

(2011) 06 GAU CK 0072
In the Gauhati High Court
Case No : Writ Petition (C) No. 3936 of 2007

Kabita Roy and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 30-06-2011

Acts Referred:

Citation : (2011) 4 GLR 256(1)

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Advocate : A.J. Atia, Mr. J. Uddin and Mr. S. Hoque, for the Appellant; S. Khound, SC, BTC and Mr. B. Choudhury, SC, Finance Department, for the Respondent

Final Decision : Dismissed

Judgement

Amitava Roy, J.—The petitioners, who are honorary teachers in various L. P. schools located in the Kokrajhar district of the State seek redress against the cancellation of the order dated 26.06.2007 of the Director of Education, Bodoland Territorial Council (for short, hereafter referred to as the "BTC") regularizing their services as Assistant Teachers in their respective institutions. By order dated 03.08.2007 while issuing notice of motion, this Court had directed maintenance of status quo of their service conditions as on that date. The petitioners claim that on the basis thereof, they have been rendering their services till date without break.

2. I have heard Mr. A.J. Atia, learned counsel for the petitioners, Mr. S. Khound, learned Standing Counsel, BTC and Mr. B. Choudhury, learned Standing Counsel, Finance Department, Government of Assam.

3. The petitioners have introduced themselves to be the permanent residents of Bodoland Autonomous Territorial Areas of the Kokrajhar district and have claimed themselves to be eligible for appointment to the post of Assistant Teacher in L. P. School in terms of the norms prescribed by the Assam Elementary Education

(Provincialization) Rules, 1977 (for short, hereafter referred to as the "Rules"). Their categorical case is that, they were appointed as Assistant Teachers by the Managing Committees of their respective L.P. Schools on various dates after provincialisation of the said institutions. As inspite of the notification under Memo No. B(3) 5-549/96/207-A dated 21.06.2000 issued by the Government of Assam in the Education Department providing a scheme for regularization of the services of honorary/ dropped teachers, the respondent authorities appeared to be indifferent and apathetic to their cause, the petitioners had approached this Court with WP(C) No. 7542/2002 praying for an appropriate writ and/or direction for regularization of their services in accordance therewith. This writ petition was disposed of vide judgment and order dated 29.11.2002 which was modified by the order dated 13.12.2002 passed in Misc Case No. 1689/2002 whereby the respondent Nos. 2 and 3 therein were directed to consider the case of the petitioners for regularization of their services as Assistant Teachers in L. P. Schools in Kokrajhar district in accordance with the relevant Government policy and also in conformity with the order dated 18.09.2002 passed in WP (C) No. 1976/2000. In the process that followed in response to the aforementioned decision of this Court, the Deputy Inspector of Schools, Kokrajhar by his letter No. DIS/KOK/HIGH COURT/LP/ 2004/3037 dated 01.12.2004 submitted a statement showing the particulars of 37 dropped and honorary teachers including the petitioners with the Secretary to the Government of Assam, Education (Elementary) Department for necessary action. The Commissioner and Secretary to the Government of Assam, Education Department vide Memo No. ELC/COP/331/ 2003/581/106 dated 04.08.2005 laid the matter with the authorities of the Bodoland Territorial Council (hereafter referred to as the "BTC") for taking necessary action as per the existing rules as well as the directions contained in the aforementioned judgment and order of this Court. Subsequent thereto, the Joint Secretary, BTC vide his Memo No. BTC/Edn. (E1). 127/2005/126 dated 12.09.2005 instructed the Director of Education, BTC to move the Government of Assam, Finance (SIU) Department for financial approval/concurrence of vacancies for appointment of the petitioners indicating the availability of posts for them. The proposal was resubmitted by the Director of Education, BTC vide his letter dated 24.04.2006 with the Commissioner & Secretary to the Government of Assam, Education Department reiterating the same request. It was after a lapse of several months that the Commissioner and Secretary to the Government of Assam, Education (Elementary) Department by his order under Memo No. ELC/COP (C)331/ 2003/581/125 dated 02.04.2007 recorded a departure from the earlier decision contained in the letter dated 04.08.2005 observing that as the initial appointments of the petitioners were against non existent posts by the Managing Committees on honorary basis, examination of their cases to ensure that their appointments had been made against existing vacant posts and in accordance with the procedure prescribed by the rules ought to be undertaken. Thereafter, however, vide order No. DE/BTC/KOK/E/CC/10/05/121 dated 26.06.2007 of the Director of Education, BTC, Kokrajhar, their services were regularized at a monthly stipend of Rs. 800/- with the observation that they will

