
(2018) 04 GAU CK 0118

In the Gauhati High Court

Case No : WP(C) 778, 1989 of 2009, 5382 of 2011

LUKENA CHUTIA AND ORS.

APPELLANT

Vs

THE STATE OF ASSAM AND ORS

RESPONDENT

Date of Decision : 24-04-2018

Acts Referred:

Citation : (2018) 04 GAU CK 0118

Hon'ble Judges : ACHINTYA MALLA BUJOR BARUA

Bench : Single Bench

Final Decision : Disposed Of

Judgement

1. Heard Ms. M. Bordoloi, learned counsel for the petitioners and Mr. N. Sarma, learned Standing Counsel for the Elementary Education Department.

2. The four writ petitions WP(C) No.778/2009, WP(C) No.1989/2009, WP(C) No.4135/2012 and WP(C) No.5382/2011 pertain to more or less the

same issue although the individual prayers made therein may be different. The difference of the prayers arises as the writ petitions were filed at

different stages, where the immediate grievance of the petitioners may have been different.

3. WP(C) No.778/2009 was preferred by about 10 petitioners claiming the relief that the respondents be directed to release their arrear as well as

current salary and further as to why they should not be regularized as directed by this Court in WP(C) No.8764/2001.

4. WP(C) No.1989/2009 was preferred by about 22 petitioners also claiming for the relief of a direction for release of their arrear as well as current

salary and also as to why they should not be regularized as directed in WP(C) No.8764/2001.

5. WP(C) No.4135/2012 had been preferred by about 20 petitioners claiming for a direction that the order dated 07.12.2011 of the Commissioner and

Secretary to the Government of Assam in the Elementary Education Department be set aside, with further direction to the respondents to regularize

the services of the petitioners as well as to release their arrear and current salaries.

6. The other writ petition WP(C) No.5382/2011 was preferred by about 9 petitioners claiming for setting aside certain show cause notices dated

30.09.2011 with further prayer to regularize their service and also to release the arrear as well as the current salaries.

7. The core fact leading to the writ petition is that the petitioners were appointed as teachers sometime in the year 2001 under Central Government

sponsored scheme called the "Operation Black Board" (in short OBB). It is stated that the OBB scheme was initiated as a precursor to the

present day Right of Children to Free and Compulsory Education Act, 2009 by providing for appointment of teachers so that education can be given to

all such deserving children. The scheme provided that during the currency of the 9th plan, the expenses thereof would be borne by the Central

Government and thereafter, it would be the burden of the State Government for paying the salary and allowances of the teachers so appointed.

8. In the given circumstance, at the end of 9th plan, sometime in the year 2002, the teachers appointed under the OBB scheme were discontinued.

Against such discontinuance, a series of writ petitions were preferred amongst others the WP(C) No.8764/2001. In the said writ petition, which is

commonly called Nirmali Bora's case, this Court had held that the teachers so appointed under the OBB scheme have a right to be retained in

service and further also be regularized. Accordingly, directions were so issued. A further provision of Nirmali Bora's case is that there was a

direction for payment of salary as admissible to such category of teachers.

9. In the aforesaid circumstance, it is the case of the petitioners that although they were appointed under OBB scheme of the group of 7066 teachers

sometime in the year 2001, their service had not yet been regularized and further they were not paid any salary as directed in Nirmali Bora's case.

10. In the aforesaid background, the petitioners preferred WP(C) No.778/2009 and WP(C) No.1989/2009 seeking for a direction for regularization of

their service as well as for payment of salary and allowances. During the pendency of the said two writ petitions, the order dated 07.12.2011 was passed by the Commissioner & Secretary to the Govt. of Assam in the Elementary Education Department. By such order, the claim of such OBB teachers like that of the writ petitioners were rejected by providing that they were not appointed against any sanctioned post and therefore, the claim for regularization cannot be accepted and further that their services be terminated with immediate effect. The said order also provided that their salary at the stipendiary rate be paid from the date of their appointment upto the date of their termination. The said order dated 07.12.2011 had been assailed in WP(C) No.4135/2012. In the meantime, show-cause notices were issued against the petitioners by a memo dated 30.09.2011. The said show cause notice provided that the petitioners were appointed beyond the available 110 number of allotted posts and therefore, they were required to show-cause as to why they should not be removed from service.

