the issue raised, in the writ petitions is no longer res-integra and has been decided by the Division Bench of this Court in the judgment reported in Deba Kanta Sarmah Vs. State of Assam and Others, In the said decision same was the issue as has been raised in the present writ petitions. The Division Bench was dealing with the issue on the basis of the different views taken by two different courts. Upon threadbare discussions of the matter and dealing with the entire provisions of F.R 49 and also referring to the earlier Division Bench judgment of this Court it has been held that the petitioner involved in the said petition is not entitled to any benefits as he was holding only the charge of the headmaster.

6. The petitioners having accepted the assignment of the Principal Incharge under F.R. 49(c) while holding the substantive post cannot now turn around the same so as to claim the benefits under F.R 49(a). The orders by which they were allowed to hold the charge of Principal Incharge having specifically mentioned the provisions of F.R. 49(c) and they having accepted the said position are not entitled to claim that their cases are required to be converted to that of F.R. 49(a).

2. Heard the learned counsel appearing for the parties.

3. It is an admitted fact that the petitioners were directed to hold the charge of the post of Principals under F.R. 49 (c). Therefore, it may be relevant to reproduce the provision of F.R. 49(c) as below:-

(c) No additional pay shall be admissible to a Government servant who is directed to hold current charge of the routine duties of a higher post irrespective of the duration of the additional charge.

4. A plain reading of the aforesaid F.R. 49(c) clearly shows that no additional pay shall be admissible to a Government servant who is directed to hold current charge of the routine duties of a higher post. Therefore, evidently the petitioners would not be entitled to higher pay attached to the post of Principal under the aforesaid provisions of F.R. 49 (c). It is, however, the contention of the petitioners that since they are holding the higher post of Principals on in-charge basis as per the directions of the State respondents, they are entitled to the pay scale of higher post of Principal as provided under F.R. 49(a), which is reproduced below:-

49 (a) "Where a Government servant is formally directed to hold full charge of the duties of a higher post or posts which is or are in the same office as his own and in the same cadre/line of promotion, in addition to his ordinary duties, he shall be allowed the pay of the higher post or the highest post if he holds full charge of more than one post, in addition to ten percent of the presumptive pay of the additional post or posts, if the additional charge is held for a period

exceeding 39 days but not exceeding three months: Provided that the occurrence of the Finance Department shall be obtained for making such arrangement and for payment of the additional pay.

A reading of the aforesaid F.R.49 (a) reveals the following:

- i) a formal order is to be issued to hold "full charge" of the duties of the higher post in addition to his ordinary duties,
- ii) the said arrangement is to be made only after the concurrence of the Finance Department for making such arrangement and for payment of additional pay.

In the case of the writ petitioners/appellants, no order was issued to hold "full charge" of the post of Principal and there is no mention of any concurrence of the Finance Department for issuing such an order. On the other hand, the orders issued in favour of the petitioners make it very clear that the orders had been issued under F.R. 49(c) to hold charge/current charge as Principal. The learned Single Judge also noted that the petitioners having accepted the assignment of the Principals in-charge under F.R. 49(c) while holding substantive post as Assistant Teachers cannot now turn around the same so as to claim the benefits under F.R. 49(a).

5. We have also perused the judgment and order dated 12.2.2009 passed in W.P(C) No. 7669/2004, which is relied upon by the writ petitioners/appellants. As also observed by the learned Single Judge in the impugned judgment and order, we have also noted that in the said judgment and order dated 12.2.2009 passed in W.P(C) No. 7669/2004, there was no reference to F.R. 49 (c) in the orders allowing holding of charge/current charge as Principals. The learned Single Judge in the said writ petition, W.P(C) No. 7669/2004 had observed that the State respondents have not pleaded in specific terms against the entitlement/claim made by the petitioners in return for the service rendered by them in higher post. It was in that context of non mentioning of FR 49(c) in the in charge arrangement orders and lack of specific denial of the entitlements of the petitioners therein, the Ld. Single Judge had allowed the said writ petition. However, in the present case, FR49(c) has been specifically mentioned in all the orders allowing holding of charge/current charge of the post of Principals. Therefore, we also in agreement with the Ld. Single Judge that the aforesaid judgment rendered in W.P(C) No. 7669/2004 is not applicable to the present writ petitions.

6. In the present case, the fact that the State Government had specifically mentioned F.R. 49 (a) at the time of making the aforesaid arrangement to hold the higher post of Principals on in-charge basis, clearly shows that the State Government had taken a specific conscious decision to appoint the petitioners to hold the post of Principals on in-charge basis under F.R. 49(c) and not under F.R. 49(a). Therefore, merely because the State Government also could have appointed the petitioners under F.R. 49 (a) would not entitle the present petitioners for a direction to the State respondents to grant the pay scale of the

higher post of Principal as contemplated under F.R. 49(c).

7. We have also noted that in the present set of writ petitions, the petitioners have not challenged their appointments under F.R. 49(c). Therefore, the writ petitioners, having accepted their appointments to hold the charge of Principals under F.R. 49(c) and having acquiesced, cannot be granted the relief which can be granted only when they are appointed under F.R. 49(a). This aspect also has been dealt with and decided by a Division Bench of this Court in Deba Kanta Sarmah Vs. State of Assam and Others, where this Court had followed the decision of another Division Bench rendered in Golap Chandra Chetia Vs. Assam Administrative Tribunal and Others, which held that FR 49(a) contemplates that there should be appointment on two or more independent posts at one time and merely directing to hold charge of another post in addition to his own duties would not entitle to the pay of the higher post. We have not found any material or reason to hold a different view from the decisions of the Division Bench of this Court rendered in the aforesaid cases. In view of the above, there is no merit in the writ appeals and writ appeals are dismissed.