
(2016) 10 GAU CK 0025
In the Gauhati High Court
Case No : WP(C) No. 5863 of 2013

Budheswar Borah

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 27-10-2016

Acts Referred:

Citation : (2017) 1 GauLT 182

Hon'ble Judges : Mr. Ujjal Bhuyan, J.

Bench : Single Bench

Advocate : Mr. G.N. Sahewalla, Sr. Advocate, Md. Aslam, Mr. D. Senapati, Mr. P. Deka and Ms. R. Jain, Advocates, for the Petitioners; Mr. N. Sarma, SC, Education Department, for the Respondents

Final Decision : Allowed

Judgement

Mr. Ujjal Bhuyan, J. (Oral) - Heard Mr G. N. Sahewalla, learned Senior Counsel for the petitioners and Mr N Sarma, learned Standing Counsel, Elementary Education Department.

2. This petition has been filed under Article 226 of the Constitution of India for quashing of order dated 24.05.2013, passed by the Commissioner and Secretary to the Government of Assam, Education (Elementary) Department and for a direction to the respondents to regularize the service of the petitioners with all consequential benefits.

3. At the outset, it has been brought to the notice of the Court that petitioner No. 7 has expired. Therefore, present writ petition would be confined to the remaining 6 (six) petitioners. Petitioners were appointed as Assistant Teacher in different ME Schools of Golaghat District in the year 1999 under the Operation Black Board (OBB) Scheme. Seeking regularization of their service in terms of Government circular dated 07.07.2000 as was extended to other similarly situated teachers, petitioners approached this Court by filing WP(C) No. 3380 of 2002. The said writ petition was disposed of by this Court vide order dated

24.05.2002 by directing the Director of Elementary Education, Assam to examine the claim of the petitioners and to consider their adjustment against available vacancies. The Director was further directed to consider payment of salary to the petitioners.

4. After more than 8 (eight) years, Director of Elementary Education, Assam, passed an order dated 26.08.2010. The claim of the petitioners was rejected on the ground that 57 candidates including the petitioners were appointed against 4040 category of OBB posts on 26.11.1999 by the then Inspector of Schools and In-charge, District Elementary Education Officer, Golaghat, though there was a ban on appointment of teachers in middle schools against posts created under the OBB scheme. Subsequently, the Government issued instructions for cancellation of such appointments. In the light of the above, Director of Elementary Education declared that appointment of the petitioners be treated as void ab initio and consequently, their prayer for adjustment and salary was rejected.

5. This led to filing of second writ petition by the petitioners being WP(C) No. 5486 of 2010. The said writ petition was disposed of vide order dated 21.05.2012. On behalf of the petitioners, it was contended that all the OBB appointments were made during the ban period. While service of other teachers so appointed were regularized, petitioners were left out. It was contended that no exception could be made only in the case of the petitioners. On the other hand, on behalf of the Education Department, the Standing Counsel expressed apprehension that petitioners might not have been validly appointed.

6. Petitioners had also placed on record copies of 2 (two) orders dated 10.03.2000 and 26.03.2001, issued by the District Elementary Education Officer, Golaghat, whereby services of 2 (two) teachers similarly situated like the petitioners, namely, Sri Naren Gogoi and Smt Deepa Bora, respectively were regularized.

7. Be it stated that the averments made in the writ petition were not controverted by the respondents. After hearing learned counsel for the parties, Court took the view that Director of Elementary Education, Assam, was not justified in declaring the appointment of the petitioners as void ab initio on the sole ground that there was ban on appointment during that period. Court took notice of the fact that Government had taken a decision to carry out phasewise regularization of the teachers appointed under the OBB scheme. Therefore, it was held that case of the petitioners would require fresh consideration by the Department. The doubt expressed by the Standing Counsel was brushed aside as being without any substance. After setting aside the order dated 26.08.2010, the matter was remanded back to the Commissioner and Secretary to the Government of Assam, Elementary Education Department, to consider afresh the claim of the petitioners to regularization and payment of salary after holding necessary enquiry.

