

(2000) 01 GAU CK 0038
In the Gauhati High Court

Case No : Civil Rule No's. 2412, 2440, 2444, 2477 and 2492 of 1997

Mandira Singh and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 18-01-2000

Acts Referred:

Assam Elementary Education (Provincialisation) Rules, 1977 — Rule 3
Constitution of India, 1950 — Article 14, 21, 226, 23
Minimum Wages Act, 1948 — Section 3(1)

Citation : (2000) 2 GLT 222

Hon'ble Judges : J.N. Sharma, J

Bench : Single Bench

Advocate : N. Dutta and U. Bhuyan, for the Appellant; D. Goswami, for the Respondent

Judgement

J.N. Sarma, J.—All the Civil rules raise almost same question of law and facts and as such they are taken up for hearing together.

2. I have heard Sri N. Dutta, learned Advocate for the Petitioners assisted by Sri U. Bhuyan learned Advocate and Mr. D. Goswami, learned Govt. Advocate for the Respondents.

3. All these applications have been filed by the teachers of L.P. Schools for certain benefits which will be highlighted latter on. It will be necessary to give the facts of each case.

4. Civil Rule No. 2440/97 : This writ application has been filed by 11 persons and 12th Petitioner is a Sikshak Sangstha in the name and style of Sibsagar Jilla Brittidhari Sikshak Sangstha. The case in brief is that all of them were duly selected to be appointed as teachers in LP schools and they were appointed as stipendary teachers. It is stated in the writ application that these Petitioners were called for interview and they went through the selection process and on being successful all of them were issued appointment letters by the authority. However, they were appointed as stipendary teachers in various LP Schools in the

district of Sibsagar, some at a monthly stipend of Rs. 750/- per month and a few Ors. as low as RS. 470/- per month. In order to appreciate the terms and conditions of the appointment letters it will be necessary to quote only one of the appointment letters. That is quoted below:

In pursuance of Director of Elementary Education* letter No. EPD/P/10/92/79 dated 4.4.92 and subject to discharge without any notice and showing any reasons there of Sri/Srimati Dilip Konwar of village Suntok Baligaon P.O. Ramanilali of District Sibsagar is hereby appointed as primary teacher very temporarily and posted to Sumtak garden Primary Schools with the following terms and conditions:

1. Initially, He/She will get a monthly stipend Rs. 750/- P.M. and subsequently he/she will be deputed undergoing teachers Training for one year subject to availability seat during the period of training he/she will get deputation allowance as per rule in addition to regular monthly stipend. If he/she becomes successful in the training will be given the regular time scale of pay as prescribed in the R.O.P. rule, 1990 plus other allowances as admissible under rules from the date of announcement of the result.

2. If he/she cannot succeed in the Final examination He/She will be allowed to appear in the next final examination as private candidate for which No. T.A. D.A. will be paid. If he/she cannot complete successful in the 2nd chance also, his/her service will be terminated within one month from the date of announcement of the result for which no claim/appeal will be entertained.

5. After receipt of the appointment letters all the Petitioners joined in their service and they are working as teachers The Petitioners No. 1 to 11 were deputed for undergoing training for one year and all of them have successfully completed their training and passed the examination. That is evident from Annexures--D, E and F to the writ application and that also finds place in paragraph 6 of the writ application. On successful completion of training the Petitioners were paid their regular scale of pay as prescribed in the R.O.P. Rules 1990 from the date of announcement of the examination till May, 1996. However, from the month of May, 1996 the Petitioners have not been paid their regular salary and other allowances even they have not been paid their stipendary allowance and in paragraph 10 of the writ application it is stated that this action of the authority is violative of Article 14, 21 and 23 of the Constitution of India. It may be stated herein that the Petitioners have not been discharged from their service and still they are working and it is on this background this application has been made for issue of a mandamus for the authority directing them to pay their regular salary in terms of R.O.P. Rules, 1990 from June, 1996 onwards. It is stated that during the pendency of the Rules 7 of the Petitioners have been paid the regular service but 4 persons/have been left out. The persons who have been left out are Petitioners No. 6,7,10 and 11. So in this writ application we are concerned with the cases of Petitioners No. 6,7,10 and 11.