11. The show-cause notices also provided that the cause be shown within seven days as to why they should not be released from their service. In the show-cause notice, it was also provided that the respective Headmasters were directed to release the petitioners from their duty immediately. The said show cause notice has been assailed in WP(C) No.5382/2011 and in the interim it was provided that the direction given in the impugned notice requiring the Headmasters to release the petitioners were stayed. As a consequence, it is stated that the petitioners are still continuing in service but their service are not yet regularized and nor the salaries been paid to them.

12. The stand taken by the respondent authorities is that present petitioners were appointed beyond the available vacancy in the year 2001 for the purpose of being appointed as OBB teachers and therefore, they are not entitled to remain in service any further.

13. The aforesaid reason is also being relied upon to justify the act of the respondents in not paying the salaries as well as for the decision taken to issue the show cause notices to remove them from service forthwith. In spite of giving several opportunities to the respondent authorities, the appropriate information as to what was the precise number of vacancies available in the year 2001 in respect of various constituents of Sivasagar district where the petitioners were appointed, could not be provided. On one

hand, the state respondents state that there were about 76 number of vacancies whereas, in some other document, it is stated that there were 110 vacancies and on the other hand, the petitioner produces certain materials to indicate that the available vacancies were more than that.

14. In view of the confused state of affairs, it cannot be adjudicated as to what was the previous number of vacancies nor it can be adjudicated as to what was the merit position of the petitioner in the selection that had taken place. A further factor to be taken note of is that in the order dated 07.11.2011 of the Commissioner & Secretary, a decision of the respondent authorities is communicated that their pay at the stipendiary rate from the date of appointment up to the date of termination shall be paid for the service they had actually rendered.

15. In the aforesaid premises, judicial notice of three factors can be taken. Firstly, the petitioners may have been appointed legitimately against available vacant posts or they could have been appointed beyond the available vacancies so as to render their appointment illegal/irregular. The second factor is that after arriving at such conclusion that the petitioners were appointed beyond the available vacancies, the respondent authorities have issued individual show cause notices to the petitioners and other similarly situated persons requiring them to show cause as to why their service should not be discontinued. The third factor is that for the period, the petitioners have actually rendered their service from the date of their appointment up to the date of their termination from service, they would be paid their salaries at the stipendiary rate which is admissible under the rules.

16. The other factor which is an admitted position of the parties is that the petitioners in the aforesaid circumstance are still continuing in service. From the facts as narrated above, what can be culled out is that as per own admission of the respondent authorities, the petitioners would be paid their salaries at the stipendiary rate from the date of appointments till such time they are in service. By accepting the said situation, a direction is accordingly issued to the respondent authorities that all the petitioners, who were appointed and are still continuing in service shall be paid their salary at the stipendiary rate as admissible up to the time of their discontinuance i.e. for the period of which they had actually rendered service. For the purpose, the respondent authorities shall make an individual evaluation of the

actual period for which the respective petitioners had rendered their service. Upon such evaluation, the salaries at the stipendiary rate be paid accordingly.

17. As regards the other aspect as to whether the service of the petitioners ought to be terminated or they should be regularized, the respondent authorities shall proceed with the show cause notice dated 30.09.2011 and bring the process to its logical end by giving an appropriate opportunity of hearing to the petitioners and by allowing them to produce any relevant material they may desire to produce. It is stated that the show cause notices must be issued to all the individual petitioners and in the event any such notice is not issued to any of the petitioners, the respondent authorities may now issue a show cause notice in a similar terms as the show cause notice dated 30.09.2011. Upon such show cause notice being issued individually, proceedings shall be held against the petitioners and a conclusion be arrived as to whether they were appointed beyond the available vacancies in terms of their merit or their appointments were legitimate and within the available vacancies. Depending on the outcome of the proceeding, individual order shall be issued against the respective petitioners as to the decision to be taken by stating the reasons thereof. In issuing the appropriate orders as regard the salaries, the respondent authorities shall take into consideration as to the actual salary is to be paid to the respective petitioners till date.

18. The aforesaid requirement of paying the salaries at the stipendiary rate be made to the individual petitioners within a period of four months from the date of receipt of the certified copy of the order. However, it is provided that the Commissioner & Secretary to the Elementary Education Department shall ensure that the process of bringing the show cause notices to its logical end shall not be prolonged by any of officers of the department beyond what is reasonably required and in the event, if it is found that the officers are prolonging the process without proper reason, appropriate action be taken against such officers. All the writ petitions are accordingly disposed of. Interim order, if any, passed earlier stands vacated.