
(2008) 09 GAU CK 0012
In the Gauhati High Court
Case No : Writ Petition (C) No. 595 of 2008

Dulu Deka

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 08-09-2008

Acts Referred:

Assam Elementary Education (Provincialisation) Rules, 1997 — Rule 2, 3

Citation : (2009) 2 GLR 693

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Advocate : M.B.U. Ahmed, for the Appellant; M.R. Pathak and K. Das, for the Respondent

Final Decision : Dismissed

Judgement

Amitava Roy, J.—The Petitioner seeks an appropriate writ and/or direction for release of his arrear salary from 12.3.2001 for the services rendered by her as Assistant Teacher in Bengbari M.E. School now located in the District of Udalguri. She has prayed for release of her current salary as well.

2. I have heard Mr. M.B.U. Ahmed, learned Counsel for the Petitioner, Mr. M.R. Pathak, learned Standing Counsel, Education Department and Mr. Das, learned Standing Counsel, B.T.C.

3. The abbreviated version of the Petitioner is that in response to an advertisement published by the Director of Elementary Education, Assam, in the issue dated 28.12.1996 of the local daily "Sentinel" for filling up 7,500 posts of Assistant Teachers in different I.P./M.V./M.E./M.E. Madrassas, Senior Basic, Junior Basic and Junior L.P. Schools of different Districts of the State, he along with others offered his candidature for the post of Assistant Teacher in M.E./M.V. School in the prescribed form.

4. At the relevant point of time, Udalguri was a Sub-Division of the then Darrang District. The Petitioner as required appeared before the Sub-Divisional Level

Selection Board some time in the month of July 1997. On enquiries made thereafter by her, she came to learn that she had been selected for appointment. However, due to imposition of ban on appointments by the Government of Assam, no recruitment was made. The ban was ultimately lifted whereafter the District Elementary Education Officer/Deputy Inspector of Schools were asked to insist upon the respective Sub-Divisional Level Selection Boards to recommend the candidates selected for appointment. Accordingly the Sub-Divisional Selection Board, Udalguri, in its meeting held on 12.3.2001 recommend the Petitioner and others for appointment. According to the Petitioner, following the approval of the State Level Empowered Committee and on completion of the other necessary formalities, she was appointed as Assistant Teacher in the Bengbari M.E. School by order dated 12.3.2006 by the District Elementary Education Officer, Darrang, Mangaldoi on a fixed salary of Rs. 2,000 per month under the Operation Black Board project, a centrally sponsored scheme. Though the Petitioner, on the basis of her selection, expected an appointment on regular basis and along with others similarly placed had submitted representations registering their objections against fixed pay induction, the same were not attended to by the State authorities. Situated thus the appointees equally placed like her approached this Court with a series of writ petition the lead case being WP(C) 8764/2001, Smt. Nirmali Borah and Ors. v. State of Assam and Ors. which were disposed of on 8.4.2002 with a direction to the Respondent authorities to regularize the services of the teachers appointed under the Operation Black Board Scheme by adjusting/absorbing them in the regularly sanctioned posts/vacancies of Assistant Teachers of L.P./M.E. Schools of Assam in a phased manner and not to terminate their services pending such regularization. The said authorities were directed to allow them to continue in service beyond 31.3.2002 as originally fixed by retaining their temporary posts and also required them to pay their monthly salary for the period for which they had been found actually rendering their services.

5. Being aggrieved, the State preferred WA 376/2002 and this Court while admitting the same directed that the services of the writ Petitioners involved would not be disbursed and their arrear salary be released. The State authorities were also directed to initiate the process in terms of the order of the learned Single Judge. Though as a consequence of the above directions, necessary funds were allotted to the concerned District Elementary Education Officers for payment of salary to the Primary and Middle School teachers, the Petitioner was denied the benefit thereof for being posted at Bengbari M.E. School within the then Mangaldoi Sub-Division though selected by the Sub-Divisional Level Selection Board, Udalguri. In eventual response to several representations submitted by the Petitioner appealing for her salary which remained in arrears from the date of her joining, the Deputy Inspector of Schools, Udalguri, by his letter dated 3.1.2008 to the Director of Elementary Education, Assam, recommended payment thereof to her as she was rendering her services as Assistant Teacher in the aforementioned School. The Petitioner has turned to this

Court, as the proposal has yet not been acted upon by the higher authorities of the Department.

6. The State Respondents have not filed their affidavit. The Council in its counter has stated that though the appointment of teachers under the Operation Black Board Scheme had been made by the Government of Assam directly, the teachers of the erstwhile Udalguri Sub-Division were not accounted for by the District Elementary Education Officer, Mangaldoi, for payment of her salary on the plea that the Council would submit the proposal for them. The counter reveals that the Director of Education, Bodoland Territorial Council, Kokrajhar, is taking steps to submit the budget estimate for onward submission to the Government of Assam for release of funds for payment of salary to the teachers appointed under the scheme. In her affidavit in reply, the Petitioner has brought on record a copy of the proceedings of the Sub-Division Level Selection Board, Udalguri, held on 12.3.2001 wherein her name appears at Sl. No. 31 in the list of recommended candidates for Udalguri Legislative Constituency prepared for M.E. Schools.

