
(2008) 09 GAU CK 0109
In the Gauhati High Court
Case No : Writ Petition (C) No. 1132 of 2008

Bhaben Basumatary and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 11-09-2008

Acts Referred:

Citation : (2009) 2 GLR 729

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Advocate : S.P. Deka, N. Choudhury, B.C. Deka, D. Dutta and A.J. Baishya, for the Appellant; K. Das and M.R. Pathak, for the Respondent

Final Decision : Dismissed

Judgement

Amitava Roy, J.—The writ jurisdiction of this Court is sought to be invoked to issue a writ of mandamus and/or appropriate direction to the Respondent authorities to sanction posts held by the Petitioners as Assistant Teachers in L.P. Schools located in Mangaldoi Sub-Division of the present Udalguri District in the State of Assam. A consequential direction has also been prayed for to release their salary since the year 2001.

2. I have heard Mr. S.R Deka, learned Counsel for the Petitioners, Mr. M.R. Pathak, learned Standing Counsel, Education Department, Government of Assam and Mr. K. Das, learned Standing Counsel, Bodoland Territorial Council ("the Council").

3. The Petitioners have averred that they are qualified to be appointed as the Assistant Teachers in L.P. Schools in Government Service. The Director of Elementary Education, Assam, by his order No. EPD/OB/14/2001/5 dated 8.3.2001 placed at the disposal of the District Elementary Education Officer, Darrang, Mangaldoi, posts presently held by the Petitioners. The order inter alia stipulated that the posts were created under the Operation Black Board Scheme ("the Scheme") during the 9th Five Year Plan period ending on 31.3.2002

whereafter the same would get automatically abolished. The posts carried a fixed pay of Rs. 1,800 P.M. Out of 100 such posts 57 were allotted for Mangaldoi and 43 for the Udalguri Sub-Division of the then Darrang District. According to the Petitioners, in terms of a W.T. Message dated 8.3.2001 from the Secretary to the Government of Assam, Education Department, addressed to the District Elementary Education Officer/Deputy Inspector of Schools to appoint teachers in the L.P. Schools on fixed pay under the Scheme, the territorial Sub-Divisional Level Advisory Board conducted interviews in which they participated and on being selected were appointed by the District Elementary Education Officer, Mangaldoi. They accordingly joined as Assistant Teachers in the respective schools on a fixed pay of Rs. 1,800 per month. The Petitioners have stated that with the formation of Udalguri District, Mangaldoi Sub-Division came to be included therein and got located in the Bodoland Territorial Autonomous District Council ("the BTAD") under the administrative control of the Council. Their grievance is that though the Respondent authorities are utilizing their services they have not been paid their monthly salary from the month of April 2001. According to them, they, therefore, approached this Court with WP(C) 7819/2001 which was disposed of along with other writ petitions by a common judgment and order dated 8.4.2002 with a direction to the Respondents to regularize their services by adjusting/absorbing them in regularly sanctioned posts/vacancies of Assistant Teachers of L.R./Middle Schools and not to terminate their services beyond 31.2.2002. The Respondents were also directed to pay their monthly salary along with their arrears. Though the Petitioners have continued to render their services as before, the Director of Elementary Education, Assam, by order dated 2.11.2007 has provided for payment of arrear salaries of 3,697 teachers of primary schools and 2,093 teachers of middle schools for the period of 1.3.2003 to 28.2.2006 @ mentioned therein. In the list of 16 Districts for which funds were allotted, Mangaldoi Sub-Division was excluded. The Petitioners have alleged that in terms of the above order, other similarly placed teachers including 43 in numbers serving in Udalguri Sub-Division have received their salary for the period 1.3.2003 to 28.2.2006. The Petitioners, however, stand deprived. They have thus alleged discrimination and unfair treatment, which they contend, is unconstitutional, unfair and unjust.

4. The State Respondents have not filed any affidavit. The Council in its affidavit in substance has pleaded that the teachers under the Scheme had been appointed by the Government of Assam and that those serving in the erstwhile Udalguri Sub-Division had been left out by the District Elementary Education Officer, Mangaldoi in the matter of payment of salary on the ground that the Council would submit proposal therefor. It has stated in its counter that steps have been taken for preparation of the budget estimate for payment of salary of the teachers appointed under the scheme and are rendering services in the Schools within its territorial limits.

5. Mr. Deka has urged that the Petitioners being fully covered by the decision of this Court rendered on 8.4.2002 and there being no conceivable ground to

exclude them from the purview thereof, the action of denying them the consequential benefits is wholly illegal, arbitrary and unconstitutional. In any view of the matter that as the Petitioners are rendering their services, the Respondents are obliged in law to pay their salary and on that count alone the impugned action is autocratic and high handed warranting judicial intervention.

6. Mr. Pathak in reply has contended that as the appointments of all teachers in the L.P. Schools in the Mangaldoi Sub-Division of the erstwhile Darrang District have been cancelled in the year 2001 and are not in service, the Petitioners' claim for salary is misconceived. According to the learned Standing Counsel, the Petitioners being not included in the list of 5,790 teachers (3,697 for primary schools and 2,093 for middle schools) who have been actually rendering services, their claim for salary is clearly untenable.