get the full scale of pay on successful completion of training as mentioned therein. It was thereafter that by the impugned letter dated 02.07.2007 and the order dated 03.07.2007 their regularization was cancelled.

4. During the pendency of the present proceeding, the Finance Department of the State accorded its approval for the regularization of the services of 37 Assistant Teachers of L. P. Schools including the petitioners appointed against the existing sanctioned posts as proposed by the Director of Education, BTC, Kokrajhar. It is evident from the affidavit-in-opposition filed on behalf of the Finance department through its Commissioner and Secretary, Respondent No. 7.

5. The petitioners by their additional pleadings have brought on record the Educational Policy embodied in the notification dated 09.12.96 adopted by then Bodoland Autonomous Council authority whereunder all of them claim to have been selected against the vacant posts in their respective schools. They however, admitted that though in terms of the said policy, the selection was to be approved by the authorities mentioned therein, most unjustifiably the same had not been accorded. They also complained that their salary had not been released though they had been rendering their services without any blemish.

6. The Secretary of Education, BTC and the Director of Education, BTC in their individual affidavits have pleaded in unison that the petitioners except the petitioner Nos. 9 and 10 namely, Smti. Nina Basumatary and Sri. Shyamal Khaklary could not be considered as dropped teachers in terms of the Government notification dated 21.06.2000 as all of them had been appointed by the Managing Committees of their school after the provincialisation thereof. Referring to the letter dated 02.03.2007 and 07.06.2007 of the concerned authorities of the Education Department of the State, the answering respondents contended against any right of the petitioners (except the petitioner Nos. 9 and 10) to claim regularization of their services having regard to the manner of their initial appointment. According to the respondents, the order dated 26.06.07 issued by the Director of Education, BTC in the facts and circumstances is untenable in law and thus had been rightly cancelled by the impugned letter dated 02.07.2007 and the order dated 03.07.2007.

7. In his additional affidavit, the respondent No. 4 while reaffirming the above stand has referred to the order dated 29.11.2010 of the Secretary, BTC, Kokrajhar in endorsement thereof with a direction to the Director of Education, BTC, Kokrajhar to cause steps to be taken to fill up the existing vacancies in accordance with the extent rules and procedure. Reference has also been made in his additional counter to the decision rendered by this Court in Abdul Bari (Md.) Vs. State of Assam and Others, and Jahangir Alam Vs. State of Assam and Others, That the educational policy relied upon by the petitioners had been cancelled in terms of the order No. BTC/Edn. (E1). 63/04/42 dated 12.11.2004 of the Joint Secretary, BTC, Kokrajhar has also been asserted.

8. Mr. Atia has urged that the petitioners having been appointed following a

selection in terms of the educational policy in force at all relevant times, they were entitled in law for regularization of their services as per the notification dated 21.06.2010 as well as the orders dated 29.11.2002 and 13.12.2002 passed by this Court in WP (C) No. 542/ 2002 and Misc Case No. 1689/2002 respectively. The learned counsel insisted that the Finance Department of the State having on a threadbare scrutiny of all relevant aspects accorded sanction to the regularization of the services of the petitioners against the posts held by them, the impugned orders are patently illegal and are liable to be interfered with. According to Mr. Atia, the BTC having consciously regularized the services of the petitioners vide order dated 26.06.2007 of the Director of Education, BTC, it is estopped in law to resile from their orientation and on that count as well, the impugned decision is liable to be adjudged illegal, discriminatory and null and void. In support of his argument, Mr. Atia placed reliance on the decision of the Apex Court in U. P. State Electricity Board Vs. Pooran Chandra Pandey & Ors. rendered in Civil Appeal No. 3765 of 2001.