7. Mr. Ahmed has argued that the Petitioner having been selected in accordance with the Assam Elementary Education (Provincialisation) Rules, 1977 ("the Rules") and being otherwise similarly situated like candidates participating in the same process and appointed under the Operation Black Board Scheme, she cannot legitimately be denied her salary only for being posted in a School in Mangaldoi Sub-Division. Further as it is apparent from the letter dated 3.1.2008 of the In-Charge Deputy Inspector of Schools, Udalguri, that she is rendering her services in the aforementioned School till date, there is not justifiable reason to treat her differently and, therefore, a writ of mandamus ought to be issued directing disbursement of her salary from the date of her joining the service. In support of the Petitioner's selection, the learned Counsel has drawn the attention of this Court to the proceedings of the Sub-Divisional Selection Board, Udalguri (Annexure A to the affidavit in reply filed by the Petitioner). According to Mr. Ahmed, WA 376/2002 having been dismissed by a Division Bench of this Court, the Petitioner by no means can be deprived of the benefit of the decision of this Court vis-a-vis the persons similarly appointed under the Operation Black Board scheme like the Petitioner, 8. Mr. Pathak in reply has urged that even assuming that the Petitioner had been selected by the Sub-Divisional Level Selection Board, Udalguri, her appointment under the Mangaldoi Sub-Division is impermissible under the Rules and as such her induction being void ab initio, her claim for salary is misconceived. The learned Standing Counsel contended that as all appointments under the Mangaldoi Sub-Division made in the year 2001 have been cancelled in the meantime, the question of the Petitioner rendering her services does not arise. The learned Standing Counsel pleaded that in course of the arguments of the WA 376/2002, a list of such selected and serving teachers of different Districts had been submitted before the Division Bench in which the name of the Petitioner does not appear. On that count as well the Petitioner's claim for salary is untenable, he maintained.

9. The learned Standing Counsel for the Council has submitted that in case the Petitioner has been validly selected and appointee and is rendering her services, the Council would examine her claim for salary and accordingly draw up the budget estimate proposed to be submitted before the Government for remittance of the salary of the serving teachers in Schools of the Council area.

10. The pleaded facts and the arguments advanced have been duly considered. The Petitioner having claimed her selection under the Rules, it would be appropriate to refer to the relevant provisions thereof pertaining thereto. Rule 2(iii) defines "Board" to mean the Sub-divisional Level Advisory Board for Elementary Education constituted by the Government. Under Rule 3(i)(a), a Board has to invite applications in prescribed forms disclosing the conditions of eligibility number of posts, extent of reservation etc. Legislative Assembly wise of the State. The Selection Board under 3(i)(b), on receipt of the applications and on completion of the necessary formalities has to scrutinize the same along with other necessary testimonials for interview by the Interviewing Committee. On completion of interviews, the Selection Board would add marks secured by the different candidates on various counts as prescribed and prepare a list constituency wise for each Assam Legislative Constituency in descending order of merit and finalize a select list after providing for the reservation to the eligible candidates and submit a list to the Director of Elementary Education, Assam. No select list, if there is no vacancy of teacher in the School, falling in the Legislative Assembly Constituency exists would be prepared. The Deputy Inspector of Schools or the District Elementary Education Officer would thereafter make appointments of the selected candidates in order of merit only from the authenticated select list and any appointment of any person outside the select list would be invalid ab initio. The minutes of the meeting of the Sub-Divisional Level Selection Board held on 12.3.2001 discloses that the selection was held for the 60 posts in L.P. Schools and 40 posts in M.E. Schools located in Dalgaon, Majbat and Udalguri, the break up being hereunder.

11. In the list of the recommended candidates for M.E. Schools for Udalguri Legislative Assembly Constituency, the name of the Petitioner appears at Sl. No. 31. Considering the number of posts earmarked for the M.E. Schools of Udalguri Legislative Assembly Constituency, the Petitioner, therefore, could not have been accommodated. The appointment order of the Petitioner dated 12.3.2001 of the District Elementary Education Officer, Darrang, Majbat, also does not indicate about her selection therefor. Thereby she had been appointed as Assistant Teacher in Bengbari M.E. School at a fixed pay of Rs. 2,000 on temporary basis for a term to terminate on 31.2.2002. The appointment order further discloses that she would have no right to continue in service beyond that date. Incidentally as on date, the Udalguri Sub-Division is included in Udalguri District. From the scheme and enjoinders of Rule 3 of the Rules, appointment of a candidate in any School beyond the Legislative Assembly Constituency for which he or she had been recommended is impermissible. The appointment of the Petitioner as Assistant Teacher in Bengbari M.E. School admittedly beyond the then Udalguri

Legislative Assembly Constituency is invalid being in contravention of the Rules. Having regard to her position in merit list for Udalguri L.A.C., she could not have been accommodated against five posts earmarked therefor.

12. The Petitioner did not join the others in the earlier round of litigation. She is also not a party in WA 376/2002, which has since been disposed of on 1.7.2008 dismissing the same. The text of the judgment and order rendered therein testifies that the consideration and findings are confined to the teachers involved in the connected writ petitions. The hon''ble Division Bench did also refer to a list of working incumbents under the relevant Operation Black Board scheme. When queried by this Court, Mr. Pathak produced a copy of the list of 5,790 teachers (3,697 L.P. School Primary and 2093 Middle School) appointed in the year 2001 under the Operation Black Board scheme, the posts occupied by them having been retained by Memo No. PMA10/2003/pt III/218 dated 30.10.2007 of the Deputy Secretary to the Government of Assam, Education Department, conveying the sanction of the Governor of Assam to the said effect. The name of the Petitioner does not appear in the list of teachers for Primary as well as Upper Primary schools of Udalguri Sub-Division of the then Darrang District. In terms of the list taken cognizance of the Division Bench, the appointments of the teachers whereof have been sustained, the Petitioner''s claim of rendering her services stands belied. The judgments of this Court in the above factual background are of no avail to her. The proposal of the in-charge Deputy Inspector of Schools, Udalguri, by his letter dated 3.1.2008 cannot, therefore, be accorded a primacy over the above overwhelming materials on record. This court, therefore, feels disinclined to intervene and issue a mandamus and/or direction for releasing the Petitioner''s salary as prayed for.

The petition stands rejected in the above terms. No costs.