6. Civil Rule No. 2412/97: This writ application has been filed by 31 persons and by the Sangstha as indicated above in the other Civil rule. The other facts are same, save and except, these persons after appointment were lent for training. They have passed the training but they have not been paid the scale of pay and since June, 1996 no stipend has been given.

7. Civil Rule No. 2477/97: This application has been filed by 10 persons and the Petitioner No. 11 is the Sangstha and the facts are absolutely same. They also have not been paid their stipendary allowance since June, 1996.

8. Civil Rule No. 2444/97; This writ application has been filed by 33 persons and the Petitioner No. 34 is the Sangstha. The only difference in this case is that these Petitioners after getting appointment as quoted above they have not been sent for training and they are working as stipendary teachers and even their stipend has not been paid since June, 1996.

9. Civil Rule No. 2492/97: This writ application has been filed by 47 persons and the Petitioner No. 48 is the Sangstha. They also have not been sent for training and have not been paid their stipend since June, 1996.

10. An affidavit-in-opposition has been filed in Civil Rule No. 2444/97 by Deputy Inspector of Schools, Sibsagar wherein in paragraph 4 it is stated that these posts are purely temporary one and subject to retention by the Govt. Unfortunately, this is not reflected in the appointment letter quoted above. Regarding sending them for training it is stated that it is the duty/job of the Director of Elementary Education and he does not know why they have not been sent for training. There is nothing in the affidavit-in-opposition, save and except, the plea that as the post has not been retained by the Govt. so the payment has not been made.

11. Rule 3 of the Assam Elementary Education (Proviencialisation) Rules, 1977 provides for the method of recruitment. Rule 3 is quoted below:

3.(i) Method of recruitment. In the month of January every year the D.I. shall invite application in prescribed form for vacancies of elementary school teachers which are likely to occur in the year in his establishment.

(ii) Age (a) A candidate shall be within the age limit on 1st January of the year of recruitment as prescribed by the Government.

(b) The upper age limit shall be relaxed, in favour of Scheduled Caste and Scheduled Tribes as per rules made by Government.

(iii) Qualification (a) Matriculation/High School leaving Certificate Examination or any other examination of equivalent standard shall be the minimum qualification for the post of teacher in Lower Primary and Junior Basic Schools preference being given to candidates trained in service Basic, Normal and Junior Basic Training Courses.

(b) For M.V. and Senior Basic Schools qualification shall be Matric, Normal or P.U.

or Intermediate or its equivalent.

(iv) Character. A candidate shall furnish the certificates of character from (a) the Principal Academic Officer of the School/College last attended by the candidate and (b) a respectable person who is well acquainted with (but not related to) the candidate.

(v) Selection Committee. There shall be a Selection Committee in each Educational Sub-Division to be constituted by the Sub-Divisional Level Advisory Board for Elementary Education. The Chairman of the Sub Divisional Level Advisory Board for Elementary Education and the D.I. of Schools shall be the Chairman and Secretary of the Selection Committee respectively.

(vi) On receipt of applications, the selection committee shall scrutinise the mark sheets and other necessary testimonials of the candidates and prepare a list of candidates for interview by the Selection Committee.

The election Committee shall then finalise the list of the successful candidates in order of merit after interview and shall put up the list before the Board for approval. While approving the list, the Board shall be guided by the declared policies of the Government and instructions issued by the Government from time to time. After approval of the list by the Board the same shall be sent to the Director of Elementary Education for his final approval. The Deputy Inspector of schools will appoint the selected candidates in order of merit from the list approved by the Director of Elementary Education as and when required as per Government rules and Government instructions for the time being in force.

The list shall be valid for one year unless its validity is extended by Government.

(vii) Reservation, there shall be reservation of posts for schedule Castes and schedule tribes as per rules made by Government from time to time.

(viii) Physical fitness (a) A candidate shall be of sound health both physically and mentally and free from organic defects or bodily infirmity likely to interfere with his/her duties, (b) A candidate shall be required to undergo medical examinations and to produce a medical certificate of fitness.

(ix) An appointed candidate may be required to undergo such in-service training as Government may decide from time to time.

