
(2012) 10 GAU CK 0066
In the Gauhati High Court
Case No : WP (C) No. 2058 of 2012

Dambarudhar Pathak

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 19-10-2012

Acts Referred:

Citation : (2013) 3 GLT 662

Hon'ble Judges : Anima Hazarika, J; Amitava Roy, J

Bench : Division Bench

Advocate : M. Chanda, Mr. S. Choudhury, Mr. S. Nath and Mrs. U. Dutta, for the Appellant; R. Bora, Central Government Counsel and Ms. R.S. Choudhury, Standing Counsel, NVS, for the Respondent

Final Decision : Dismissed

Judgement

Anima Hazarika, J.—The pleaded facts in the writ petition reveals that this is the third round of litigation between the parties before this Court. In the previous round of litigation before this Court, viz. WP(C) No. 367/2007, the Court had passed an order dated 29.01.2007 disposing of the case wherein it had directed the petitioner to submit a representation to the Deputy Director, Navodaya Vidyalaya Sangathan, New Delhi with all relevant documents for consideration of his claim for pay and allowances for the period from 17.10.2001 to 26.05.2003. In the said order dated 29.01.2007, the Court further directed the respondents to consider the same within a period of three months. The petitioner submitted his representation on 07.02.2007 which was rejected by the official respondents through their memorandum dated 11.06.2007 wherein it was stated that the petitioner was not entitled to any pay and allowances for the period in question, in the absence of taking over charge of the Principal of Jawahar Navodaya Vidyalaya ("JNV" for short), Darrang. The petitioner, therefore, approached the learned Central Administrative Tribunal ("the Tribunal" for short), Guwahati Bench by filing OA No. 98/2009 seeking release of his pay and allowances for the period from 17.10.2001 to 26.05.2003. The learned Tribunal dismissed the said

OA through its order dated 19.05.2010, thereby affirming the memorandum dated 11.06.2007 issued by the respondents. This order of the learned Tribunal passed on 19.05.2010 and the memorandum dated 11.06.2007 has been assailed before the Court by the petitioner in the present writ proceeding. To arrive at any conclusion as regards the validity of the said order dated 19.05.2010 and memorandum dated 11.06.2007, the Court has thus to determine the following issue:-- Whether the petitioner is entitled to any salary and allowance for the period from 17.10.2001 to 26.05.2003?

To understand the factual matrix of the case in order to adjudicate the matter in controversy, the cause of action for the first round of litigation and the subsequent litigations of the contesting parties need to be summarized in seriatim:--

The petitioner herein was originally holding the post of Subject Teacher in commerce at Sarthebari HS School of Barpeta District under the Education Department, Government of Assam. He went on deputation as Principal, JNV, Kalaigaon for a period of two years on 02.08.1999. However, his willingness was sought for extension of deputation by one year vide communication dated 18.07.2001. But by communication dated 14.09.2001, he was repatriated to his parent department with effect from 17.10.2001 and consequently thereupon he was relieved with effect from 16.10.2001 vide order dated 15.10.2001 which was put to challenge before the Tribunal being OA No. 426 of 2001. Vide interim order dated 22.10.2001 passed by the learned Tribunal, the order of repatriation was suspended. In pursuance to the interim order dated 22.10.2001, the petitioner had submitted an application on 23.10.2001 before the Deputy Director, Navodaya Vidyalaya Sangathan ("NVS" for short), Regional Office, Shillong informing that he had reported for duty. On receipt of the communication dated 23.10.2001, the Regional Officer, NVS, Shillong asked the principal i/c JNV, Kalaigaon that the financial power would not be allowed to exercise by the petitioner though he had already handed over the charge, till the formal orders from NVS Headquarters and Regional Office, Shillong are received. The said OA No. 426 of 2001 was allowed on 09.04.2002 directing the petitioner to submit representation expressing his willingness for permanent absorption in NVS whereof the respondents are required to pass a reasoned order. Till such representation is considered the interim order dated 22.10.01 was allowed to continue and the impugned orders which were under challenge in OA No. 426 of 2001 were kept in abeyance. However, the petitioner filed another Miscellaneous Application being No. 21 of 2002 seeking a direction to release his salary on and from 17.10.2001 onwards which was disposed of alongwith OA No. 426/2001 directing to pay full salary with effect from 17.10.2001.

