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(2015) 01 GAU CK 0028

In the Gauhati High Court

Case No : Writ Petition (C) No. 1813 of 2013

Hemanta Chutia — APPELLANT

Vs

The State of Assam and Others — RESPONDENT

Date of Decision : 07-01-2015

Acts Referred:

Citation : (2015) LabIC 1853

Hon'ble Judges : Tinlianthang Vaiphei, J

Bench : Single Bench

Advocate : B.C. Das, Senior Advocate, M. Ahmed, B.D. Sarma and U.K. Das, for the Appellant; U.K. Goswami and B. Gogoi, S.Cs., Advocates for the Respondent

Judgement

Tinlianthang Vaiphei, J.

1. As both the writ petitions are analogous in nature, they have been heard together and are now being disposed of by this common judgment. In the year 1991-92, the Government of India sponsored some posts of Hindi Teachers to popularise Hindi language in the non-Hindi speaking States and the Government of Assam had created 500 posts of Hindi Teachers under the said Centrally Sponsored Scheme during the 8th Plan period. Some Hindi Teachers were appointed in the provincialized schools whereas the remaining Hindi Teachers were on Ad-hoc basis in Ad hoc Secondary Schools during 1993-96 at a basic pay @ Rs. 3,580/-p.m. (fixed). Initially, they were appointed for a period of three months only, but their appointments were extended from time to time and ultimately made until further orders. It would appear that during the 9th Plan period, the Government of India was no longer willing to bear the expenditures under the scheme as the Plan period was over by then, the liability for paying the salaries of these teachers'' fell upon the State Government. As there was no longer reimbursement by the Central Government, these Hindi Teachers stopped receiving their salaries. In such a situation, the Planning and Development Department, Assam normalized those posts through screening test in the year 1998. In the year 1999, the State Government abolished these 500 posts w.e.f.

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1-3-1999 and created 401 posts of Hindi Teachers in the usual pay scale under the Non-Plan head with retrospective effect from 1-3-1999 vide the letter dated 12-10-1999 of the Education Department (Planning Branch), Government of Assam.

2. It is the case of both the petitioners that the existing Hindi Teachers appointed under the Centrally Sponsored Scheme were accommodated against the newly created posts under the Non-Plan head. Out of the aforesaid posts of 401 Hindi Teachers, 319 teachers were allowed to draw the time pay scale of Rs. 3,580-8,750/- plus other allowances with effect from 1-3-1999 as they were appointed in the provincialized schools, but the remaining 82 teachers were allowed to draw Rs. 3,580/-(fixed) without any incremental benefits as they were appointed in Ad hoc Secondary Schools. Aggrieved by this, some of the ad hoc teachers approached the respondent authorities on different occasions, but failed to get positive results whereupon they filed WP(C) No. 1676/2005 before this Court, which by the order dated 4-3-2005 disposed of the writ petition at the motion stage by directing the respondent No. 1 (Commissioner, Education Department, Assam) to consider the claims of the petitioners sympathetically. The respondent No. 2 thereafter examined the cases of the petitioners and issued the order dated 11-4-2007 rejecting the claims of the petitioners and at the same time directed the District Elementary Education Officer, Dibrugah District Circle ("DDC") to consider the appointments of 82 Hindi Teachers in provincialized High/Higher Secondary Schools sympathetically within the framework of the rules when such vacancies arose in future. Finally, the Government of Assam vide the letter dated 19-6-2009 allowed the adjustment of the posts of Ad hoc Hindi Teachers against sanctioned vacant posts in provincialized High/Higher Secondary, Schools with prospective effect.

3. In WP(C) No. 1814 of 2013, the petitioner was appointed as Hindi Teacher of Banaphul High School by the Managing Committee of the School on 16-1-2000 after termination of the service of the incumbent, namely, George Newar, who was found to be a habitual absentee. He has since then been working in the School in that capacity till now at the fixed pay of Rs. 3,580/- per month. The petitioner is working in one of the 82 post of Hindi Teachers appointed in the Ad hoc Schools. Similarly, the petitioner in WP(C) No. 1813 of 2013 was appointed by the Managing Committee of Public High School, Namrup in the year 1999. When one newly created post of Hindi Teacher was lying vacant at Duliajan Balika Vidyapith High, School (Ad hoc), the Inspector of Schools, DDC vide the order dated 29-3-2001 withdrew this post and attached it to Public High School, Namrup against which the petitioner came to be appointed at the fixed pay of Rs. 3,580/-. Subsequently, he was transferred to Namrup High School (Provincialized) along with the post vide the order dated. 24-9-2002. The petitioner has thus since then been serving against one of the aforesaid 82 posts of Hindi Teachers appointed in Ad hoc schools.

4. It is the grievance of both the petitioners that although other similarly situated

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teachers have been adjusted against sanctioned vacant posts of provincialized schools, they have not been adjusted against the sanctioned posts till date despite the proposal submitted by the Inspector of Schools, DDC with the result that they are enjoying the fixed pay of Rs. 3,580/-. It is thus the contention of both the petitioners that they are entitled to the benefits extended to similarly situated Hindi Teachers, who were appointed under the same scheme. The contention of Mr. B. Das, the learned senior counsel appearing for both the petitioners is simple, and is that though the cases of the petitioners for adjustment at Namrup High School (Provincialized) with regular pay and allowances have been found to be genuine and tenable in law as recommended at the Inspectorate level, the respondent Nos. 1 and 2 are dragging their feet without any rhyme or reason. He, therefore, strenuously urges this Court to issue necessary direction upon the respondent No. 1 to pass appropriate order in the light of the various correspondences exchanged between the Inspector of Schools, DDC and the Director of Secondary Education, Assam from time to time viz. Annexures-21, 22 and 23, which are self-explanatory. On minutely going through the writ petition and the contents of the aforecited annexures, I find considerable force in the contention of the learned senior counsel.

