

(2005) 08 GAU CK 0087

In the Gauhati High Court

Case No : Writ Petition (C) No's. 128, 1518 and 3442 of 2005

Bimalesh Sinha and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 08-08-2005

Acts Referred:

Citation : (2005) GLT 14 Supp

Hon'ble Judges : A.H. Saikia, J

Bench : Single Bench

Advocate : B. Sinha, for the Appellant; N. Ahmed and B. Chakraborty, for the Respondent

Final Decision : Dismissed

Judgement

A.H. Saikia, J.—Heard Mr. B. Sinha, learned Counsel for the Petitioner. Also heard Mr. N. Ahmed learned standing counsel, Education Department appearing for the official Respondents and Mr. B. Chakraborty, learned Counsel representing Smti Anita Kalita (Hussain), Respondent Nos. 6 and 7 in W.P.(C) No. 128/05 and W.P. (C) No. 1518/05 respectively (for short "the Respondent")

2. As agreed to by the learned Counsel for the parties in this case and on consideration of the issue involved herein which precisely pertains to the question of relieving the Petitioner from the duties of the In-charge (I/C) Headmaster, this Court proposes to dispose of all these 3(three) writ petitions today itself at the admission stage as all of them have been filed by the Petitioner himself challenging different orders passed by the concerned authority including the Enquiry Report submitted by the Enquiry Officer.

3. For such disposal of these writ petitions by way of common judgment and order, I have heard all those cases analogously along with respective Misc. cases being Misc. cases No. 700/05, and 1262/05.

4. The brief facts of the cases as emerged from an ordinary reading of the pleadings of the contesting parties exchanged by and on behalf of them in all

these three writ petitions i.e. W.P.(C) No. 1518/05, W.P.(C) No. 128/05 and W.P. (C) No. 3442/05 as well as in Misc. cases above mentioned, are that the Petitioner, being the seniormost Assistant Teacher of Sri Aurobindo Vidyamandir High School, Ulubari, Guwahati (for short "the School"), was allowed to hold the charge of I/C Headmaster of the School vice the earlier I/C Headmaster Sri R.N. Bhattacharjee, retired vide order dated 19.3.2004 issued by the Respondent No. 2, the Director of Secondary Education, Assam, Kamrup, Guwahati-19. The order dated 19.3.2004 reads as follows:

GOVT. OF ASSAM OFFICE OF THE DIRECTOR OF SECONDARY EDUCATION:
ASSAM: KAHILIPARA: GUWAHATI-19

No. GS-EST/Apptt/36/97/224 Dated Kahilipara the 19th March, 2004

ORDER

Until further order Sri Bimalesh Sinha, Seniormost Asstt. Teacher Sri Arobinda Vidyamandir High School Dist. Kamrup is hereby allowed to hold the charge of Headmaster of the said school alongwith the financial power to draw and disburse the salary etc. of the staff of the school in addition to his own normal duty as Asstt. Teacher under F.R. 49(c) vice Sri R.N. Bhattacharjee Headmaster retired. This is a purely temporary arrangement.

Sd/- Dr. H.C. Das, Director of Secondary Education, Assam, Kahilipara, Guwahati-19. Memo No. GS-EST/Apptt/36/97/22A-A Dtd. Kahilipara the 19th March, 2004

5. While the Petitioner was serving as I/C Headmaster a complaint dated 3.10.2004 was lodged against him by the Managing Committee of the School under the signature of the Working President alleging various anomalies and irregularities in his working as I/C Headmaster. On the basis of such complaint, the authority ordered for an enquiry appointing the Deputy Director of Secondary Education as Enquiry Officer who conducted an enquiry by visiting the school on 20.11.2004. In the said enquiry, the Petitioner along with the working president of the School including one teacher representative and one lady member were present and they were heard. On the basis of the said enquiry, the Enquiry Officer submitted an enquiry report on 23.11.2004 which is reproduced herein below:

(A) The HM and the Secy. of the School is not willing to hold the meeting of the MC of the School since his taking over the charge of the school on 1st March/2004.

