
(2016) 11 GAU CK 0065
In the Gauhati High Court
Case No : Writ Petition (C) No. 6048 of 2011

Khagen Mahanta

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 24-11-2016

Acts Referred:

Citation : (2016) 5 GauLT 416

Hon'ble Judges : A.M. Bujor Barua, J.

Bench : Single Bench

Advocate : Mr. A. Adhikary, Advocate, for the Petitioners; Mr. J. Abedin and Mr. M. Khataniar, Advocates, for the Respondents

Final Decision : Disposed Off

Judgement

A.M. Bujor Barua, J.(Oral) - Heard Shri A. Adhikary, learned counsel appearing for the petitioners. Also heard Shri J. Abedin, learned counsel appearing on behalf of respondent Nos. 1 and 2 as well as Shri M. Khataniar, learned counsel appearing for the respondent Nos. 3 to 8.

2. The case of the petitioners was that pursuant to an advertisement published in the month of January, 1997 in the Employment News, wherein, applications were invited from the intending candidates for filling up 7500 posts of Assistant Teachers in the provincialised in Middle/Middle English/Middle English Madrassa/ Higher Basic/Lower Basic/Lower Primary Schools of different districts in Assam the petitioner had offered his candidature. The petitioner, accordingly, participated in the selection process and by the letter dated 01.12.1999 of the Chairman of Sub-Divisional Elementary Education Advisory Board, Nalbari, Assam addressed to Deputy Inspector of Schools, Nalbari, it was informed that the appointment of the petitioner was approved as per the selection in Serial No. 366 of the Advisory Board held on 18.08.1999. Similar letters are also found in respect of the other three petitioners. Consequent thereupon, 4 (four) petitioners were appointed as stipendiary teachers by different orders issued by the Deputy Inspector of Schools, Nalbari, all of which are dated 04.12.1999.

3. It is also the case of the petitioners that by the order of the Deputy Inspector of Schools, Nalbari under Memo No. DI/NAL/BTC/1/04/14861-72 dated 31.12.2005 the services of the 4 (four) petitioners who were appointed against the existing regular vacant posts in the BTC area were allowed to draw the regular scale of pay of Rs. 3130-6600 per-month.

4. It is the further case of the petitioners that on being so appointed and regularized in service, the petitioners have been drawing and paid the regular scale of pay up to June 2006. From June 2006 onwards, the salary allowances of the petitioners were not paid. It is also the case of the petitioners that all along during the said period, the petitioners have been discharging their services to the satisfaction of all concerned and the respondents correspondingly have been utilizing their services. But however, all the petitioners were issued show-cause notice dated 03.02.2009 by the Director of Education, Bodoland Territorial Council, Kokrajhar, inter-alia, raising allegations that upon enquiry, it was found that the appointment of the petitioners had been made de-hors rules and were required to show-cause as to why their services should not be terminated. Against the said show-cause notice, the petitioners had submitted their respective replies. In their replies, the petitioners had stated that they had appeared in the interview for the post of Assistant Teacher, which was held pursuant to the advertisement published in the year 1997 and, as such, their appointments were made by following the required procedure of the rules. Thereafter, the petitioners by the impugned order(s) dated 25.03.2011 were terminated from service with immediate effect by stating the reasons which are, in fact, the same as that what has stated in the show-cause notice.

5. In the above circumstances, the learned counsel for the petitioners submits that the required procedure prescribed under the rule for effecting the order of termination had not been followed in the present case and, as such, the impugned order(s) of termination are vitiated in law for want of following the procedure and are also made in violation of the principles of natural justice.

6. The learned counsel for the respondent, BTC, Shri M.K. Khataniar submits that there is a decision of this Hon'ble Court in WA No. 182/2013 and other related writ appeals dated 06.02.2015 wherein, it has been provided that the appellants in such writ appeals were receiving their salaries up to 17.10.2006 and, thereafter, the termination was effected. But in the meantime, the BTC authorities as well as the Govt. of Assam had taken a decision to regularize all such teachers who were in service and were regularly receiving their salaries up to 17.10.2006. In the said writ appeal, the counsel appearing for the BTC had submitted that the policy decision has been taken that the persons receiving salaries regularly from the month of March 2006 would be regularized and the concerned policy would be implemented. Accordingly, the said writ appeal was disposed of with a direction to the respondent authorities therein to effect the regularization as per the policy decision of all such eligible teachers who were regularly receiving salaries up to 17.10.2006.

7. Shri Khataniar, learned counsel for the BTC submits that the petitioner having received salary up to June 2006, their cases would also be covered by the aforesaid policy decision of the BTC, which is referred in the aforesaid order of the Division Bench of this Hon''ble Court in WA No. 182/2013. As such, the direction contained in the said order of the Division Bench would also cover the case of the petitioners in the instant case.

8. The aforesaid submission of the learned counsel for the BTC finds sufficient force to convince this Court that the petitioners in the instant case also having received their salaries up to June 2006, would be covered by the said policy decision referred in WA No. 182/2013

9. Accordingly, this writ petition is disposed of with a direction to the respondent authorities, more particularly the respondent authorities in the BTC, who would consider the cases of the petitioners for regularization and payment of salary etc. as per the said policy decision which had been referred in the order of the Division Bench of this Hon''ble Court dated 06.02.2015 in WA No. 182/2013 and other related writ petitions.

10. The above exercise to consider the case of the petitioners as per the above referred policy decision would be done within a period of 6 (six) months from the date of receipt of a copy of this order. However, it is provided that the case of the petitioners being that the required procedure under the Rules were not followed to effect their termination and there being a violation of the principle of natural justice, the petitioners would be at liberty to approach this Court once again, in the event, there is some adverse order(s) against him upon their cases being considered as per the above direction.

11. With the above observation, this writ petition is disposed of.