
(2016) 01 GAU CK 0022
In the Gauhati High Court
Case No : W.P.(C) No. 3893 of 2014

Jayashree Dhar

APPELLANT

Vs

State of Assam and Ors.

RESPONDENT

Date of Decision : 21-01-2016

Acts Referred:

Citation : (2016) 2 GauLJ 416 : (2016) 2 GauLR 693 : (2016) 3 GauLT 150

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

Bench : Single Bench

Advocate : D. Borgohain, Advocate, for the Appellant; N. Sarma and J. Huda, Advocates, for the Respondent

Final Decision : Allowed

Judgement

A.K. Goswami, J. - Heard Ms. D. Borgohain, learned counsel for the petitioner. Also heard Mr. N. Sarma, learned Standing counsel, Elementary Education Department, appearing for respondent Nos. 1, 2 and 3; and Ms. J. Huda, learned Standing counsel, Finance, appearing for respondent No. 4.

2. This writ petition is filed by the petitioner praying for release of her salary from the date of regularisation of her service with effect from 24.04.2998. The case of the petitioner is that her service was regularised with effect from 24.04.1998 by the Director of Elementary Education, Assam, in pursuance of a Government letter dated 09.12.1998, as a dropped teacher, against sanctioned post under the scheme of OBB (4040). However, in pursuance of Government letter dated A(I) E.562/99/20 dated 27.09.1999, the Director of Elementary Education, Assam, had cancelled the order of regularisation of the services of 52 nos. of teachers and the petitioner was one amongst such 52 nos. of teachers, whose regularisation order was cancelled. The petitioner challenged the aforesaid order of cancellation in WP(C) 6496/1999 and this Court, by an order dated 22.12.1999, had provided, as an interim measure, that the service of the petitioner shall not be terminated.

3. It appears that pursuant to a Government letter dated 25.11.2002 (Annexure-2), the cancellation of regularisation order, in respect of the petitioner, who was working in Doboka Vidya Mandir M.E. School, was withdrawn. 20 nos. of teachers, out of the 52 nos. of teachers, whose regularisation orders had been cancelled and, subsequently, withdrawn, had approached this Court in WP(C) 2741/2008, praying for redressal of their grievances on account of non-payment of salary from the date of their induction in service in the year 1998.

4. This Court, while disposing of the said writ petition by order dated 31.03.2009, observed as follows:

"..In this singular factual background, as unfolded herein above, this Court is therefore of the un-hesitant opinion that the petitioners are entitled to their pay and other service entitlements as due to them in law. The State respondents would forthwith cause necessary steps to be taken to ensure that the dues to which the petitioners are entitled as remuneration for the services rendered, are released to them without any delay. As the petitioners are waiting in expectation for over a decade, the process as ordered should be completed within a period of six months from the date of receipt of the certified copy of this order.

The petition stands allowed in the above terms. No costs."

5. 14 other similarly situated teachers, out of the said 52 nos. of teachers, had also approached this Court in WP(C) 4932/2009 wherein this Court had directed the respondent authorities to make available to the petitioners therein their respective dues/arrear salary and allowances, if any, within three months from the date of receipt of a copy of the order.

6. It is contended by Ms. Borgohain that a totally wrong report, dated 23.03.2012, had been submitted by the District Elementary Education Officer, Nagaon, stating that the petitioner had remained absent from 2006. There was another report of the District Elementary Education Officer, Nagaon, dated 03.11.2012, recording that the petitioner had been working in the school from the date of her joining. Subsequent thereto, many reports had been called for from the Deputy Commissioner as well as Additional Deputy Commissioner, Nagaon, which had corroborated with the report dated 03.11.2012 that the petitioner had been rendering her service regularly from the date of her joining. Drawing attention of the Court to the affidavit filed by the respondent No. 1, the learned counsel submits that the case of the petitioner could not be placed before the State Cabinet because of the contrary reports.

7. Drawing pointed attention to paragraph 24 of the writ petition, Ms. Borgohain submits that by letter dated 05.04.2005, the District Elementary Education Officer, Nagaon, had forwarded her name along with 36 other OBB teachers, out of 52 nos. of teachers, to the Director of Elementary Education, Assam, and all the aforesaid 36 teachers are receiving their salaries and arrears had also been paid to them. She has also pointed out that the 34 petitioners in the said two writ petitions, namely, WP(C) 2741/2008 and WP(C) 4932/2009 are within these

36 teachers. She has contended that in view of submission of subsequent reports stating that the petitioner had been rendering her services continuously since the date of her joining, which is also reflected in the affidavit filed by the respondent No. 1, there cannot be any justification for not paying salary and emoluments to the petitioner, while others similarly situated had been paid.

8. Relying on the written instructions, Ms. J. Huda, learned Standing counsel, Finance, submits that the proposal received from the Education Department was returned back to the Education Department after consultation with Finance (SIU) Department and the Finance Department will further examine the proposal with priority when the proposal is received back again. She has also submitted that the Education Department should check as to whether Acquittances Rule for salary supports entries in the register and, if the Education Department is satisfied, cabinet approval should be obtained like in other cases.

9. Mr. N. Sarma, learned Standing counsel, Elementary Education Department, submits that the Education Department had moved the Finance Department on 07.05.2015 for concurrence for payment of salary to the petitioner and, subsequently, the file was returned back by the Finance Department with certain observations and, accordingly, no payment of salary could be made to the petitioner.

