
(2016) 03 GAU CK 0039
In the Gauhati High Court
Case No : W.P. (C) 6638 of 2015

Arunima Pathak

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 22-03-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 4 GauLJ 604 : (2016) 4 GauLT 343

Hon'ble Judges : Mr. A.K. Goswami, J.

Bench : Single Bench

Advocate : Ms. P. Barman, Advocate, for the Appellant; Mr. U.K. Goswami, SC, Education (Secondary) Department and Mr. P.D. Nair, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Mr. A.K. Goswami, J.—By this writ application, the petitioner has challenged the letter dated 12.10.2015 issued by the Director of Secondary Education, whereby the petitioner was relieved of the charge of the Principal i/c of Dampur Higher Secondary School, Kamrup, and one Sri Ajit Chandra Kalita, a Post-Graduate teacher (respondent No. 7 herein) was allowed to hold the charge of Principal i/c of the school along with financial power to draw and disburse the salary of the staff of the school in addition to his normal duties as Post-Graduate teacher. By the aforesaid order, the earlier order dated 03.06.2014, whereby the petitioner had been allowed to hold the charge of Principal i/c along with financial power to draw and disburse the salary of the staff of the school in addition to her normal duties as a teacher of school, was recalled. The petitioner has also prayed for a writ of mandamus to the respondent authorities to release the salary of the petitioner for the period from 13.09.2015 to 30.09.2015.

2. The case of the petitioner, as projected in the writ petition, in a nutshell, is that she possesses the Degree of B. Ed. and M.A. in the subject of Education and, upon being duly selected by the State Selection Board, she was appointed

as a Subject Teacher in Dampur Higher Secondary School on 25.1.1996. Prior to that, she had served as a Subject Teacher in Education in Rangia Higher Secondary School against a non-sanctioned post without any pay for one year. On the eve of retirement of the Principal of Dampur Higher Secondary School, on 30.09.2013, a show-cause notice dated 08.05.2013 was issued to the petitioner by the Inspector of Schools alleging that the petitioner did not attend the Second year classes on 21.11.2012 as well as the School Management and Development Committee (for short, "SMDC") meeting held on 13.04.2013, to which she submitted her reply on 14.05.2013 stating that on 21.11.2012 she was ill and had gone to the school for submitting application seeking two days" leave and that she attended the First year classes and did not attend the Second year classes as she was not well and, moreover, she had already finished her course and had also revised the course once. With regard to the non-attending the meeting of the SMDC on 13.04.2013, it was stated by her that she had gone to Barpeta to attend the funeral ceremony of her uncle. The petitioner was placed under suspension by the Director of Secondary Education by order dated 17.08.2013 without considering her reply. Aggrieved, the petitioner filed a writ petition which was registered as WP(C) 5683/2013. Considering that the petitioner had filed an appeal dated 30.08.2013 before the Commissioner and Secretary to the Government of Assam, Education Department, which was not attended to, the Court, by an order dated 27.09.2013, directed the Commissioner and Secretary to pass a speaking order within a period of two weeks on the appeal filed by the petitioner against the suspension order with a further direction to the respondent authorities not to appoint any serving teacher of the school as Principal i/c until the appeal was decided by the Commissioner and Secretary. Subsequently, the departmental proceeding was dropped by an order dated 14.01.2014 as in the inquiry no material was found against the petitioner to indict her. After the departmental proceeding had been dropped, the petitioner was allowed to hold the charge of Principal along with financial power by an order dated 03.06.2014. On 12.09.2015, at the instance of the SMDC of the Dampur Higher Secondary School, a public meeting was organised by Dampur Gaon Unnayan Committee (for short, "DGUC") in the school premises and the petitioner was compelled to attend the said meeting and the DGUC adopted resolutions on the basis of some baseless allegations and prevented the petitioner from discharging her duties as Principal i/c. On 19.09.2015, when she had gone to school at around 8-15 A.M., she was prevented by some miscreants from entering into her class room and the petitioner immediately informed the Officer-in-Charge, Hajo Police Station about the incident and lodged an Ejahar. On 05.10.2015, she also informed the Director of Secondary Education about the aforesaid incident, but the authority, instead of taking action against the DGUC and the miscreants, passed the impugned order dated 12.10.2015.

