
(1999) 03 GAU CK 0036
In the Gauhati High Court
Case No : Civil Rule No. 116 of 1997

Jayanta Baruah

APPELLANT

Vs

State of Assam and Ors.

RESPONDENT

Date of Decision : 25-03-1999

Acts Referred:

Assam Elementary Education (Provincialisation) Services and Conduct Rules, 1981 —
Rule 2(xii), 2(xii), 4, 4
Constitution of India, 1950 — Article 226, 226

Citation : (1999) 1 GLJ 530

Hon'ble Judges : A.K.Patnaik, J

Bench : Single Bench

Advocate : B.C.Das, A.K.Maheswari, A.Devi, Advocates appearing for Parties

Judgement

1. In this application under Article 226 of the Constitution the petitioner has prayed for a direction on the respondents to pay his salary for the period from October, 1995 with interest @ 20% per annum from the date of accrual till the payment is made.

2. The facts briefly are that by order dated 28.4.95 the Deputy Inspector of Schools, Dhemaji appointed the petitioner with effect from 18.1.95 as Assistant Teacher on a monthly stipend of Rs.900 per month. In the said order of appointment it is further stipulated that the petitioner will be deputed for undergoing teachers training for one year and after he becomes successful in the training, he will be given the regular time scale of pay as prescribed FOR Rules, 1990 plus other allowances admissible under Rule from the date of announcement of result. Pursuant to the said order of appointment the petitioner joined as Assistant Teacher of Rupahipathar LP School on 10.6.95. However, one Sri Juganta Deori was also appointed as Assistant Teacher. The Deputy Inspector of Schools, Dhemaji on coming to learn about the appointment of the two persons to the very same post of Assistant Teacher, stopped payment of salary to the petitioner as well as Sri Juganta Deori. Thereafter an inquiry was conducted

by the Block Elementary Education Officer, Dhemaji and report dated 29.9.96 submitted by him to the Deputy Inspector of Schools, Dhemaji stating that the appointment of the petitioner as 2nd founder teacher by the Deputy Inspector of Schools, Dhemaji was found valid on verification of certificates and documents. On receipt of the said report dated 29.9.95 of the Block Elementary Education Officer, Dhemaji the appointment of the petitioner as 2nd founder teacher in Rupahipathar LP School was upheld and the appointment of the said Juganta Deori has been cancelled by the order dated 25.10.95 of the Deputy Inspector of Schools, Dhemaji. In the meantime, the petitioner was paid his salary for the months of June, July, August and September, 1995, but his salary from October, 95 onward was not paid. On these facts the petitioner has moved this Court for appropriate relief.

3. Mr. AK Maheswari, learned counsel for the petitioner submitted that the salary of the petitioner perhaps was not paid from October, 95 on account of appointment of the petitioner as well as Sri Juganta Deori in the same post of Assistant Teacher. But in view of clear report of the Block Elementary Education Officer, Dhemaji dated 29.9.96, the Deputy Inspector of Schools, Dhemaji upheld the appointment of the petitioner and cancelled the appointment of said Sri Juganta Deori vide his order dated 25.10.95. Hence, there should be no further difficulty on the part of the respondents to pay the salary to the petitioner for the period from October, 95 onwards. He stated that as a matter of fact the said Sri Juganta Deori had filed a Civil Rule No.612 of 1997 before this Court and by order dated 10.2.97 this Court disposed of the said civil rule with a direction to the petitioner to prefer an appeal before the Director of Elementary Education, Assam and the Director of Elementary Education, Assam was directed to hear the said Sri Juganta Deori as well as the writ petitioner and pass appropriate orders in accordance with law. Pursuant to the said order dated 10.2.97 of this Court the Director of Elementary Education, Assam considered the case of the writ petitioner as well as Sri Juganta Deori and held that the Deputy Inspector of Schools, Dhemaji had cancelled the appointment of Sri Juganta Deori and allowed the writ petitioner to continue his service with effect from 25.10.95 and therefore Sri Juganta Deori cannot be considered for regularisation of service as 2nd founder teacher in Rupahipathar LP School.

4. It appears that the petitioner has not been paid his salary from October, 95 as both the petitioner and Sri Juganta Deori were appointed to the same post of 2nd founder teacher in the aforesaid school and there was a dispute as to who would be entitled to salary, the petitioner or Sri Juganta Deori. The said dispute has been finalised by the Director of Elementary Education, Assam pursuant to a direction of this Court passed in CR No.612 of 1997. The said order passed by the Director of Elementary Education, Assam is extracted herein below :

?ORDER

Perused the order dated 10.2.97 passed by the Hon"ble Gauhati High Court in Civil Rule No.612 of 1997 of Sri Juganta vs. Sri AC Pegu, Director of Elementary

Education, Assam. Also seen the report of the Deputy Inspector of Schools, Dhemaji sent vide letter No.DIS/DMS/HC234/95/96/9936 dated 21.3.96. Also perused the order passed by the Hon'ble High Court on 1.8.97 in COP (C) 323 of 1997.

