
(2018) 05 GAU CK 0199
In the Gauhati High Court
Case No : Writ Prtition (C) No.414 of 2016

Hemanta Das Hemanta Das	Vs	APPELLANT
State Of Assam And Ors		RESPONDENT

Date of Decision : 25-05-2018

Acts Referred:

Citation : (2018) 05 GAU CK 0199

Hon'ble Judges : ACHINTYA MALLA BUJOR BARUA, J

Bench : Single Bench

Advocate : T N Srinivasan, S K Singhar

Final Decision : Disposed Off

Judgement

1. Heard Mr. M.K. Choudhury, learned senior counsel for the petitioner and Mr. N. Sarma, learned Standing Counsel for the Secondary Education

Department. Notice on the respondent No.4 being the Headmaster of the school was served and the Headmaster has also filed an affidavit in opposition.

2. It is the claim of the petitioner that he was appointed as an Assistant Teacher as per the order dated 22.10.1998 upon being selected by the District

Level Selection Board, Nalbari and was posted in the Bornibari Milan High School. On his appointment, the petitioner was allowed the service benefits

like PF, GIS etc and his Service Book was also opened. By an order of 26.07.2000 of the Inspector of Schools, Nalbari, one Smti Binapani Das was

appointed as an Assistant Teacher following the up gradation of one Paramananda Kakati as the Headmaster of the school.

The appointment order of 26.07.2000 of Smti Binapani Das was assailed by the writ petitioner in WP(C) No.5208/2000 and by an interim order dated

22.09.2000, the said appointment was stayed. The writ petition was given a final consideration by the judgment and order dated 17.08.2006, by which

it was provided that the petitioner would be allowed to continue as the Assistant Teacher of the school and further all consequential service benefits

be given to him. It was also provided that if under the law, his appointment requires to be regularized, it be done after the ban that was enforced at

that relevant point of time be lifted.

3. In the meantime, the appointment of several teachers in the Nalbari district were cancelled by different orders and in the process, the appointment

of the petitioner was also cancelled by an order dated 21.05.2012. All such cancellations were assailed in several writ petitions including WP(C)

No.3111/2012, which was of the present writ petitioner. All the said writ petitions were given a final consideration by the order dated 01.08.2013,

wherein this Court arrived at a conclusion that the required procedure prior to the cancellation was not followed.

The Court was of the view that the show cause notices issued on 18.05.2010 were cancelled and the same were not taken to their logical conclusion

and that the orders of termination were issued abruptly without affording the affected persons any opportunity to defend their case. Accordingly, by

the said order of 01.08.2013, the respondent authorities were given the liberty to proceed against all such persons by issuing fresh show cause notices.

It was further provided that the earlier orders of termination of 21.05.2012 of the Inspector of Schools would be subject to the final decision to be

taken in the proceeding to be initiated.

4. Accordingly, the petitioner was allowed to resume his duties from 18.01.2014. The procedure to be adopted as required by the order dated

01.08.2013 resulted in the order dated 24.03.2015 of the Inspector of Schools, Nalbari. By the said order, the Inspector upon giving a detail

consideration to the entire aspect of the matter, arrived at a conclusion that all the nine persons involved therein, including the petitioner, were allowed

to draw the current salaries from the date of resuming their duty in their respective schools till a final decision is taken. It is at that stage that the

present writ petition has been preferred seeking for a direction that the order dated 24.03.2015 of the Inspector of Schools, Nalbari be given effect

and the final conclusion be arrived on the matter.

5. This Court has taken note of that there is an earlier order of this Court dated 17.08.2006 in WP(C) No.5208/2000, which arrives at a categorical conclusion that the petitioner be allowed to continue as an Assistant Teacher with all consequential service benefits and if required under the law, his service be regularized. The said order of this Court is a prima facie indication that otherwise the petitioner is entitled to continue in service.
6. But, be that as it may, whether rightly or wrongly, his service was terminated by an order of 21.05.2012 along with many other such teachers of Nalbari district. The order of cancellation being assailed in WP(C) No.3111/2012, the order dated 01.08.2013 required the authorities to conduct a de-novo proceeding by issuing fresh show cause notice and giving the petitioner an appropriate opportunity to present his case and thereupon arrive at its own conclusion.
7. The order of the Inspector dated 24.03.2015 is, therefore understood to be the culmination of the requirement of this Court in its order dated 01.08.2013. As the order of the Inspector goes in favour of the petitioner, therefore, as per the requirement of the order of 01.08.2013, the same should ordinarily be substituted over the earlier order of termination dated 21.05.2012.
8. Mr. N. Sarma, learned Standing Counsel for the Secondary Education Department states that the appropriate authority to take the final decision would be the Director of Secondary Education, Assam.
9. Accordingly, this writ petition is disposed of by requiring the Director of Secondary Education, Assam to pass a final order on the basis of the order dated 24.03.2015 of the Inspector of Schools and in doing so, the earlier orders of this Court dated 17.08.2006 in WP(C) No.5208/2000 and order dated 01.08.2013 in WP(C) No.3111/2012 shall also be borne in mind.
10. The aforesaid requirement be done by the Director within a period of three months from the date of receipt of a certified copy of this order.
11. Till such final order is passed, the service condition of the petitioner as it prevails today shall be maintained. In terms of the above, the writ petition stands disposed of.