2. In terms of the order dated 09.04.2002 passed in OA No. 426/2001, the petitioner submitted a detailed representation indicating therein his willingness for permanent absorption in NVS, which, however, was rejected on 10.06.2002 holding that the notification dated 21.06.2001 has not yet been ratified by the

Executive Committee of the Samity and as such the said notification has no force in the eye of law and the benefit of the Notification lacks its sanctity in the matter of permanent absorption. The order of rejection of his representation dated 10.06.2002 gave rise to OA No. 231 of 2002 before the Tribunal.

3. However, during the pendency of OA No. 231 of 2002 before the Tribunal, the official respondents took up the order dated 09.04.2002 passed in OA No. 426 of 2001 on the file of this Court being WP(C) No. 135 of 2003. The said writ petition came up for consideration on 08.05.2003, whereby this Court allowed the writ petition by setting aside the order dated 09.04.2002 passed by the learned Tribunal in OA No. 426 of 2001. However, in the concluding paragraph of the order, the Court observed that the respondent (in the writ petition) shall be entitled for all the salaries for the period he had worked in the post of Principal of the School, may be as a result of the interim or the final order issued by the learned Tribunal or by the High Court directing that the salaries shall be paid by the authority within a period of three months from the passing of the order.

4. In view of the order dated 08.05.2003 passed by the Court in WP(C) No. 135 of 2003, the petitioner has withdrawn OA No. 231 of 2002 on 26.05.2003 and a representation dated 27.05.2003 addressed to the Deputy Director, NVS, Shillong, was made requesting to release his salaries with effect from 17.10.2001. On receipt of the aforesaid representation, the Deputy Director, NVS, Shillong vide communication dated 25.06.2003 issued a demand draft of Rs. 10,692/- which includes arrear of increment from 01.09.2001 to 16.10.2001 for Rs. 6,995/- holding that since the petitioner did not render any service to the Samity after 17.10.2001, the question of releasing his salary does not arise.

5. The order of rejection dated 25.06.03 by the Deputy Director, NVS, Shillong has raised another subject matter in OA No. 43 of 2004. The said OA No. 43 of 2004 came up for consideration on 12.08.2005 before the Tribunal, whereby the learned Tribunal dismissed the case holding that the disputed question of facts cannot be a subject matter of adjudication of the Tribunal, which was challenged in a writ proceeding being WP(C) No. 367 of 2007. The writ court disposed of the writ petition on 29.01.2007 requiring him to submit a fresh representation, whereof the official respondents were directed to consider his representation within the time limit prescribed therein. However, the Court made it clear that in case he is not satisfied with the findings of the authority, he would be at liberty to approach appropriate forum for redressal of his grievances. In pursuance to the order dated 29.01.2007, the petitioner ventilated his grievances in the form of a representation dated 07.02.2007 reiterating his entitlement of salary with effect from 17.10.2001. The concerned authority took up his representation for scrutiny, but rejected his representation vide memorandum dated 11.06.2007 holding that he is not entitled to any pay and allowance for the period as asked for.

6. The petitioner called in question the legality and validity of the order of rejection dated 11.06.2007 of his representation before the learned Tribunal in

OA No. 98 of 2009. The learned Tribunal after marshalling the entire pleadings of the parties along with the annexures appended thereto has come to a categorical finding that there is no material or evidence to establish that the petitioner indeed worked in the post of Principal after handing over the charge as Principal on 16.10.2001 and there was no document of taking over the charge as like handing over the charge pursuant to the interim order passed by the Tribunal on 22.10.2001. The Tribunal has further noticed that the reference of letter dated 2/5.11.2001 and 18.11.2002 whereby the petitioner has claimed that he served as Principal, JNV, Kalaigaon, Darrang is lack of better particulars. The communication dated 18.11.2002 was addressed to his original residence at Barpeta wherefrom he came on deputation and thus dismissed OA No. 98/2009 vide order dated 19.5.2010 the legality of which has been questioned in the instant writ proceeding.