5. At this stage, I may refer to the affidavit-in-opposition filed by the respondent authorities in WP(C) No. 1914 of 2013, which is also relied on by them while defending their case in WP(C) No. 1813 of 2013. Paragraphs 7, 8, 9 and 10 of the affidavit are instructive, which are reproduced hereunder :

"7. That the deponent begs to state that as there was no post sanction in Banphul High School, the deponent instructed Inspector of Schools, Dibrugarh for sending a proposal to adjust the petitioner as Hindi Teacher at Dhaman Higher Secondary School vide Office Letter No. GIS/Hindi/2/2009/98 dated 23-5-2012.

8. That the deponent begs to state that as per the direction of the deponent vide letter No. GIS/Hindi/2/2009/98 dated 23-05-2012, the Inspector of Schools, Dibrugarh issued an order vide No. GIS/Hindi/Adjust/12/2467 dated 14-12-2012 with a request to the deponent to adjust the petitioner at Dhaman Higher Secondary School (Provincialized) as Hindi Teacher.

A copy of the letter issued by the Inspector of Schools, Dibrugarh dated 14-12-12 is annexed herewith and marked as Annexure-1.

9. That the deponent begs to state that the petitioner is still working in Bonphul High School and were waiting for the order to be issued by the deponent regarding adjustment in Dhaman Higher Secondary School with regular scale of pay.

10. That the deponent begs to state that the petitioner''s plea would be considered by the deponent in pursuance of the eligibility criteria required for Hindi Teacher."

6. This is the position taken by the respondent authorities in the case of the

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petitioner in WP(C) No. 1813 of 2013 is evident from the letter dated 14-12-2012 of the Inspector of Schools, DDC addressed to the respondent No. 2 (Annexure-1 to the affidavit-in-opposition of the respondent No. 2 in WP(C) No. 1814/13), the relevant portion whereof reads thus :

"Sub:- Regarding submission of proposal for adjust of Ad hoc Hindi Teachers (Fixed Pay) in respect of two No. of Teachers of Provincialized High and Higher Secondary Schools.

Ref: DSE''s Letter No. GIS/Hindi/2/2009/98--Dated 23rd May, 2012.

Sir,

With reference to the subject-matter cited above, I have the honour to submit herewith. a proposal along with a statement in respect of following 2 (two) numbers of Ad hoc Hindi Teachers (Fixed Pay) adjust them in Provincialized High and Higher Secondary Schools:

1. Sri Lakhi Pasad Gogoi, Hindi Teacher @ Rs. 3,590/- (Fixed Pay) of Bonphul High School, Jariguri, Dibrugarh appointed by the M/C Resolution No. 2 dated 16/12/2000 vice (sic) Sri. George Newar resigned on 25/08/2000 Sri Lakhi Prasad Gogoi has been serving at that post from the date of joining and his salary @ Rs. 3580/- p.m. as fixed pay.

2. Sri. Hemanta Chutia, Hindi Teacher is drawn @ Rs. 3,580/- (Fixed Pay) at Namrup High School. Originally the post allotted to Duliajan Balika Vidyapith High School (Ad hoc) vide this Office Memo No. 9216-20 Dated 07/06/1994 against, the Govt. creation No. EPG/401/86/Pt-1/78, D/- 31/3/1992 and after that again the said Teacher transferred to Namrup Public H.E. School (Ad hoc) finally. Sri. Hemanta Chutia transferred to Namrup High School (Provincialized) vide this Office Memo No. 12268 74, D/- 24/09/2012 where the teacher is presently working presently.

As both the two Hindi posts are lying vacant at Namrup High School (Provincialized) and Dhaman Higher Secondary School (Provincialized) respectively.

Therefore, I request you kindly to adjust Sri. Hemanta Chutia at Namrup High School (Provincialized) and Sri. Lakhi Prasad Gogoi at Dhaman Higher Secondary School (Provincialized). So that Teachers concerned will draw their regular pay and allowances.

This is for favour of your kind information and necessary action.

Yours faithfully, (P. Doley) Inspector of Schools, Dibrugarh District Circle, Dibrugarh."

7. The genuineness or entitlement of the said Hemanta Chutia (the petitioner in WP(C) No. 1813/13) for adjustment at Namrup High School (Provincialized) and the said Lakhi Prasad Gogoi (the petitioner in WP(C) No. 1814/13) can hardly be

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debatable now. The respondent No. 1 and/or 2 should have taken a decision on the basis of the materials on record referred to above. This amounts to failure/ refusal to exercise the discretion vested in them by law. Having failed/refused to exercise such discretion, the interference of this Court is warranted. For the aforementioned reasons, this writ petition is disposed of with the following directions :

"(a) The respondent No. 1 and/or the respondent No. 2, whoever is the appropriate authority, shall now take a decision about the entitlement of the petitioner (Hemanta Chutia) in WP(C) No. 1813/13 for adjustment against the sanctioned post of Hindi Teacher at Namrup High School (Provincialized) with regular time scale of pay and other admissible allowances with effect from his initial date of appointment with notional pay.

(b) The respondent No. 1 and/or the respondent No. 2, whoever is the appropriate authority, shall also consider the entitlement of the petitioner (Lakhi Prasad Gogoi) in WP(C) No. 1814 of 2013 for adjustment against the sanctioned post of Hindi Teacher at Bonphul High School (Provincialized), Jariguri with regular time scale of pay and other admissible allowances with effect from the date his initial appointment with notional pay.

(c) The entire exercise shall be carried out within a period of two months from the date of receipt of this judgment.

(d) The decision so taken shall be communicated to both the petitioners forthwith."

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