7. Mr. Das, however, has abided by the Council's pleaded stand without making any comment on the tenability of the Petitioners' claim.

8. The pleadings of the parties and the arguments advanced have been duly considered. Though the Petitioners' claim to have been appointed under the scheme in the year 2001 they have not annexed any appointment letter to the petition. In absence thereof it is not possible to ascertain the correctness of their assertion that their appointments were preceded by a selection by the jurisdictional Sub-Divisional Level Advisory Board. They have admitted that their appointments were initially for a fixed period to end by 31.3.2002 at a consolidated pay of Rs. 1,800 per month.

9. The judgment and order dated 8.4.2002 however, disclose that thereby WP(C) 7819/2001 claimed to have been filed by the Petitioners were also disposed of thereby. This Court by the said decision required the State Respondents to regularize the services of the writ Petitioners appointed against posts created under the Scheme by adjusting/absorbing them in regularly sanctioned posts/vacancies of Assistant Teachers of L.R/Middle Schools of Assam in a phased manner and not to terminate their services pending such regularization. The Petitioners were allowed to continue in service beyond 31.3.2002 by sanctioning retention of their temporary posts created under the Scheme. The State Respondents were also directed to pay the monthly salary of the Petitioners with arrears for the period they are found actually rendering their services as teachers in the respective schools. The State Government was, however, left at liberty to take necessary action in accordance with due procedure for termination of services in individual cases, if on enquiry any appointment was found to be made in violation of the extant guidelines. This decision was taken in appeal by the State and a Division Bench of this Court by judgment and order dated 1.7.2008 passed in WA 376/2002 affirmed the determination of the learned Single Judge.

10. It appears from the narration of facts as recorded in the decision in the appeal that the process of appointment was launched through an advertisement issued by the Director of Elementary Education, Assam, on 28.12.1996 for filling

up of 7,500 posts of Assistant Teachers in provincialised M.E./M.V. Schools in different Districts of the State on regular time scale. The writ Petitioners therein had submitted applications in response to the advertisement and after appearing in the interview were selected by the concerned Sub-Divisional Level Selection Boards. Though they were selected, in the face of a ban on appointment they could not be inducted. After the removal of the ban, the candidates so selected were provided with appointments at a fix pay as referred to in their appointment orders. Since the term of their appointments was for one year and was to end by 31.3.2002, the teachers concerned filed a series of writ petitions which were disposed of on 8.4.2002 according to them the reliefs as referred to hereinabove. The Division Bench while dismissing the appeal took on record a list of incumbents working under the scheme numbering 3697 and 2093 in L.P. and M.E. Schools respectively. Thereby the Division Bench recognized that only the said teachers were rendering services in their respective schools. Admittedly the Petitioners herein are not included in the 3697 teachers of the L.P. Schools or 2093 M.E. Schools of the State who are accepted to be presently in service. Incidentally the impugned order dated 2.11.2007 also refers to the said number of teachers in the aforementioned schools for whom salary has been provided for the period 1.3.2003 to 28.2.2006. Noticeably in the list of Districts and Sub-Division indicating the break up of posts in the two categories of Schools, Mangaldoi Sub-Division does not figure. As a matter of fact, by notification dated 30.10.2007 of the Deputy Secretary to the Government of Assam, Education Department, the Government sanction for retention of the above number of posts only for the period 1.3.2003 to 28.2.2006 has been conveyed.

11. Apart from the fact that the Petitioners have omitted to seek annulment of the order dated 2.11.2007, the cavil against the same also appears to be much belated. The petition also does not disclose any endeavour on the part of the Petitioners representing against the order dated 2.11.2007 before the Respondent authorities prior to the institution of the instant proceeding after over four months therefrom. The decision of the Government to sanction 3697 posts of primary school teachers and 2093 middle school teachers has also remained unchallenged. As alluded hereinabove, the Division Bench in disposing of WA 376/2002 also acknowledged that only the above teachers are presently in "service". The list to the said effect, which does not contain the names of the Petitioners, has been approved by the Division Bench.

12. In the above factual premise, it is not possible for this Court to conclude that the Petitioners in fact had been rendering their services since their appointment in 2001 as on date. The learned Single Judge while directing continuation of the services of the writ Petitioners had left the State Government at liberty to take appropriate action for termination of the services in individual cases in compliance of the procedure prescribed by law in case their appointments were found to be in violation of the guidelines. In this context the stand taken by the state Respondents that the appointments of the Assistant Teachers in the Mangaldoi Sub-Division had been terminated cannot be lightly brushed aside.

13. The materials on record do not unequivocally demonstrate that the Petitioners as on date have been actually rendering their services since their appointment in the year 2001 so as to entitle them to an appropriate writ or direction to the Respondents to release their salary, arrear or current. The certificates appended to the writ petition endorsing their claim of being in service from the month of March 2001 in face of the other overwhelming facts on record do not clinch the issue in their favour.

14. In the above view of the matter, this Court is not inclined to accede to the prayer made in the writ petition, which is accordingly rejected. No costs.