(B) The way of collection of fund and the non deposit of collected amount from the student may lead to misappropriation of fund as seen from the records.

(C) Protection of the school land and property is to be ensured by the development committee or by the Managing Committee, otherwise future is not safe.

(D) Due to lack of office assistant in the school, the money collected and the way of entries made in the cash book will one day lead to total misappropriation of fund by submitting false and take (sic) vouchers as seen from the records in building repairing during checking of cash book and vouchers.

6. On receipt of such enquiry report, the Respondent No. 2 by his order dated 18.12.2004, relieved the Petitioner from his duties as FC Headmaster and in his place one Sri M. Kakati Assistant Inspector of Schools, K.D.C., Guwahati in the office of the Inspector of Schools, K.D.C. was allowed to hold the current charge of I/C Headmaster of the School. The order dated 18.12.2004 runs as under:

GOVT OF ASSAM OFFICE OF THE DIRECTOR OF SECONDARY EDUCATION:
ASSAM: KAHILIPARA: GUWAHATI-19

No. GB-EST/Apptt/Misc/40/97/182 Dtd. Kahilipara the 18th Dec., 2004

ORDER

Sri M. Kakati, Asstt. Inspector of Schools, K.D.C., Guwahati, Office of the Inspector of Schools, K.D.C., Guwahati under Kamrup District is hereby allowed to hold the current charge of Headmaster of Sri Arobinda Vidyamandir High School under F.R. 49(c) in addition to his normal duties vice Sri Bimalesh Sinha incharge Headmaster is relieved with immediate effect. Sri M. Kakati is allowed to exercise the financial power for drawal and disbursement of salaries etc. of teaching and non-teaching staff of the school until further orders.

This is a purely temporary arrangement.

Sd/- Dr. H.C. Das, Director of Secondary Education, Assam, Kahilipara, Guwahati-19. Memo No. GB-EST/Misc/40/97/182-A Dtd. Kahilipara, the 18th Dec., 2004.

7. Being aggrieved by the aforesaid order of relieving the Petitioner from the I/C Headmastership, he has preferred W.P.(C) No. 128/05 and in the said writ petition, this Court by order dated 7.1.2005 while issuing notice of motion, in the interim provided that until the reasons for issuance of the impugned order dated 18.12.2004 were placed before this Court, operation of the aforesaid order dated 18.12.2004 shall remain suspended.

8. It also emerges from the pleadings of the parties that while the interim order has been continuing or is in force, the Petitioner has been allowed to continue as Headmaster I/C by order dated 19.3.2005. A copy of the order dated 19.3.2005 has been placed before this Court by Mr. Sinha, learned Counsel for the Petitioner during the course of hearing which reads as under:

GOVT. OF ASSAM OFFICE OF THE DIRECTOR OF SECONDARY EDUCATION:
ASSAM: KAHILIPARA: GUWAHATI-19

No. GS-EST/Misc/40/97/212 dtd. Kahilipara the 19th March, 2005.

ORDER

In pursuance of the Govt. instruction vide letter No. ASE. 53/2005/7 dt. 11.02.2005 and in compliance with the Hon"ble High Court's order dt. 7.01.2005 on W.P.(C) No. 128/05 by Sri Bimalesh Sinha, Asstt. Teacher of Sri Arobinda Vidyamandir High School, Ulubari, Guwahati is hereby allowed to remain as In-charge Headmaster of the same school in addition to his normal duties with immediate effect until further orders vice Sri R.N. Bhattacharjee, in-charge Headmaster of the school retired. Sri Bimalesh Sinha is not allowed to any financial transaction in view of financial irregularities and temporary misappropriation of school fund during tenure as in-charge Headmaster of the school w.e.f 1st March/2004 to 20th Nov., 2004. The earlier order passed under memo No. GB-TST/TRN/12/88/161 dt. 19.2.05 is hereby vacated and the order under Memo No. GB-EST/ Misc/40/97/182 dt. 18.12.2004 stands cancelled.