3. It is pleaded that though for the period from 13.09.2015 to 30.09.2015 the petitioner was discharging her duties, the members of the DGUC not only forcefully prevented the petitioner from signing the Attendance Register but also

struck off the signatures of the petitioner from the Attendance Register. It is also pleaded that a conspiracy had been hatched to deprive the petitioner of her legitimate claim to hold the post of Principal i/c of the school.

4. An Additional affidavit was filed by the petitioner bringing on record the resolutions adopted in the meeting of the DGUC on 12.09.2015 and the letter dated 19.09.2015, addressed by the Secretary, DGUC, to the Inspector of Schools, Kamrup (Rural) District Circle.

5. An affidavit was filed by the respondent No. 5. Respondent No. 6, i.e., the DGUC, though represented by the same counsel, has not filed affidavit. In the affidavit of respondent No.5, it is stated that the petitioner is an insincere and unpunctual teacher and is not fit to hold the post of the Principal of the school and the earlier Principal, in his letter dated 12.08.2013, whereby he had forwarded the seniority list of the teachers, made an adverse note against the petitioner. It is pleaded that the inquiry report, based on which the order dated 14.01.2014 was passed by the Director of Secondary Education, is a farcical and partial one and it failed to reflect the truth and, as such, there was a prayer by the SMDC, vide letter dated 24.03.2014, for review of the said order. In paragraph 9 of the affidavit, it is alleged that the petitioner had misused the financial power vested upon her and some instances of such irregularities were cited in paragraphs 9(a) to 9(d). The SMDC felt that amounts were misappropriated and there was embezzlement of funds and the Vice-President of the SMDC lodged an Ejahar on 02.12.2015 before the Officer-in-Charge, Hajo Police Station, in this regard. The report of the Inspector of Schools, dated 30.09.2015, is also relied upon against the petitioner. It is averred in the affidavit that in view of the inaction on the part of the Director of Secondary Education with regard to the grievances of the general public of Dampur village, the SMDC decided to bring the entire matter to the notice of the general public for their information and, accordingly, the DGUC was requested to convene a public meeting. It is in this background it is averred that DGUC had requested for engagement of a suitable person to hold the charge of Principal i/c as the petitioner was not a desirable and competent person to hold the post. It is pleaded that DGUC is not against any individual person, but against the person whose activities are detrimental to the interest of the institution.

6. In the reply affidavit that was filed by the petitioner, it is stated that since 1986 till 21.12.2012, there was no allegation against the petitioner. The allegations made in paragraphs 9(a) to 9(d) are denounced as false and fabricated.

7. No affidavit is filed by the Education Department, but records have been produced.

8. I have heard Ms. P. Barman, learned counsel for the petitioner. Also heard Mr. U.K. Goswami, learned standing counsel, Secondary Education Department, appearing for respondent Nos. 1 to 4, and Mr. P.D. Nair, learned counsel,

appearing for respondent Nos. 5 and 6. None appears for respondent No. 7, who is currently holding the post of i/c Principal of Dampur Higher Secondary School.

9. Ms. Barman, learned counsel has submitted that the fact that the petitioner is the senior-most Post-Graduate teacher is not in dispute and she is going to retire on 31.05.2017. It is submitted by Ms. Barman that presently no regular Principal is being appointed in any of the Higher Secondary Schools because of pending litigations and only i/c Principal are appointed. SMDC did not want the petitioner to be appointed as i/c Principal as they wanted to have their favoured person as the i/c Principal of the school. It is submitted by Ms. Barman that false accusations had been made against the petitioner earlier also. Again false allegations of misappropriation are levelled impeaching upon the integrity of the petitioner with an oblique motive. It is submitted by Ms. Barman that the petitioner was prevented from discharging her duties at the instigation of SMDC and, after she had taken over the charge, she was discharging her duties as Principal i/c sincerely and the academic atmosphere of the school was also peaceful. It is contended by her that the impugned order is stigmatic in character and was passed as a measure of punishment without affording her any opportunity. She submits that the entire episode was orchestrated by the SMDC.