12. No doubt, when the initial appointment is irregular and illegal it cannot give legality to appointments in spite of issuance of appointment letter. But that is not the position in the case in hand. All these persons were appointed on regular basis after holding interview and thereafter only these appointment letters were issued and even today the service of these persons have not been terminated and they are working since 1993 onwards and because of this the Govt. also did not take up the stand that these appointments were not regular appointment. That being the position, the question is that whether the Petitioners are entitled to the benefits as given in the letter of appointment. The authority itself made

clear in the letter of appointment that these persons shall be sent for training and after completion of the training these persons shall be given regular scale of pay. In Civil Rule No. 2440/97 already 7 persons have been given regular scale of pay and the four persons have been left i.e., the Petitioners No. 6,7,10 and 11. There is no justification and/or earthly reason as to why there should be discrimination between these persons. Accordingly this Civil Rule is allowed and the authority is directed to give the same scale of pay to these four persons i.e. the Petitioners No. 6,7,10 and 11. This petition is allowed on the ground of discrimination itself in as much as all of them are similarly situated persons.

13. In Civil Rule No. 2412/97 all the Petitioners have already passed the training. In that view of the matter in terms of the letter of appointment these persons are entitled to have regular scale of pay as per the letter of appointment So, this Civil rule is also allowed with a direction that they shall be paid regular scale of pay from the date of announcement of the result as was done in case of seven Petitioner mentioned above in Civil rule No. 2440/97.

14. In the other two civil rules i.e. Civil Rule No. 2444/97 and Civil Rule No. 2492/97 the Petitioners shall be sent for training according to the availability of vacancies within a period of six months from today and after passing the training they shall be paid the regular salary as mentioned in the appointment letter. It is needless to say that they shall be entitled to the stipend during the period of this six months and pay stipend from June, 1996 shall be paid. In this connection Sri Dutta draws my attention to a decision of Apex Court reported in Sanjit Roy Vs. State of Rajasthan, the factual situation is that as there is acute unemployment and insuch a situation even if a person accepts job with a meagre salary that will not wipe out his right to agitate for the salary due to him under the law inasmuch as the Govt. cannot exploit a person and the Govt. also cannot utilise a person in a meagre salary, that will violate Article 23 of the Constitution of India. On 23rd July, 1998 the Govt. of Assam, Labour and Employment Department, Labour (RC) Branch fixed the minimum daily wage of a person at Rs. 48/-for unskilled workers Rs. 52/- for semi-skilled/Unskilled Supervisory and Rs. 63/- for skilled workers/clarical works. The amount of stipend given to these persons are far below this level. Paragraph 3 of the notification is quoted below:

3. Now, therefore, in exercise of the powers conferred by Section 3(1)(a) of the said Act and the Governor of Assam after consultation with the minimum wages Advisory Board the meeting of which was held on 18.05.98 is pleased to hereby fix minimum rates of wages in respect of different categories of employees/workers employed in the said schedule employment in the whole State of Assam at the rates specified in the schedule below:

SCHEDULE Category of Employees/ Minimum Rates of wages Workers. Daily wages Monthly wages 1. Unskilled workers Rs: 48.00 Rs. 1440.00 2. Semi-skilled/unskilled Supervisory Rs. 52.00 Rs. 1560.00 3. Skilled workers/ Clarical works Rs. 63.00 Rs. 1890.00

15. Earlier to 1998 although it cannot be definitely said what was the amount and/or salary so fixed by the Govt. that amount shall be certainly due to the Petitioner. In 1983 SC page 328(Supra) in paragraph 3 the Supreme Court considered Article 23 of the Constitution of India and that is quoted below:

This Court had occasion to consider the true meaning and effect of Article 23 in a judgment given on 18th September, 1982 in writ petition No. 8143 of 1981- Peoples People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others, The court pointed out that the constitution makers, when they set out to frame the Constitution, found that the practice of "forced labour" constituted an ugly and shameful feature of our national life which cried for urgent attention and with a view to obliterating and wiping out of existence this revolting practice which was a relic of a feudal exploitative society totally incompatible with the new egalitarian socioeconomic order which "We the people of India" were determined to build, they enacted Article 23 in the Chapter on Fundamental Rights. This Article, said the court, is intended to eradicate the pernicious practice of "forced labour" and to wipe it out altogether from the national scene and it is therefore not limited in its application against the state but it is also enforceable against any other person indulging in such practice. It is designed to protect the individual not only against the state but also against other private citizens. The court observed that the expression "other similar forms of forced labour" in Article 23 is of the widest amplitude and on its true interpretation it covers every possible form of forced labour, begar or other wise, and it makes no difference whether the person forced to give his labour or service to Anr. is remunerated or not. Even if remuneration is paid, labour supplied by a person would be hit by this Article if it is forced labour, that is, labour Supplied not willingly but as a result of force or compulsion and die same would be the position even if forced labour supplied by a person has its origin in a contract of service. The court then considered whether there would be any breach of Article 23 when a person provides labour or service to the State or to any other person and is paid less than the minimum wage for it and observed.