7. Heard Mr. M. Chanda, learned counsel appearing for the petitioner. Also heard Mrs. R Bora, learned Central Govt. Counsel appearing for respondent No. 1 and Ms. RS Choudhury, learned Standing Counsel, NVS, appearing for the respondent Nos. 2 to 6.

8. The pleaded facts of the contesting parties are noticed. Perused the relevant records placed before this Court by Ms. Choudhury. The records of the case would disclose that the petitioner joined as Principal, JNV, Darrang on deputation vide appointment letter dated 02.08.1999 for a period of two years initially, extendable on yearly basis. As per terms and conditions of the appointment order, deputation period may be curtailed or extended at the discretion of the competent authority without assigning any reason or notice. Though his willingness was invited for extension of another year vide letter dated 18.07.2001 and the petitioner had submitted his willingness for permanent absorption as Principal in any of the Navodaya Vidyalayas, but the official respondents did not respond to his permanent absorption rather by an order dated 14.09.2001 repatriated him to his parent department with effect from 17.10.01 and release order was issued on 15.10.2001 and accordingly, he had handed over the charge on 17.10.2001 to the in-charge Principal. The orders dated 14.09.2001 and 15.10.2001 were challenged before the learned Tribunal being OA No. 426 of 2001 which came up for consideration on 22.10.01 whereby the learned Tribunal admitted the case and in the interim suspended the impugned orders dated 14.09.2001 and 15.10.2001 till the next date fixed. After getting the interim order in his favour, the same was communicated to the official respondents on 23.10.2001 and the petitioner had reported for duty on 24.10.2001 whereby a letter was issued on 2/5.11.2001 with reference to the interim order restraining the petitioner not to discharge any financial powers without the approvals of NVS Headquarter. In the said OA No. 426/2001, the petitioner filed a Misc. Application being No. 21/2002 wherein he sought for a direction to release his salary with effect from 17.10.2001.

9. The aforesaid OA No. 426/2001 was finally disposed of on 09.04.2002 along

with the Misc. Application No. 21 of 2002 directing the petitioner to submit a detailed representation expressing his willingness for permanent absorption with a further direction that till his representation is considered the interim order dated 22.10.2001 shall continue and the impugned orders dated 14.09.2001 and 15.10.2001 shall be kept in abeyance. The Misc. Application No. 21 of 2002 was disposed of directing the respondents to pay full salary to the petitioner on and from 17.10.2001. However, the representation submitted by the petitioner pursuant to the order dated 9.4.2002 was rejected by the authority on 10.06.2002.

10. The order dated 10.06.2002 issued by the official respondents rejecting the prayer of the petitioner for permanent absorption in NVS was under challenge before the learned Tribunal being OA No. 231 of 2002. The said OA No. 231 of 2002 came up for consideration before the learned Tribunal whereby the learned Tribunal admitted the case with a further direction to the official respondents not to repatriate the petitioner to his parent department. However, the then Principal-in-charge by a communication dated 18.11.2002 conveyed to the petitioner that in compliance of the order dated 05.11.2002 of the Regional Office, Shillong, the salary of the petitioner is required to be released with effect from 17.10.2001 onwards till further orders, requiring him to submit certain documents for settlement of income tax from salary for payment. Communication dated 18.11.2002 written by the then Principal-in-charge is a routine communication.

11. In the meantime, the official respondents took the order dated 09.04.2002 passed in OA No. 426 of 2001 in a writ proceeding being WP(C) No. 135 of 2003. The Court in the aforesaid writ proceeding while admitting the case passed an interim order dated 07.01.2003, the relevant portion of which is quoted hereunder:--

The order passed on 9.4.2002 in Misc. Petition No. 21 of 2002 shall remain suspended for the period from 17.10.2001 to 10.06.2002, if the respondent has not rendered service.