10. Mr. P.D. Nair, learned counsel for respondent Nos. 5 and 6 has submitted that the petitioner does not have any vested right to hold the post of Principal i/c and in any view of the matter, because of the allegations against her, she is not a desirable person to hold the post of Principal i/c. Mr. Nair has specifically drawn the attention of the Court to the inquiry report dated 30.09.2015 submitted by the Inspector of Schools, which is reproduced below:

"No..../2015/1498

Dated Amingaon the 30th September, 2015

From:- Sri N.C. Boro, M.A. B.Ed., AES-I,

Inspector of Schools, KDC, Amingaon.

To,

The Director of Secondary Education,

Assam, Kahilipara, Guwahati-19.

Sub:- Report against Smti Arunima Pathak, Principal i/c, Dampur Highger Secondary School.

Sir,

With reference to the subject cited above, I have the honour to state about the situation of Dampur Higher Secondary School, Dampur. The school was inspected by me after received complain from the public (including the President of the SMDC). The Principal i/c of the said school completely failure as a Head of the Institution.

She has no control upon the staff and students. No relation with the SMDC and no action with guardians and public. During my inspection it was reported by the staff and public that she attend in the school lately and leave the school early in the name of official works at Inspector of Schools office and Director of Secondary Education office etc. She has no administrative capability at all.

In case of financial matter it is found that she drew Rs. 16,380.00 (Sixteen thousand three hundred and eighty) only as T.A. which was not approved either by the Govt. or by the SMDC. Most of the expenditure incurred without decision or approval of the SMDC, which is very irregular. One more irregular is the case in hand. The entire collected money Rs. 1,37,900.00 of Class-XI and XII admission was not deposited in Bank Account of the school. Hence, in my observation the Principal i/c is totally failure as the Head of the Institution. The local people very upset with her. They are protesting her entrance in the school for which the Principal i/c absent in the school for 8 (eight) days with effect from 23.09.2015 to 30.09.2015.

Therefore, you are cordially requested either to draw departmental proceeding or to remove her from the in-charge of the said school at an early date in the interest of the school and public. Otherwise law and order situation may arise in the locality.

This is for favour of your kind information and necessary action.

Yours faithfully,

Sd/-

Inspector of Schools,

KDC, Amingaon,

Guwahati-31"

Enclosed:

1. Copy of the public complain.

2. Staff position

11. Mr. U.K. Goswami, learned Standing counsel, Education (Secondary) Department also endorses the submission of Mr. Nair and contends that no interference is called for with the order under challenge.

12. It appears from the record produced by Mr. Goswami that the impugned order was passed on the basis of the letter dated 30.09.2015 issued by the Inspector of Schools. Along with the said letter, the resolutions adopted in the meeting of the DGUC held on 12.09.2015 were also annexed. A letter dated 14.09.2015 addressed to one Bhabesh Kalita, a Subject Teacher of the said school, who is second in the seniority list, requesting him to discharge the various functions of the school, was also enclosed. There is a note by Bhabesh

Kalita indicating that as he is a cancer patient, he is unable to discharge such duties and, therefore, he entrusted the duties upon the respondent No.7 herein. The respondent No.7 made an endorsement on the said letter to the effect that he had taken up the responsibility. It is to be noted that till that time the petitioner was not divested or relieved of her duties as i/c Principal.

13. In the records produced, there is also a letter dated 14.05.2014 addressed to the Director of Secondary Education, Assam, requesting him to appoint a suitable person as Principal of the school. It was indicated therein that a lot of difficulties had ensued in view of the fact that the charge of i/c Principal was entrusted upon the Inspector of Schools, Kamrup (Rural) necessitating the students and guardians to visit his office even for trivial matters. It was also indicated that the present petitioner is suitable to hold the post of Principal.