The Rupahipathar LP School was provincialised in the year 1991. As per Deputy Inspector of Schools report, the petitioner Sri Juganta Deori was not appointed by the Managing Committee dated 3.6.93. He was appointed as 2nd founder teacher in. Rupahipathar LP School without any justification by the then I/c Deputy Inspector of Schools, Dhemaji Sri Jugen Bora vide order No.572832 dated 9.6.95. On the other hand the respondent Sri Jayanta Baruah was appointed as 2nd founder teacher at Rupahipathar LP School by the then J7c Deputy Inspector of Schools, Dhemaji vide order No 1416367 dated 28.4.95.

The post of 2nd founder teacher of Rupahipathar LP School was allowed vide this office notification order No.EVD.2/94/94A dated 15.1.95. The appointment of the petitioner was made on 9.6.95 whereas Sri Jayanta Baruah was appointed on 28.4.95 as 2nd founder teacher against the Govt sanctioned post which was allowed to Rupahipathar LP School. As such after receiving report from Block Elementary Education Officer, Dhemaji as well as per report of the SubInspector of Schools the appointment order of Sri Juganta Deori has been cancelled by the Deputy Inspector of Schools, Dhemaji and th? appointment order of Sri Jayanta Baruah has been allowed to continue vide Deputy Inspector of Schools, Dhemaji order No.DI/Dhemaji/ 95/Engll/179/727581 dated 25.10.95.

In view of the above, the petitioner's matter cannot be considered for regularisation of his service as 2nd founder teacher in Rupahipathar LP School.

With the above, the matter is disposed of being compliance of the direction of the Hon'ble High Court in CRNo.612 of 1997.

Sd/ AC Pegu,

Director, Elementary Education Assam, Kahilipara, Gauhati''''

It is clear from the aforesaid order that the appointment of the writ petitioner has been upheld and that of Sri Juganta Deori has been cancelled. The dispute as to who would be entitled to salary is to resolved by the Director of Elementary Education, Assam by the aforesaid order and there is no further reason as to why the salary of the petitioner should be withheld any further.

6. It is next contended by Mr. Maheswari, learned counsel for the petitioner that the petitioner is entitled to regular time scale of pay as no training facilities have been provided to the petitioner by the Govt and as per the terms and conditions of the appointment order the petitioner was to get regular time scale of pay after successful completion of training. He relied on the decision of this Court in Jayanta Kumar Das & others vs. State of Assam & others, 1997 (2) GLJ 509 in which it has been held that where the State Govt was rtot able to provide facilities of training on completion of which the stipendiary teachers are entitled

to regular scale of pay, the teacher should not be further deprived of regular scale of pay when they have been appointed on regular vacancies carrying regular scale of pay. Mr. BC Das, learned Additional Govt Advocate, however, submitted that the appointment order dated 28.4.95 clearly stipulated that the petitioner will be deputed for undergoing teachers training by an order subject to availability of seats. According to Mr. Das, therefore, when no seat is available for such training, the question for being deputed for training does not arise.

7. Mr. BC Das is right in his submission that the appointment order dated 28.4.95 states that the petitioner will be deputed for undergoing teachers training for one year subject to availability of seat. Assuming that no seat was available for providing training facilities to the petitioner the fault of not providing training facilities to the petitioner goes to the State Govt and the State Govt cannot go on deferring the appointment of the petitioner on regular time scale of pay and continue to pay a monthly stipend @ 9007 PM to him on the plea that no seat was available for deputing the petitioner for teachers training course. In the case of Jayanta Kumar & others vs. State of Assam & others (supra) this Court held that where a teacher had put in long years of service and for more than 3 years the State respondents have not been able to provide facilities of training to such a teacher on completion of which he was entitled to regular scale of pay, such a teacher should not be further deprived of regular scale of pay, particularly when he has been appointed on regular vacancies carrying regular scale of pay.

8. For the reasons stated above, I dispose of this writ petition with a direction that a certified copy will be filed by the petitioner before the Director of Elementary Education, Assam who will ensure payment of stipendiary amount to the petitioner from October, 95 till date within a period of 3 months from the date of receipt of the said certified copy of this order from the petitioner. I further direct that the Director of Elementary Education, Assam would take steps for payment of regular scale of pay to the petitioner after obtaining necessary sanction from the State Govt within the said period of 3 months from the date of receipt of the certified copy of this order. It is made clear that regular scale of pay to the petitioner shall be given by the Director of Elementary Education, Assam to the petitioner not retrospectively but prospectively from the date of sanction of the State Govt. No costs.