The said writ petition was finally disposed of by the Court on 08.05.2003 whereby the Court set aside the order of the learned Tribunal passed on 09.04.2002 in OA No. 426 of 2001 with the following observation:--

However, it is made clear that the respondent shall be entitled for all salaries for the period he has worked on the post of Principal of the school, may be as a result of the interim or the final order issued by the Tribunal or by the High Court. The salaries shall be paid by the authority within a period of three months from today.

12. In view of the order passed in the writ proceeding on 08.05.2003, the case pending before the learned Tribunal being OA No. 231 of 2002 was withdrawn. However, on receipt of the order dated 08.05.2003 passed in WP(C) No. 135 of 2003, the petitioner made a representation addressed to the Deputy Director, NVS, Shillong on 27.05.03 seeking release of his salaries with effect from

17.10.2001. On receipt of the aforesaid representation, the Deputy Director vide communication dated 25.06.2003 issued a demand draft amounting to Rs. 10,692/- which includes arrear of increment from 01.09.2000 to 16.10.2001 for Rs. 6,995/- and Teaching allowance from 27.9.1999 to 16.10.2001 for Rs. 3697/- but rejected the prayer for releasing his salaries with effect from 17.10.2001 holding that the petitioner did not render any service with effect from 17.10.2001 which is the subject matter in OA No. 43 of 2004.

13. The aforesaid OA No. 43 of 2004 came up for final hearing before the learned Tribunal on 12.08.2005 wherein the learned Tribunal after threadbare discussion and taking into consideration the orders passed on OA No. 426 of 2001, WP(C) No. 135 of 2003 and the communications made between the contesting parties, more particularly, the letter dated 25.06.2003 wherein the Deputy Director NVS Shillong had taken a stand on verification of the record, that the petitioner did not render any service in the school after 17.10.2001 and also after perusal of the rejoinder and the stand of the petitioner that he assumed the charge and had worked as the Principal of the school, has found that the rejoinder speaks otherwise which is quoted hereunder:--

The applicant repeatedly insisted on his resumption of duty as Principal of JNV, Kalaigaon and even submitted representation to the Dy. Director, NVS, Shillong, but it is the respondents who restrained the applicant from discharging his duties in utter violation of the order of the Tribunal and as such the contention of the respondents that the applicant did not render service after 17.10.2001 is false.

Further, the learned Tribunal has observed that if the respondents had restrained him from resuming his duties, it was for the petitioner to bring the said fact immediately to the notice of the Tribunal to get further order in the matter as the interim passed in OA No. 426 of 2001 was in his favour. Moreover, when the Court passed an interim order on 07.01.2003 in WP(C) No. 135/2003 suspending the order dated 09.04.2002 passed in M.P. No. 21 of 2002 arising out of OA No. 426 of 2001, the petitioner did not make any endeavor to vacate the interim order dated 07.01.2003 holding that such disputed question of facts is beyond the scope of judicial review, thereby dismissed OA No. 43 of 2004 vide order dated 12.8.2005, observing that the petitioner may approach the appropriate civil courts for reliefs.

14. Against the order passed on 12.08.05 in OA No. 43 of 2004 the petitioner approached the Court by filing a writ petition being WP(C) No. 367 of 2007 which was disposed of on 29.01.2009 with a direction to the petitioner to approach the concerned authority for consideration of his clam afresh keeping in mind the communications from the school dated 02.11.2001 and 18.11.2002 by way of representation whereof the authority shall consider the same within a period of three months and if the authority after proper scrutiny comes to the conclusion that the petitioner had actually rendered his services in the school as Principal, they shall release his pay and allowances in accordance with law with a rider that if the petitioner is not satisfied with the findings of the authority, he may

approach the appropriate forum for redressal of his grievances.

