

(2004) 02 GAU CK 0057
In the Gauhati High Court
Case No : Civil Rule No. 4385 of 1998

Dambudhar Nath and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 03-02-2004

Acts Referred:

Citation : (2004) 2 GLR 363

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Advocate : A.M. Buzarbaruah, for the Appellant; R.K. Boss and M.K. Misra, for the Respondent

Final Decision : Dismissed

Judgement

Ranjan Gogoi, J.—The 31 writ petitioners have joined together to challenge an order dated 1st August, 1998 issued by the Deputy Secretary to the Government of Assam, Panchayat and Rural Development (A) Department. By the aforesaid order, the authority after canceling an earlier order dated 6.1.1995 had directed that the temporary Gaon Panchayat Secretaries be allowed to take charge of financial transactions of such Gaon Panchayats where there are no sanctioned posts of Secretaries. It must be put on record that by the earlier order dated 6.1.1995 (Annexure-VI(a) to the writ petition) it was ordered that in cases of Gaon Panchayats where no sanctioned posts of Secretaries exist, the senior-most Government servant is to be allowed to be the custodian of cash and the temporary Gaon Panchayat Secretaries were to assist such functionaries in the discharge of the said duties.

2. While some of the writ petitioners claim to have been appointed as Secretaries, the others, admittedly, are holding posts like. Lower Division Assistant, Tax Collector etc. Though there is an omnibus statement in the writ petition that some writ petitioners were appointed as Secretaries, no supporting materials in this regard have been enclosed. The contention advanced by Mr. A.M. Buzarbaruah, learned counsel for the writ petitioners is that the petitioners

were all along discharging the duties and responsibilities of Gaon Panchayat Secretaries and as they have been appointed much earlier than the private Respondents No. 3 to 24, the impugned order dated 1st August, 1998 must receive interference of this Court. Financial transactions and responsibility in respect of cash are an integral part of the duties of the Gaon Panchayat Secretaries and the petitioners having discharged such duties on the strength of Government orders passed from time to time, they cannot be replaced by the Respondents No. 3 to 24 who joined service much later.

3. The claims made on behalf of the writ petitioners have been resisted by Mr. R.K. Borah, learned Govt. Advocate, Assam as well as Mr. M.K. Misra, learned counsel appearing for the Respondents No. 3 to 24. Learned counsels for the respondents have submitted that the discharge of duties of the posts of Gaon Panchayat Secretary by the writ petitioners, if any, was a purely temporary arrangement and after the Respondents No. 3 to 24 were appointed as temporary Gaon Panchayat Secretaries, the State Government took a policy decision that all duties of the Gaon Panchayat Secretaries should be handled by temporary Gaon Panchayat Secretaries appointed. The legal entitlement of the writ petitioners to continue to handle cash and responsibilities of the finances of the Gaon Panchayats has also been questioned by the learned counsels appearing for the respondents.

4. I have considered the submissions advanced by the respective parties. The claims made in the writ petition would have some semblance of tenability if the writ petitioners could be understood to have been appointed as Gaon Panchayat Secretaries, a conclusion that this Court is unable to reach on the basis of the materials on record. If the materials on record cannot sustain a finding that the petitioners were appointed as Gaon Panchayat Secretaries, mere performance of duties, as claimed, cannot be understood to have conferred any right on the petitioners to so continue. As the Respondents No. 3 to 24 have been appointed as temporary Gaon Panchayat Secretaries and after their appointment, there was a change in policy to allow such functionaries to perform all duties of a Secretary, like handling of cash etc. no infirmity can be found in the impugned order dated 1st August, 1998. In any event, it will be difficult for this Court to recognize any legal right in the writ petitioners to continue to perform the earlier assigned duties with regard to cash and finance, which alone could have justified an interference by this Court with the impugned order dated 1.8.1998.

5. For all the aforesaid reasons, this writ petition has to fail. It is accordingly, dismissed. No costs.