

(2015) 09 GAU CK 0042
In the Gauhati High Court
Case No : W.P.(C) No. 1474 of 2012

Bijoy Boruah and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 30-09-2015

Acts Referred:

Citation : (2015) 5 GLT 260

Hon'ble Judges : Tinlianhang Vaiphei, J.

Bench : Single Bench

Advocate : K.K. Mahanta, Sr. Advocate and K. Singha, for the Appellant; R. Majumdar, SC, for the Respondent

Final Decision : Allowed

Judgement

Tinlianhang Vaiphei, J.—In this writ petition, these nine petitioners are seeking the intervention of this Court for quashing the order dated 7.4.2011 holding that they were found in the list of terminated teachers, for releasing their salaries due with effect from August, 2007 and for allowing them to continue in their services as regular Assistant Teachers by paying them their regular monthly salaries. The facts giving rise to this writ petition, as pleaded by the petitioners, are that pursuant to the employment notice issued by the respondent No. 3 inviting applications from interested candidates for the posts of Assistant Teachers for various schools under the Dhakuakhana Sub-Division of Lakhimpur District, they applied for the posts, duly appeared in the interview held on 16.10.1986 conducted by the Selection Committee and were duly selected for the posts by the Selection Committee vide the select list published on 19.12.1989. They were accordingly appointed as Assistant Teachers on 19.12.1989 by different appointment orders against vacancies due to the retirement of the incumbents, joined their respective posts and have been working there till now. Payment of their salaries was, however, withheld by the respondent authorities till 1997. After duly making enquiry, the respondent authorities found that they were duly appointed against clear vacant posts as evident from inter departmental

communications dated 1.4.1996, 24.5.1996 and 3.6.1996 wherein the dates of retirement of the incumbents against whose vacant posts they had been appointed on 19.12.1989. The State-respondents through the Deputy Secretary to the Government of Assam in the Education Department by his letter dated 22.8.1996 directed the respondent No. 3 to regularize the services of the petitioners with effect from the date of joining their respective posts.

2. Subsequently, on the direction of the respondent No. 2 vide his letter dated 7.9.1996, the Deputy Inspector of Schools, Dhakuakhana (respondent 5) was asked to regularize the services of the petitioners from the date of joining their services. The respondent No. 5 thereafter issued the order dated 30.9.1996 regularizing the services of the petitioners from the respective dates of joining. This was followed by the order of budget allocation dated 6.10.1997 issued by the respondent No. 3 allotting Rs. 20,54,767/- for payment of the salary arrears of the petitioners for the period from 20.12.1989 to 31.8.1996, and the same was thereafter duly disbursed to the petitioners. According to the petitioners, they have been continuing in their posts till now, and no order of termination of their services has ever been issued by the respondent authorities or served upon them at any time. In fact, they were allowed to cross the efficiency bar (EB) on 3.2.2005: some of the petitioners i.e. petitioner No. 2, 7 and 9 have even completed the junior basic training course. However, much to the consternations of the petitioners, the respondent authorities abruptly stopped payment of salaries to the petitioners, who have not thus been receiving their salaries since then. On enquiry, they came to learn that such drastic action was taken against them as their services were terminated along with others in the year 1992 due to their illegal appointments. In this connection, PIL No. 67/07 is still pending before this Court. Several representations were made by the petitioners thereafter before the respondent authorities but to no effect whereafter they were constrained to file WP(C) No. 3044/08 before this Court for payment of their past and current salaries regularly. This Court by the order dated 5.2.2009 disposed of the writ petition along with the writ petitions of other teachers by directing the respondent authorities to verify the claims of the petitioners with respect to their salaries and take a decision in accordance with law. If the respondent authorities found the claims of the petitioners to be genuine, it was further directed therein, immediate actions should then be taken to disburse the same to them.

3. When no action was taken immediately by the respondent authorities as ordered by this Court, Contempt (C) Case No. 458/09 was filed by the petitioners before this Court against the officials of the State-respondents complaining of violation of the said order of this Court, the respondent No. 1, in response to the notice issued by this court, filed his affidavit stating, inter alia, that due to some defects found in the enquiry report, which was filed by the Deputy Director, Elementary Education, who had conducted the enquiry, he directed the respondent No. 3 to re-enquire into the matter and set right the deficiency therein. He further stated therein that he could not take further action as the