15. Accordingly, the petitioner submitted a detailed representation dated 07.02.2007 before the authority seeking release of salary from 17.10.2001 to 26.05.2003 in pursuance of the order passed in WP(C) No. 367 of 2007. The official respondents disposed of the representation on 11.06.2007 holding that the petitioner did not render his service as Principal in the Samity during the period from 17.10.2001 to 26.05.2003 after his release though the petitioner had relied on two documents viz. communication dated 02.11.2001 and 18.11.2002 whereof the letter dated 02.11.2001 written by Regional Office, Shillong to the Principal-in-Charge, JNV, Darrang informing that the petitioner should not be allowed to exercise any financial power in case of his joining on the basis of stay order granted by the learned Tribunal, whereas the letter dated 18.11.2002 has been written by Principal, JNV, Darrang to the petitioner advising him to submit required documents for settlement of income tax and these two letters do not, in any way, establish that the petitioner had actually taken over the charge of Principal of JNV, Darrang and was functioning in that Vidyalaya. On the contrary, these letters reveal that the petitioner was not in JNV, Darrang thereby requested to submit some documents for settlement of Income Tax and hence rejected his representation.

16. The order dated 11.06.2007 gave rise to a new cause of action culminating another OA being 98 of 2009 seeking a direction to release the salary of the petitioner from 17.10.2001 to 26.05.2003 in terms of the order dated 29.01.2007 passed in WP(C) No. 367 of 2007. The aforesaid OA No. 98 of 2009 came up for final hearing on 19.05.2010 wherein the learned Tribunal after marshalling the entire evidence on record came to a categorical finding that save and except a bold statement that the petitioner served as Principal of the School no concrete material or evidence had been furnished by him to establish that he indeed worked in the said post. The learned Tribunal has further observed that if the petitioner had indeed taken over the charge from the Principal-in-Charge after 17.10.2001 pursuant to the interim order passed by the learned Tribunal, there would have been some written document in proof of taking over the charge as like of handing over the charge which he had given to Principal i/c on 16.10.2001. Other observations made by the Tribunal are similar to the order dated 12.08.2005 passed in OA No. 43 of 2004. By observing as thus, the Tribunal dismissed the OA No. 98 of 2009 which is under challenge in the instant writ proceeding.

17. We have given our anxious consideration to the matter at hand. In particular, we have taken note of the communications dated 2/5.11.2001, 05.11.2002 and 18.11.2002 which set out the entitlement of salary of the petitioner. For better appreciation and effective adjudication of the case, (the aforesaid communications are quoted herein below:--

Regional Office NAVODAYA VIDYALAYA SAMITY SHILLONG Ministry of Human Resource Development (Deptt. of Education)

Dated 2/5.11.2001

To

The Principal Incharge, JNV, Kalaigaon Assam.

Sub: Joining of duty of Shri DP Pathak, Ex-Principal. JNV, Darrang reg.

Sir,

With reference to the subject cited above and to convey that Hon"ble CAT in an interim order passed in OA. No. 426/2001 has temporarily suspended the operation of orders of NVS Hqrs and Regional Office, Shillong till next date. As Shri D.D. Pathak, has already handed over the charge and financial powers has already been transferred to the Incharge Principal, he will not start exercising the financial powers without the formal order of NVS Hqrs and Regional Office, Shillong.

You are therefore advised/requested not to hand over the financial charge without the order of the competent authority.

The compliance must be ensured and communicated to this office immediately.

Yours faithfully, (B SINGH) ASSTT. DIRECTOR (ASP)

Copy to:--

1. Shri DD Pathak, Ex-Principal, JNV Darrang with a direction not to exercise financial powers without orders from the competent authority.
2. The Branch Manger, SBI, Mangoldai, Distt. Darrang for information & necessary action.
3. The Dy. Commissioner cum Chairman, VMC, JNV, Darrang for information.

ASSTT. DIRECTOR (ASP) OA. NO. 426/2001 -NVS (SHR)/Admn/5580

05.11.2002

ORDER

As per decision passed by Hon"ble CAT, Guwahati Bench, Guwahati on 9.4.2002, on the Miscellaneous Application No. 21/2002(OA426/2001), Shri D.D. Pathak, Principal to pay full salary from 17.10.2001 onwards. It is hereby ordered to pay full salary to Shri D.D. Pathak on and from 17th October, 2001 onwards till further orders.