8. Thereafter, the impugned order was passed on 24.05.2013, rejecting the claim of the petitioners on the same ground as was taken in the order dated 26.08.2010, which order was set aside by this Court.

9. Aggrieved, present writ petition has been filed.

10. Before proceeding further, it would be apposite to refer to the impugned order dated 24.05.2013, which reads as under:-

"Order

Read: The order dated 21.05.2012 passed by the Hon"ble Gauhati High Court in WP(C) No. 5486 of 2010 in Budheswar Bora and 6 (six) others v. State of Assam and Ors.

Also read: The report submitted by the Director of Elementary Education, Assam, vide his letter No. EMPD.62/2010/109 dated 24.04.2013.

Findings: The Director of Elementary Education, Assam, issued an advertisement calling for application from intending candidates to fill 7500 vacant posts of Assistant Teacher in the ME/MV/HS of different districts of Assam. The said advertisement was issued in the year, 1996 through Janasanyog. There was no mention of OBB teacher in the said advertisement nor numbers of vacancy district wise was shown. Then in the year 1999, a select list was prepared comprising 62 names. Out of which 57 numbers of candidate including the petitioners were appointed as Assistant Teacher in middle under OBB (4040) scheme in the Golaghat district though there was a ban on appointment of teachers against created scheme. This appointment did not have the approval of SLEC constituted by Government in 1999. Subsequently, Government issued an instruction for cancellation of appointment of those teachers appointed under OBB (4040) scheme vide Govt. letter No. PMA. 337/35/Pt-VI/3 dated 17.12.1999.

Order: Thus, there is no valid ground to consider the claim of the petitioners for regularization and consequential salary and hence rejected.

This issued with the compliance of the order dated 21.05.2012 passed by the Hon"ble High Court in WP(C) No. 5486 of 2010.

Sd/-Shri H K Narzary, IAS,

Commissioner & Secretary to the Government of Assam,
Education (Elementary) Department.

Memo No. ELC/WP(C) 5486/2010/840/124-A,

Dated, Dispur the 24th May,2013"

11. From a perusal of the impugned order dated 24.05.2013, it is seen that a selection process was initiated by the Director of Elementary Education to fill up 7,500 vacancies in the post of Assistant Teacher in different categories of schools

in the State of Assam, including in ME Schools. It is stated that there was no mention of any appointment to be made under the OBB scheme. In the year 1999, a select list was prepared comprising 62 names, out of which 57 were appointed as Assistant Teacher in ME Schools under the OBB (4040) Scheme in Golaghat district though there was a ban on appointment of teachers. Appointments of the teachers did not have approval of the State Level Empowered Committee (SLEC). Subsequently, Government issued instructions for cancellation of appointment of such teachers. Therefore, the claim of the petitioners was rejected.

12. On a reading of the impugned order dated 24.05.2013, it is evident that claim of the petitioners was rejected on the same ground as was taken in the previous order dated 26.08.2010, i.e. appointments being made during the ban period. As already noticed above, this Court in the order dated 21.05.2012, found the said ground to be untenable and accordingly, the same was set aside. Again, the case of the petitioners has been rejected by reiterating the same ground. On this ground alone, impugned order dated 24.05.2013 is liable to be set aside and quashed.

13. However, since respondent No. 1, i.e., Commissioner and Secretary to the Government of Assam, Elementary Education Department has filed affidavit, a reference to the same would be in order. As per this affidavit, Director of Elementary Education, Assam, had issued an advertisement on 28.12.1996 to fill up 7,500 vacancies in the post of Assistant Teacher in the provincialized LP and ME Schools of the State. In view of acute financial crisis in the State, it was decided not to go for regular selection. State Government also constituted State Level Empowered Committee (SLEC) under the Finance Department to verify all the appointments etc. to be made by the State.