Sd/- Dr. H.C. Das, Director of Secondary Education, Assam, Kahilipara, Guwahati-19. Memo No. GS-EST/Misc/40/97/212-A Dtd. Kahilipara, the 19th March, 2005

9. On perusal of the aforesaid order, it appears that the Petitioner has been allowed to remain as I/C Headmaster in the School only by the strength of the interim order passed on 7.1.2005 rendered in W.P.(C) No. 128/05 with a rider that he was not allowed to any financial transaction in view of the financial irregularities and temporary misappropriation of the School fund during his tenure as I/C Headmaster in the School, w.e.f. 1.3.2004 to 20.11.2004.

10. On the other hand, Respondent No. 2 by his order dated 19.2.2005, during the pendency of W.P.(C) No. 128/05, transferred the Respondent, Headmistress of Champabati High School of Kamrup district and posted to the School at her own request vice Sri R.N. Bhattacharjee, I/C Headmaster retired.

11. This order of transfer and posting of the Respondent has been assailed in W.P. (C) No. 1518/05 and this Court by order dated 28.2.2005 at the time of issuance of notice of motion, making it returnable to a date on 21.3.2005, stayed the impugned order dated 19.2.2005.

12. At the same time, the Petitioner, on being dis-satisfied with the enquiry report dated 23.11.2004 on the basis of which he was relieved from his duties as I/C Headmaster, has preferred W.P.(C) No. 3442/05 challenging the said enquiry report alleging basically that no reasonable opportunities of hearing was ever given to him.

13. The Respondent has filed two applications being Misc. case No. 1262/05 arising out of W.P.(C) No. 128/05 and Misc. case No. 700/05 arising out of W.P. (C) No. 1518/05 for vacation/ modification/cancellation of the interim orders passed ex-parte on 7.1.2005 and 28.2.2005 respectively.

14. Prior to passing of the interim order dated 28.2.2005 rendered in W.P.(C) No. 1518/05, the Respondent, being a regular Headmistress, has submitted her joining report to the School on 21.2.2005 as the same is evident from the

Annexure-III and IV to the Misc. case No. 700/05 filed in Writ Petition (C) No. 1518/05 wherein Sri Manoranjan Kakati, Assistant Inspector of School, KDC who was appointed as I/C Headmaster by order dated 18.12.2005, handed over the charge of I/C Headmastership to the Respondent on her being posted on transfer as a regular Headmistress to the School and in turn she has also taken over charge of Headmistress of the School.

15. Mr. Sinha, learned Counsel for the Petitioner in all three writ Petitioner, has strenuously argued that the Petitioner, being the seniormost teacher in the School was rightly and legally appointed as the I/C Headmaster immediately after the retirement of the earlier I/C Headmaster Mr. R.N. Bhattacharjee. His case is that he has been relieved from the post only on the basis of so-called enquiry report submitted by the Enquiry Officer who illegally and improperly conducted the said enquiry against him wherein he was not a party. He was neither given any adequate opportunity of hearing nor was any notice whatsoever served upon him. The enquiry was not an enquiry in the eye of law which was made behind the back of the Petitioner but only to malign him so as to ruin his career. It is contended that being aggrieved by the said enquiry he has challenged the same before this Court by way of W.P.(C) No. 3442/05.

16. Mr. N. Ahmed, learned Standing Counsel Education Department, defending both the impugned Govt. orders dated 18.12.2004 and 19.2.2005 passed by the Respondent No. 2, has vehemently argued that both the orders have been passed after giving due consideration of the enquiry report dated 23.11.2004 which was submitted after conducting a valid enquiry following the procedure of law and also affording the reasonable opportunity of hearing to the Petitioner on the allegation of financial irregularities as well as taking into account the conduct of the I/C Headmaster who during his tenure of I/C Headmaster failed to convene any meeting of the School. That apart, he was also found to be involved in misappropriation of the School fund. The Respondent being a regular Headmistress, has been transferred and posted in the School on her request and as such there is no illegality or irregularities in appointing the Respondent as regular Headmistress in the School.