10. I have considered the submissions of the learned counsel for the parties.

11. It will be appropriate to quote herein below certain paragraphs, namely, para 5, 6 and 7 of the affidavit-in-opposition of the respondent No. 1, which are as follows.

"5. That the deponent begs to state that the service of the petitioner was regularised vide order dated 10.05.1999 w.e.f. 24.04.1998 under OBB (4040) Scheme. Subsequently, the regularisation order of 52 OBB (4040) teachers including the petitioner was cancelled vide order dated 25.11.1999. However, the cancellation of regularisation order in respect of the 52 OBB (4040) teachers including the petitioner was withdrawn as per Government Order dated 25.11.2002 in compliance of the Hon''ble Court's order.

6. That the deponent begs to state that out of 52 group of teachers, some of them have already been regularised/adjusted by the Government with the approval of the State Cabinet but the matter of the petitioner could not be placed before the State Cabinet due to contradictory of working status in respect of the petitioner. The District Elementary Education Officer (DEEO), Nagaon vide his letter dated 23.02.2012 (Annexure-6/page 51 to the writ petition) informed that the petitioner was absent from 2006. But the Director of Elementary Education, Assam (in short the DEE, Assam) has forwarded another report of DEEO, Nagaon, dated 30.03.2012 that the petitioner has been working in the school from the date of her regularisation. Therefore, the Government vide letter dated 25.06.2012 directed the DEE, Assam, to clarify the position (Annexure-11/page 58 to the writ petition).

Therefore, the DEE, Assam vide his letter dated 29.11.2012 informed the Government as per report of the DEEO, Nagaon that the petitioner has been working in the school since 1993.

As the matter seems quite dubious, the Deputy Commissioner, Nagaon was asked to enquire the matter vide Government letter dated 02.03.2013 (Annexure-15/page 62) and in pursuance to that, the Additional Deputy Commissioner, vide his letter dated 04.09.2013, forwarded an enquiry report conducted by the Circle Officer, Dobaka wherein it is stated that the petitioner has been working in the school.

As two reports contradicts, the Deputy Commissioner, Nagaon was again asked to look into the matter personally and to submit a detail report vide Government letter dated 06.03.2014. Accordingly, the Additional Deputy Commissioner, Nagaon vide his letter dated 19.05.2014 (Annexure-20/page 68) informed the Government that the petitioner has been working in the school since the date of her joining.

7. That this matter came up for consideration on 13.08.2014 and this Hon''ble Court after hearing the matter, directed that the Education Department should now take the consequential decision following submission of inquiry report, so that petitioner is paid her due salary, both arrear and current. The Hon''ble Court also observed that pendency of this petition shall not be a bar for the respondents to release the due salary of the petitioner. In compliance of the Hon''ble Court's order, the matter was moved with the Finance (EC-III) Department for their concurrence on 07.05.2015. However, the Finance Department returned the file on 14.05.2015 and directed to resubmit with Judicial Department's views. Accordingly, the file was endorsed to the Judicial Department for their views on 18.06.2015. The Judicial Department has returned the file in respect of the petitioner with their views on 07.08.2015 and thereafter, the file is being endorsed to the Finance (EC-III) Department for their concurrence."

12. From a reading of the aforesaid paragraphs, it appears that the Director of Elementary Education, Assam, had submitted a letter dated 29.11.2012 informing the Government that the petitioner had been working in the school since 1993. Not being satisfied with the said report, another report was called for by the Government from the Office of the Deputy Commissioner, Nagaon, by a letter dated 02.03.2013, whereupon a report was submitted by the Additional Deputy Commissioner, Nagaon, on 04.09.2013 to the effect that the petitioner had been working in the school. One more report was again sought for from the Deputy Commissioner, Nagaon, and the Additional Deputy Commissioner, Nagaon, vide his letter dated 19.05.2014, informed the Government that the petitioner had been working in the school since the date of her joining.

13. There is no denial in the affidavit filed by the respondent No. 1 to the statement made by the petitioner in para 24 of the writ petition that 36 other

teachers, whose names were forwarded along with the petitioner's, had since been paid their salaries. There is also no denial of the statement made in para 7 of the writ petition that the writ petitioners in WP(C) 2741/2008 and WP(C) 4932/2009 had been paid arrear as well as current salary.

14. It appears that Cabinet approval could not be taken in respect of the petitioner only because of the fact that an incorrect report had been submitted by the District Elementary Education Officer on 23.03.2012. Regularisation of the service of the petitioner was effected on the strength of a Government order and, therefore, this Court is of the opinion that no approval of the Cabinet is necessary for payment of salary to the petitioner. Even otherwise, Cabinet had accorded approval to the similarly situated persons about which there is no dispute. It appears that the petitioner is caught in the web of bureaucratic tangle and the petitioner had been denied her dues unjustifiably and, therefore, payment of the petitioner's salary, current and arrears, brooks no delay.

15. Resultantly, a writ of mandamus is issued to the respondents and, more particularly, to the Commissioner and Secretary to the Government of Assam, Education Department and the Commissioner and Secretary to the Government of Assam, Finance Department, to make payment of the current salary of the petitioner from the month of April, 2016. The respondents are further directed to pay the arrear salary of the petitioner, with all increments due over the years, within a period of four months from to-day, failing which interest @8%, per annum, till the date of payment to the petitioner, will accrue.

16. The writ petition stands allowed of in terms of the above. No cost.