enquiry report was not submitted as soon thereafter he was assigned to look after Secondary Education Department only and one AB Md. Eunus, IAS, Commissioner and Secretary was entrusted to look after the Education (Elementary) Department. The petitioners were never aware of the fate of the enquiry so conducted inasmuch as the Enquiry Officer was never given an opportunity of hearing: the enquiry was rather conducted without examining the relevant record and behind their back. Apparently, based on such enquiry report, the said Commissioner and Secretary, passed the order dated 7.4.2011 holding that the petitioners were appointed by the then Deputy Inspector of Schools, Dhemaji on 19.12.1989 against non-existent posts and were allowed regular pay scales without undergoing junior basic training course and that their names were found among the 752 terminated teachers and that their claims with regard to past and current salaries had no merit. He accordingly rejected the representation of the petitioners. According to the petitioners, there was no enquiry report at all, and the said order was issued by him just to get rid of the contempt proceedings and is, therefore, passed without any foundation whatsoever and perverse. It is also the contention of the petitioners that though the respondent No. 1 held that they were among the 752 terminated teachers, no such termination order was ever issued or served upon any of them at any point of time so much so that they are still continuing in their respective posts till date. The representation submitted by the petitioners even to the Minister for Education, Assam has also turned a cropper except resulting in more papers works and correspondences in the various offices of the respondent authorities but without any tangible result. Aggrieved by this, they are approaching this Court for appropriate reliefs.

4. Resisting the writ petition, the respondent No. 3, in his affidavit, states that 752 teachers including the petitioners, as per the reports submitted by the Deputy Inspector of Schools, Dhemaji, were appointed by the then Deputy Inspector of Schools, Dhemaji (one Dimbeshwar Gogoi who has now retired from service) in the year 1989 in excess of the vacant posts and against non-existent posts before bifurcation of Deputy Inspector of Schools, Dhakuakhana under the Lakhimpur district. The petitioners had been allowed to draw their salaries with effect from their respective dates of joining of their posts but their salaries came to be stopped by his order dated 9.2.2007 because their names were included among the 178 terminated teachers out of the total number of 752 teachers on the basis of the list prepared by the Deputy Inspector of Schools, Dhemaji. The answering respondent further takes the plea that the respondent authorities are not aware of the fact that the petitioners had ever applied for the posts in question or appeared for interview or had ever been selected by the Sub-Divisional Level Advisory Board as there was no select list available in the Office of the Deputy Inspector of Schools, Dhakuakhana. It is further pleaded that this Court had taken up suo motu proceedings in PIL No. 67/2007 (Suo Motu) over the payment of salaries to the 752 terminated teachers, who were terminated in 1992, and the same is pending and that the case of payment of salaries paid to

the terminated teachers is also being investigated by the State CID. These are the contentions of the State-respondents in countering the writ petition of the petitioners.

5. A reply affidavit is filed by the petitioners by pointing out that the petitioner No. 5 has been holding the post of Headmaster of Konwarbari L.P. School since 28.2.2003 till now whereas the petitioner No. 9 has been working as Headmaster of Bhalukaguri L.P. School since 30.8.2000 till date and that in this way, the remaining petitioners are still working as Assistant Teachers of their respective schools without earning any salary. According to the petitioners, the respondent No. 3 in his letter dated 26.2.2014 while submitting the enquiry report with respect to the cases of the said 752 terminated teachers to the respondent No. 1/2 has categorically stated that payment of salaries to the said teachers could not be made due to the pendency of PIL No. 67/07 before this Court. However, when the PIL in question has been disposed of by this Court on 20.3.2014, contend the petitioners, there is no longer any legal impediment in releasing their salaries.

6. Mr. K.K. Mahanta, the learned senior counsel for the petitioners, contends that the inclusion of the petitioners among the list of terminated teachers is illegal, arbitrary and based on the enquiry report which was made perfunctorily and without hearing them. It is also contended by the learned senior counsel for the petitioners that the finding recorded by the respondent No. 112 that the names of the petitioners were found among the list of 752 terminated teachers is perverse and suffers from non-application of mind inasmuch as no orders terminating the services of the petitioners are available: at the most, such finding is heresy based on the enquiry report, which was found by him earlier to be defective. According to the learned senior counsel, the petitioners are now aged about 50 to 55 years old and have no prospect of getting alternative employment at this stage by denying their salaries, their very livelihood is at stake. According to the learned senior counsel, the State-respondents do not deny in their affidavit that the services of the petitioners have been regularized by the order dated 30.9.1996 issued by the Deputy Inspector of Schools, Dhakuakhana (not by the Deputy Inspector of Schools, Dhemaji) with the approval and instruction of the Deputy Secretary, Education Department, Govt. of Assam and their refusal to pay their salaries, under such circumstances, is highly unjustified and contrary to law. Moreover, submits the learned senior counsel, the petitioners were never heard or were given an opportunity of hearing by the enquiry officer. He, therefore, submits that the impugned order is, therefore, bad in law and is liable to be quashed and the salaries, past and present, due to the petitioners should be released forthwith.

7. Mr. R. Mazumdar, the learned senior standing counsel for Elementary Education Department, however, seeks to refute the contentions of the learned senior counsel by contending that the petitioners were recklessly appointed by the then Deputy Inspector of Schools, Dhemaji without following the recruitment

rules and, that too, against non-existent posts. He further submits that the petitioners have miserably failed to demonstrate with evidence that they had applied for the posts or appeared in the interview or that they were ever selected by the Sub-Divisional Level Advisory Board, Dhemaji inasmuch as there is no select list available in the Office of the Deputy Inspector of Schools, Dhemaji. He further submits that if all the petitioners were appointed as L.P. School teachers, they are merely excess appointees and are not entitled to salary or regularization of their services. The impugned order, according to the learned senior standing counsel, took note of the reality that the petitioners are a part of the 752 terminated teachers, whose appointments were never made by following the regular process of recruitment and involved in the recruitment scam of those days when the Deputy Inspector of Schools, Dhemaji issued appointment order one after another against non-existent posts and without the knowledge of the Government. He, therefore, strenuously urges this Court to dismiss the writ petition, which is bereft of merit.

