

(2004) 01 GAU CK 0046

In the Gauhati High Court

Case No : Writ Petition (C) No. 332 (SH) of 2002

Manoj Kr. Gupta

APPELLANT

Vs

State of Meghalaya and Others

RESPONDENT

Date of Decision : 30-01-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 1 GLT 266

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : R. Choudhury, for the Appellant; Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—Brief facts leading to the filing of the writ petition is that the Petitioner was appointed as a Lecturer in Chemistry in Raid Laban College by the Principal of the College in the month of March, 1993 at a monthly salary of Rs. 400/-. According to the averments made in the writ petition, the salary was subsequently raised to Rs. 1,500/- with a further promise by the Principal of the College that such salary of the Petitioner would be increased to Rs. 6,000/- per month w.e.f. July, 2002. As reflected in the writ petition, the Petitioner put in nine (9) years of service as a Lecturer in the College out of which a period of 5 years was as a whole time Lecturer. The services of the Petitioner was discontinued w.e.f. 1.8.2002. It will be pertinent to mention here that except the averments made in the writ petition, neither the copy of any appointment order nor the order of termination has been annexed to the writ petition. However as a proof of employment of the Petitioner as a Lecturer in the College, the Petitioner has relied upon certain documents to show that he was in fact serving as a Lecturer in the said College. A few certificates issued by the Principal of the College certifying the services of the Petitioner as a Lecturer in the department of Chemistry in the said College have also been annexed to the writ petition.

2. In the writ petition there are all together five (5) Respondents of which

Respondents Nos. 1 and 2 are the State of Meghalaya and the Director of Higher and Technical Education. The Respondents Nos. 3 and 4 are the College in question and the Principal of the College respectively. Respondent No. 5 is one Smti. Tuhina Roy Choudhury, Lecturer in Chemistry of the said College. The prayer made in the writ petition is for a direction to the Respondents Nos. 3 and 4 to reinstate the Petitioner in service with all consequential benefits including scale of pay as admissible and also for setting aside the appointment of Respondent No. 5. However, no copy of the order of appointment made in respect of the Respondent No. 5 has been annexed. Yet the aforesaid prayer has been made for setting aside the appointment of the Respondent No. 5. As per the averments made in paragraph 20 of the writ petition, the Respondent No. 5 was appointed against the leave vacancy pursuant to an advertisement issued on 31.7.2002. However, the Petitioner has expressed his apprehension that such appointment of the Respondent No. 5 was against the resultant vacancy which was caused due to illegal termination of the services of the Petitioner.

3. None of the Respondent has responded to the writ proceeding by filing any affidavit. However, from the averments made in the writ petition, it is not clear as to whether the college in question is under deep and pervasive control of the State of Meghalaya in the Education Department. Nothing has been brought on record to show any control of the Respondent Nos. 1 and 2 over the College. As per the averments made in the writ petition, the Petitioner was appointed by the Principal of the College and it was the Principal who orally terminated the services of the Petitioner. Nothing has been brought on record to show that the State instrumentalities and for that matter the Respondent Nos. 1 and 2 had at any point of time approved the appointment of the Petitioner. Nothing has been stated in the writ petition as to what for the Respondent Nos. 1 and 2 have been impleaded in the writ petition as party-Respondent. Throughout the writ petition the only grievance raised is in respect of the action of the Respondent No. 4. In paragraph 9 and 10 of the writ petition, averments have been made that the College is not a purely private one and that the Respondent Nos. 3 and 4 are amenable to writ jurisdiction and thus the writ petition under Article 226 of the Constitution of India is maintainable.

4. Mr. R. Choudhury, learned Counsel appearing for the Petitioner submitted that the Petitioner having been appointed by the Principal of the College and he having continued in his service for long 9 years, his services could not have been terminated in the manner and method in which the same has been done. On being asked as to whether the college in question is being managed and controlled by the machineries of the State, it was submitted that although initially the College was purely as privately managed one, but by afflux of time the College has been receiving financial assistance of the State Authorities. As regards the appointment of the Petitioner, the learned Counsel for the Petitioner could not produce anything. However, he referred to the aforementioned documents in support of the claim of the Petitioner that he was in fact serving in the college. Nothing could be brought on record that the appointment of the

Petitioner had the approval of the State authorities. Nothing could also be stated about the manner and method of appointment of the Petitioner. However, as per the averments made in the writ petition, it was the Respondent No. 4 who had invited the Petitioner to join the College as a Lecturer on a monthly salary of Rs. 400/-. Such appointment of the Petitioner was not preceded by an advertisement and or selection. As per the averments made in the writ petition out of 9 years of service rendered by the Petitioner, only about 5 years of services was as whole time Lecturer meaning thereby that the remaining 4 years of service rendered by the Petitioner was on part time basis.

5. Even if it is held that the writ petition is maintainable, the writ Petitioner is not entitled to any relief as has been prayed for in the writ petition. In any public employment, same will have to be preceded by a proper advertisement and selection. For appointment of a College Lecturer certain criteria have been laid down by the University Grants Commission and also by the State Government. Unless those conditions are fulfilled no one can claim automatic appointment. The prayer made in the writ petition is for regularisation of the services of the Petitioner and to grant him regular scale of pay and also to set aside the appointment of the Respondent No. 5. As noticed above, the Respondent No. 5 was appointed against the leave vacancy and the same has got nothing to do with the alleged discontinuation of the services of the Petitioner. Moreover, the order appointing the Respondent No. 5 has not been placed on record. The Petitioner has not apprised the Court as to the nature of appointment made in favour of the writ Petitioner and the Respondent No. 5. Moreover in absence of the order of appointment made in favour of the Respondent No. 5 I am not in a position to scrutinise the same not to speak of setting aside and quashing the same.

6. As noticed above no materials have been placed as to the nature of appointment made in favour of the Petitioner and also as to whether the College in question is still a privately managed one. Even assuming that the College is in receipt of some kind of grants from the Government of Meghalaya, that by itself will not be sufficient to invoke the writ jurisdiction of this Court more particularly when it is an admitted position that the Petitioner was appointed and disengaged by the Respondent No. 4. Nothing has been brought on record to show that there was any approval of the appointment of the Petitioner by the Respondent Nos. 1 and 2. The irresistible conclusion is that the Petitioner was engaged by the Principal of the College on a purely personal and private capacity and continuation of the Petitioner in the College on that basis will not vest him with any right towards granting of the relief as has been prayed for in writ petition. It was a purely private affair between the Petitioner and the Respondent No. 4 and in my considered opinion, the writ petition is misplaced. Even otherwise also the Petitioner is not entitled to the relief sought for in the writ petition for the simple reason that mere continuation in the College will not vest him with any right of being regularised without there being any selection etc.

7. For the foregoing discussions I do not find any merit in the writ petition and the same is dismissed.

8. Before parting with the case records I make it clear that the dismissal of the writ petition will not preclude the Respondent Nos. 3 and 4 to take the services of the Petitioner if so advised.