(b) The constitution makers have given us one of the most remarkable documents in history for ushering in a new socio-economic order and the constitution which they have forged for us has a social purpose and an economic mission and therefore every word or phrase in the constitution must be interpreted in a manner which would advance the socio-economic objectives of the Constitution. It is not un often mat in a capitalist society economic circumstance exert much greater pressure on an individual in driving him to a particular course of action than physical compulsion or force of legislative provision. The word "force" must therefore be construed to include not only physical or legal force but also force arising from the compulsion of economic circumstances which leaves no choice of alternatives to a person in want and compels him to provide labour or service even though the remuneration received for it is less than the minimum wage. Of course, if a person provides labour or service to Anr. against receipt of the minimum wage, it would not be possible to

say that the labour or service provided by him is "forced labour" because he gets what he is entitled under law to receive. No inference can reasonably be drawn in such a case that he is forced to provide labour or service for the simple reason that he would be providing labour or service against receipt of what is lawfully payable to him just like any other person who is not under the force of any compulsion. We are therefore of the view that where a person provides labour or service to Anr. for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words "forced labour" under Article 23. Such a person would be entitled to come to the Court for enforcement of his fundamental right under Article 23 by asking the Court to direct payment of the minimum wage to him so that the labour or service provided by him ceases to be "forced labour" and the breach of Article 23 is remedied.

I must, therefore, hold consistently with this decision that where a person provides labour or service to Anr. for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the meaning of the words "forced labour" and attracts the condemnation of Article 23. Every person who provides labour or service to Anr. is entitled at the least to the minimum wage and if anything less than the minimum wage is paid to him he can complain of violation of his fundamental right under Article 23 and ask the Court to direct payment of the minimum wage to him so that the breach of Article 23 may be abated.

16. Sri Dutta also places reliance in *Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another*, wherein the Supreme Court in paragraph 101 pointed out that even the existence of a clause which is oppressive in nature will not wipe out the right of a person to agitate for his dues otherwise such an action will be harmful and injurious to the public interest and is against the public good.

17. That being the position of law all these Civil rules are allowed and it is directed as follows:

- (i) That whatever is due to the Petitioners shall be determined on the basis of minimum wages for skilled labour during that period and shall be paid.
- (ii) Those who have passed the training they shall be paid their regular salary from the date of announcement of the result.
- (iii) Those who have not been sent for training within a period of six months they shall be sent for training according to the availability of vacancy and as and when they pass the training they shall be paid their regular salary.
- (iv) The arrear salary/stipend due to these persons from June, 1996 shall be paid within a period of six months from to-day, if necessary by instalment.

18. At this stage Sri Goswami, Learned Govt. Advocate submits that there is no prayer in the writ application to pay the wage at the rate of minimum wage as

fixed by the Govt. from time to time. That will not take away the power of the writ court to mould the relief in view of the Apex Court decision reported in *Air India Statutory Corporation, etc. Vs. United Labour Union and others* [overruled], wherein in paragraph 59 it has been held as follows:

The founding further placed no limitation or fetters in the power of the High Court under Article 226 of the Constitution except self-imposed limitations. The arm of the court is long enough to reach injustice wherever it is found. The court as sentinel in the *qui vive* is to mete out justice in given facts.

19. The Supreme Court in this particular case pointed out that the arm of the court is long enough to reach injustice wherever it is found. The court should try to wipe out the injustice. In the schedule of Minimum Wage Act education is not inserted but that does not mean that the rule of minimum wage shall not apply in the education department and that authorities can do anything to in fixing the scale of pay of a person. The authority must bear in mind this aspect of the matter and even in R.O.P. rules, 1990 that was taken into consideration.

20. This disposes of the writ applications.