8. After hearing Mr. K.K. Mahanta, the learned senior counsel for the petitioners, and Mr. R. Mazumdar, the learned senior standing counsel for the Education (Elementary) Department, Assam, the sole question which falls for consideration in this writ petition is whether the services of the petitioners in the post of Assistant Teachers were ever terminated. This question assumes importance in view of the fact that the respondent No. 3 in his letter dated 26.2.2014 (Annexure-10 to the reply-affidavit of the petitioners) addressed to the respondent No. 112 has stated that the petitioners are still continuing in their respective posts. In fact, the petitioners in their reply affidavit have pointed out that the petitioner No. 5 and the petitioner No. 9 are in fact currently serving as Headmasters of Konwarbari L.P. School and Bhalukaguri L.P. School respectively apart from the fact that the remaining petitioners are still working as Assistant Teachers in their respective schools. If the services of the petitioners have been truly terminated as claimed by the respondent authorities, why are they still allowed continuing in their respective posts? The appointment orders of all the petitioners are found at Annexure-1 (series) to the writ petition. The claims of the petitioners that they were appointed to their respective posts against the posts lying vacant after the retirement of the incumbents are supported by the letter dated 3.6.1996 of the District Elementary Education Officer, North Lakhimpur District wherein he had informed the respondent No. 3 the dates of retirement of 11 teachers against whose vacant posts the petitioners were appointed. It was apparently on the basis of this information that the Deputy Secretary to the Government of Assam, Education Department that the respondent No. 3 was asked to regularize the services of the petitioners. The respondent No. 3 thereafter by his letter dated 7.9.1996 instructed the Deputy Inspector of Schools, Dhakuakhana to regularize the services of the petitioners, who were appointed against the retirement vacancies of the teachers named therein. Consequently, the Deputy Inspector of Schools, Dhakuakhana issued the order dated 30.9.1996 regularizing the services of the petitioners against the

posts of Assistant Teachers of L.P. Schools with effect from their respective dates of joining their posts on various dates between 20.12.1989 and 18.1.1990.

9. The fact that their services were indeed so regularized is again corroborated by the order dated 6.10.1997 issued by the respondent No. 3 allocating Rs. 20,54,767/- for payment of salaries to the petitioners for the period commencing from 20.12.1989 to 31.8.1996 and also from the consequential order dated 10.10.1997 issued by the District Elementary Education Officer, North Lakhimpur. In the impugned order, the respondent No. 1/2 gave mainly two reasons for rejecting the claims of the petitioners for payment of salaries, namely, (i) the names of the nine petitioners are included in the list of 178 terminated teachers out of the 752 terminated teachers; (ii) the original copy of the letter of regularization of the services of 11 teachers including the nine petitioners was not found available. Based on the enquiry report of the respondent No. 3, the said respondent, therefore, concluded that the petitioners were appointed by the then Deputy Inspector of Schools, Dhemaaji on 19.12.1989 against nonexistent posts and were granted regular pay scale without their undergoing junior basic training course and that it was reported by the enquiry officer that their names were found among the list of 752 terminated teachers.

10. In my opinion, in the light of the documentary evidences produced by the petitioners at Annexure-1 series, which are the appointment orders of the petitioners, Annexure-4, which is the document showing the vacancies arising out of the retirement of the incumbent against which the petitioners were appointed, Annexure-5, which is the order issued by the Deputy Secretary, Education Department, Assam for regularization of the services of the petitioners and Annexures-5 and 6, which are the consequential order of regularization and Annexure-8 and 9, which the budget and supplementary budget allocations orders and also the non-denial by the respondent authorities that the petitioners are still working as Assistant Teachers or Head- masters, a high degree of evidence is established by the petitioners that they are not part of the 752 terminated teachers and that they are serving regular Assistant Teachers/ Headmasters of L.P. Schools under the government of Assam. No rebuttal evidence worth the name is produced by the respondent authorities to show the contrary. Under the aforesaid facts and circumstances, it is not difficult to come to the conclusion that the petitioners have been denied of their salaries legitimately due to them from September, 2007 and of their current salaries. The result of the foregoing discussion is that this writ petition succeeds. The impugned order dated 7.4.2011 issued by the respondent No. 1/2 is hereby quashed. The respondent authorities are, therefore, directed to release the salaries of the petitioners with effect from 1.9.2007 till date and pay their monthly salaries due hereafter. The entire exercise shall be completed within a period of three months from the date of receipt of this judgment.