14. Petitioners were appointed as Assistant Teacher in ME Schools in Golaghat District under the OBB (4040) scheme though there was a ban imposed by the State Government on appointment of teachers. Subsequently, the Government issued instructions for cancellation of appointment of those teachers, who were appointed without prior approval of the State Level Empowered Committee (SLEC). The affidavit also referred to orders passed by a Division Bench of this Court in WP(C) No. 1307 of 2009, regarding regularization of services of the OBB teachers. A High Powered Committee was constituted and as per the report of the High Powered Committee, it was found that service of 2173 numbers of OBB teachers under the 4040 category appointed during the ban period, i.e., 1998-1999, were required to be regularized. Thereafter, the Education Department carried out the regularization. It is stated that the said list of 2173 teachers was prepared by the OBB Teachers' Association and that service of all such teachers were regularized in the month of December 2010. Names of the petitioners were not found in the said list. It is stated that the petitioners moved this Court only after completion of the exercise of regularization of OBB (4040) teachers by the Government.

15. From a close scrutiny of the affidavit filed by respondent No. 1, it is seen that besides repeating the ground taken in the impugned order for rejecting the claim of the petitioners, it has been further stated that services of all the genuinely appointed OBB teachers under the 4040 category numbering 2173 were regularized. Names of the petitioners did not figure in the said list of 2173 teachers, which would go to show that their appointments were not regular. The insinuation made against the petitioners that they have moved the Court after all the 2173 teachers were regularized is not correct, inasmuch as, petitioners had approached this Court wayback in the year 2002 by filing WP(C) No. 3380 of 2002. It is the respondents, who did not consider the case of the petitioners within reasonable time. In fact, the Director took more than 8 (eight) years in taking the decision dated 26.08.2010, which was found to be untenable by the Court. The said decision has now again been reiterated by the departmental Commissioner and Secretary, which is sought to be reinforced in the affidavit by stating that services of all the genuine OBB teachers under 4040 category numbering 2173 have been regularized and names of petitioners were not found in the said list. In the course of hearing, this Court directed learned Standing Counsel to produce before the Court a copy of the complete list of 2173 teachers belonging to the 4040 category of OBB teachers, pursuant to which, a copy of the same was placed before the Court. The list was thoroughly scrutinized by learned counsel for the parties, whereafter Mr Sahewalla, learned Senior Counsel for the petitioners submitted that in the said list there was not a single teacher from Golaghat district. Mr Sarma, learned Standing Counsel submitted that candidates from Golaghat district were not included in the said list because there was no approval of the State Level Empowered Committee (SLEC).

16. I am afraid submission made on behalf of the State can be accepted. All along, stand of the Department has been that since appointments of the petitioners were made during the ban period their services could not be regularized. This ground was found to be untenable by the Court. In so far the second ground being developed in the affidavit is concerned, grant of approval by the State Level Empowered Committee (SLEC) is a procedural step, which do not in any manner cast aspersions on the merit of the selection. Nowhere it is stated that petitioners were selected following unscrupulous means or they were appointed against any non-existent posts. In fact, it is the stand of the respondents that petitioners were appointed against posts created under the OBB scheme. Petitioners cannot be faulted for non-inclusion of their names in the list of 2173 teachers belonging to the OBB 4040 category. In so far the procedural aspect is concerned, it was always open to the respondents who have obtained ex-post facto approval of the State Level Empowered Committee (SLEC). It goes without saying that rules and procedures are the hand-maid of justice. They are there to further the cause of justice and not to obstruct justice. As has been held by the Supreme Court, procedure is not a thing designed to trip people up. In *Lily Thomas v. Union of India*; reported in (2000) 6 SCC 224, Supreme Court observed that justice is a virtue which transcends all barriers.

Rules, procedure or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice.

17. Petitioners have been knocking the doors of the Court since 2002. Similarly situated teachers and other teachers have been granted relief by the State by resorting to various procedures including by creating supernumerary posts. I see no reason why a different and discriminatory approach should be adopted in the case of the petitioners. Having regard to the above, impugned order dated 24.05.2013 is set aside and quashed. Respondents are directed to treat the petitioners at par with the 2173 numbers of teachers under the OBB 4040 category and grant them all consequential benefits as granted to the said category of teachers. This shall be done within a period of 4 (four) months from the date of receipt of a certified copy of this order.

18. Writ petition is accordingly allowed, but without any order as to cost(s).