17. It is also contended by Mr. Ahmed that the School has been running without giving a permanent/regular Headmaster for a pretty long period and earlier also one R.N. Bhattacharjee was holding the post as I/C Headmaster and after his retirement, the Govt, is in frantic search of a regular Headmaster. It is only as a stop gap arrangement the Petitioner has been appointed as I/C Headmaster, who is also found not holding the general meeting of the school and misappropriated school fund and accordingly the Respondent, being a selected regular Headmaster has been duly transferred on her request and posted in the School.

18. At this stage Mr. Sinha, learned Counsel for the Petitioner, has strongly restarted the submissions advanced by the Govt. counsel stating that transfer and posting of the Respondent in the school is itself illegal and the Petitioner being the senior most teacher is required to be appointed as Headmaster. On

pointed asking, Mr. Sinha has fairly stated that the Petitioner has not yet been selected for appointing him as a regular Headmaster though he appeared in the selected test for regular Headmaster.

19. It is further urged by Mr. Sinha that the appointment/transfer of the Respondent has been vacated by the Govt. as she has been allowed to continue in her service on being shown her attached to the office of the Inspector of Schools concerned. In reply to this submission, Mr. Ahmed has submitted that since the operation of both the interim orders are in force and holding the field at present, Govt. has no other alternative but to attach the services of the Respondent with the office of the Inspector of Schools, KDC. However, as and when the interim orders passed by this Court would be vacated, the earlier position would be immediately restored and she will be allowed to work in the School as Headmistress.

20. I have given my anxious consideration to the forceful submissions canvassed on behalf of the rival parties and also meticulously scanned the materials available on records including the various orders passed by the Govt. as well as the enquiry report so submitted against the Petitioner by holding the enquiry which is annexed in Misc. case No. 700/05. It appears that the enquiry as already noticed by quoting the observations made therein, was conducted properly and the Petitioner was allowed to participate. In that view of the matter, this Court does, therefore, find no illegality and irregularity in the said enquiry. It is safely held that no valid or plausible reasons can be gathered from the submissions made on behalf of the Petitioner calling for interference of this Court with the enquiry report and consequently W.P.(C) No. 3442/05 stands dismissed.

21. Admittedly the Petitioner is holding the post of I/C Headmaster. Such In-chargeship cannot give a right to the Petitioner for a regular Headmaster. It is also admitted that a stopgap arrangement has been made by the Govt. by allowing the Petitioner to work as I/C Headmaster for non-availability of a regular teacher as Headmaster. The order dated 19.3.2004, as already noticed hereinabove, abundantly reflects that the Petitioner was allowed on to hold the charge of Headmaster of the School until further orders due to the retirement of earlier I/C Headmaster under F.R. 49(c) which provides 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 irrespective of the duration of the additional charge. In the instant case, the Respondent is a selected Headmistress and the Petitioner is only I/C Headmaster and that too not being selected. That being so, the Petitioner has no right to continue as an I/C Headmaster when a regular Headmaster/Headmistress is posted and/or transferred to hold the post as a regular one.

22. The Apex Court in a case of Sreedam Chandra Ghosh Vs. State of Assam and others, categorically ruled that the Petitioner therein who was allowed to officiate as Headmaster as stop gap arrangement till the regular incumbent assumed office as Headmaster, did not have any right to the post to hang on after the

regular incumbent was transferred to the post.

23. Having regard to the Sreedam Chandra Ghosh's case (supra) and also in view of the facts situation narrated herein above as well as upon hearing the learned Counsel for the parties, this Court is of the firm view that the Petitioner has no right to claim for continuation as I/C Headmaster after the transfer and posting of the Respondent as a regular Headmistress though on her request.

24. That being so, this Court finds no merit in these writ petitions i.e. W.P.(C) No. 128/05 and W.P.(C) No. 1518/05 and accordingly both are hereby dismissed. No costs.