14. It appears from the resolution adopted by the DGUC in the meeting held on 12.09.2015 that the said meeting was convened on the basis of an application received from SMDC and the President of the SMDC had expressed his views regarding callous attitude of the Principal, poor administrative condition, wretched infrastructure and financial irregularities etc. in the said meeting. It is not understood under what authority the SMDC could refer a matter pertaining to a school to a Gaon Unnayan Committee. If the SMDC had any issues, it ought to have taken up the matter departmentally or by taking recourse to Court of law and it could not have raised any issue before an entity like Gaon Unnayan Committee, which does not have any authority or role in the matter of administration of a school. In the said meeting, Resolution No. 2 was adopted holding the petitioner to be incapable of maintaining the administration and educational environment, etc., condemning the behaviour of the Principal i/c towards the President and other members of the SMDC and suggesting her to voluntarily relinquish the post. By the resolution No. 2, resolution was also adopted to restrain the Principal i/c from entering into the school and to handover the post of Principal i/c to the senior-most teacher of the school. It is disturbing that the resolution also states that in restraining the petitioner from entering into the school, members of the SMDC will also take part. Resolution No. 3 adopted therein held out a threat that anyone deciding to extend support to the Principal i/c would face the consequences. It appears that the entire episode, as submitted by Ms. Barman, was orchestrated at the instance of the SMDC and the President of the SMDC had played a pivotal role. It is not a case where Dampur Gaon Unnayan Committee had, on its own, being dissatisfied with the functioning and the affairs of the school had taken up the issues with departmental authorities.

15. A perusal of the report of the Inspector of Schools, Kamrup District Circle, Amingaon, dated 30.09.2015 goes to show that he had inspected the school after receiving a complaint from the public including the President of the SMDC. The report of the Inspector of Schools has to be seen in the light of the resolutions adopted in the meeting of the DGUC held on 12.09.2015, a copy of

which he had also forwarded by the said letter.

16. If there are allegations, the Inspector of Schools ought not to have given an alternative proposal of removing petitioner from the post of Principal i/c of the School and should have only pressed for departmental proceeding. The Court cannot lose sight of the fact that earlier also, a show cause notice dated 08.05.2013 had been issued against the petitioner by the Inspector of Schools alleging negligence of duty and non-compliance of the order of the higher authority. Subsequently, on the basis of an enquiry report submitted by the Deputy Director of Secondary Education, finding no material against the petitioner, the departmental proceeding was dropped and she was reinstated in her post treating the period of suspension as on duty for all purposes. is brought on record by the Inspector of Schools to suggest that there was allegation against the petitioner from any quarter after she had assumed charge as Principal i/c on 03.06.2014 till the meeting was held by the DGUC on 12.09.2015.

17. Mr. Nair may be right in contending that the petitioner does not have a vested right to be appointed as Principal i/c, but it must not be forgotten that the petitioner, being the senior-most teacher, was allowed to hold the charge of Principal i/c on 03.06.2014 and, by the order impugned, she is relieved of the charge of Principal i/c on the basis of the report dated 30.09.2015 alleging misconduct including misappropriation of funds. Relieving the petitioner of the charge of Principal i/c on the backdrop of the allegations impeaches upon the integrity and honesty of the petitioner, who is a lady, and she has no way, in the circumstances, to redeem her reputation, an attribute which every person holds dear to his or her heart. The impugned order relieving the petitioner of the charge of Principal i/c has given credence and a ring of finality to the allegations levelled against her, that too, without affording any opportunity to the petitioner to meet the allegations. The action taken on the basis of the allegations without semblance of proof has entailed civil consequences.

18. If there are allegations warranting initiation of departmental proceeding, then there can be no half measures. It is easy to make allegations, but to take action on the basis of the allegations, without establishing the veracity of the allegations, cannot be approved by a court of law. The impugned order dated 12.10.2015, in the facts and circumstances of the case, clearly militates against the principles of natural justice.

19. The petitioner could not discharge her duties from 13.09.2015 to 30.09.2015 because of the resolution taken in the meeting dated 12.09.2015 and the overt action taken by the SMDC. In essence, she was prevented from discharging her duties by, amongst others, the members of SMDC. The petitioner cannot be denied her salary for the aforesaid period for the wrongful action of others for which she had also lodged ejahar.

20. In view of the above discussions, the order dated 12.10.2015 is set aside and quashed. The petitioner will be allowed to function as Principal i/c of Dampur

Higher Secondary School. The salary of the petitioner for the period from 13.09.2015 to 30.09.2015 shall also be paid within a period of one month from the date of receipt of a copy of this order.

21. Writ petition is allowed in terms of the above observations and directions. No cost.

22. Records produced by Mr. U.K. Goswami, learned Standing counsel, Education (Secondary) Department, be returned back to him.