9. While, the learned Standing counsel, Finance Department affirmed the approval for the regularization of the services of the petitioners by his department, the learned Standing counsel, BTC adhered to the pleaded contention of this respondent. Reiterating that in the facts and circumstances of the case, the petitioners having been appointed as honorary teachers by the Managing Committees of their respective schools after provincialization thereof, they have no right in law to claim regularization of their services, the decisions of this Court rendered in Abdul Bari (supra) and Jahangir Alam & Ors. (supra) were pressed into service.

10. The pleadings of the parties and the arguments advanced have received the due consideration of this Court That the petitioners (except the petitioner Nos. 9 and 10) had been appointed by the Managing Committees of their schools subsequent to the provincialisation thereof is a matter of record. The pleaded case of the petitioners is that they had been so appointed after the provincialization of their institutions. Their initial appointment therefore had not been in accordance with the provisions of the Rules. Not only their appointment letters are not on record, it is admitted as well on their part that their selection under the education policy of the then BAC had not been approved by the concerned authorities as mentioned therein.

11. This Court by order dated 13.12.2002 passed in Misc Case No. 1689/2002 in WP (C) No. 542/2002 had only directed consideration of their cases for regularization in accordance with the relevant Government policy. No direction for regularization of their services was made without reference to the attendant facts and the rules otherwise applicable. It is not the case of the petitioners that the prescriptions of the Rules do not apply to them.

12. That the petitioners, except Nira Basumatary and Shyamlal Khaklary had been appointed by the Managing Committees of the schools after the provincialization thereof, had been noticed by the Commissioner and Secretary to

the Government of Assam, Education Department in his letter dated 04.08.2006 whereby, the issue was laid with the BTC for taking necessary action as per the existing rules. The same view was iterated by this authority in his order dated 02.03.2007. In the teeth of the above, the order dated 26.06.2007 of the Director of Education, BTC, Kokrajhar regularizing the services of all the petitioners as well as the approval accorded by the Finance Department of the State per se do not remedy the infirmity in the appointment of the petitioners at the first instance. This Court in a Division Bench in the case of Abdul Bari (MD.) (supra) while decided against the regularization of the services of the incumbents selected and appointed in violation of the provisions of Assam Secondary Education (Provincialised) Service Rules, 1982, a Hon"ble Single Judge in the case of Jahangir Alam and Ors. (supra) held the same view vis a vis, the Assam Elementary Education (Provincialization) Rules, 1977. In this decided case, the petitioners therein had been appointed in different LP/ME/MV/High/Higher secondary schools by the Managing Committees thereof after the institutions had been provincialised. The decision of the Apex Court in U. P. State Electricity Board (supra) is clearly distinguishable on facts. The petitioners therein were daily wage employees of a Cooperative Electricity Supply Society. The society had been taken over by the U. P. State Electricity Board and it was decided that the daily wage employees of the society who were being taken over by the Board would start working under it in the same manner and position. The Board thus had taken a decision to regularize the services of its employees working on daily wage basis. No requirement of compliance of any statutory rules as an indispensable prerequisite for regularization of the services was involved.

13. On a totality of all considerations as recited hereinabove, this Court is of the unhesitant opinion that the challenge to the impugned orders lacks substance. The petition therefore is dismissed. The respondent authorities however would take necessary steps for regularization of the services of the petitioner Nos. 9 and 10, namely, Smti. Nira Basumatary and Shri Shyamlal Khaklary without undue delay with all consequential benefits. It is made clear that, if the petitioners are rendering their services, their salary and other allowances as due to them in law would be released to them forthwith. No costs.