Compliance report may be sent to the undersigned latest by 11th November 2002.

(D. HAZARIKA) DEPUTY DIRECTOR

To,

The Principal JNV, Darrang Assam.

Copy to:

1. The Joint Director (Admn), NVS HQrs, New Delhi-110 002 with reference to his telephonic instructions dated 5.11.2002.
2. Shri D.D. Pathak (Through Principal, JNV, Darrang).
3. Shri K.N. Choudhury, Senior Advocate, Rupnagar, Guwahati to apprise the matter to the Hon''ble CAT Guwahati Bench Guwahati and to take steps to drop the contempt proceedings.

DEPUTY DIRECTOR."

"JAWAHAR NAVODAYA VIDYALAYA Ministry of Human Resource Development Govt. of India, Deptt. of Education, Udmari: Kalaigaon PO: Tengabari (784525) Dist: Darrang (Assam). Ref...PF(DDP)/2002-03/JNV(KLG)/Udmari/9943-44 Dated 18.11.02

To

Shri Dambarudhar Pathak Near St. Mary's High School, Ward No.-3 Kalahbhanga Distt: Barpeta (Assam)

Sub: REGARDING SUBMISSION OF DOCUMENT OF SAVINGS FOR SETTLEMENT OF INCOME TAX FOR THE PAYMENT OF SALARY W.E.F. 17.10.2001.

Sir,

With reference to the subject cited above I would like to inform you that as per NVS (R.O.) Shillong letter No. 426/2001-NVS (SHR)/Admn/5580 dt: 05.11.02 your salary is to be released from this office w.e.f. 17.10.01 onwards till further order.

Therefore you are hereby asked to submit the documents i.e. receipt of savings during April '01 to 31st March' 02 which is required for settlement of income tax from Salary for payment.

This is for your kind information and compliance please. Thanking you.

Yours faithfully, Principal. J.N.V. Kalaigaon Udmari, Darrang. Mangaldai

Copy to:--

1. The Deputy Director, NVS (R.O.) Shillong for information.
2. Office copy.

Principal. J.N.V. Kalaigaon Udmari, Darrang.

18. After perusal of the entire records, it would further reveal that the Principal-in-charge issued a communication dated 23.11.2002 to the Deputy Director, NVS, Shillong as to how the payment would be made when the petitioner had

never resumed duties as Principal of the school after his release on 16.10.2001. The communication dated 23.11.2002 being relevant, is quoted hereinbelow:--

Date-23.11.02

To, The Deputy Director, (R.O.) Navodaya Vidyalaya Samiti Shillong-3 (Meghalaya)

Ref No. Your letter No. OA No. 926/2001-NVS (Admn)5580 Dt. 05.11.02

SUB: REGARDING THE PAYMENT OF SHRI DAMBARUDHAR PATHAK, EX. PRINCIPAL OF JNV KALAIGAON, UDMARI, DARRANG

Sir,

With reference to the subject cited above and as per above mentioned letter, your honour is hereby requested to kindly give the suggestion regarding the following points.

1. How payment be made, as Shri Dambarudhar Pathak is neither on duty nor at the Vidyalaya and there is no evidence of presence after his release on 16.10.01.
2. If payment is made then the date from which to which date to be done.

This is for your kind information and necessary suggestion please. Thanking you.

Yours faithfully Principal JNV, Kalaigaon, Udmari Distt: Darrang, Assam.

19. The records also do not support the claim of the petitioner that he indeed joined in service after 16.10.2001 when he handed over the charge to the next senior most teacher on repatriation. The communication dated 18.11.2002 clearly demonstrates that the petitioner had not served as Principal of the school after 16.10.2001 as the same was sent to the petitioner at his original house address, i.e. Kalahbhanga, district Barpeta. Therefore, the Court is constrained to hold that the petitioner, in fact, did not render any service as Principal of the school for the period with effect from 17.10.2001 to 26.05.2003. In the result, the writ petition is found to be devoid of any merit and the same is dismissed accordingly. The parties are left to bear their own costs.