
(2017) 06 GAU CK 0015
In the Gauhati High Court
Case No : 4805 of 2012

Md. Sahjahan Ali Ahmed

APPELLANT

Vs

The State of Assam and others

RESPONDENT

Date of Decision : 07-06-2017

Acts Referred:

Citation : (2017) 06 GAU CK 0015

Hon'ble Judges : A.M. Bujor Barua

Bench : SINGLE BENCH

Advocate : NNB Choudhury, N. Sarma

Judgement

1. Heard Mr. N.N. B. Choudhury, learned counsel for the petitioner, Mr. M. Khataniar, learned Standing Counsel for BTC and Mr. N. Sarma, learned Standing Counsel for the Education Department.

2. The petitioner was appointed as the second founder teacher of the Arnibil Milan L.P School, when the said school was still in its venture stage. The petitioner was appointed by the Managing Committee of the school by its resolution dated 04.02.1984. Subsequently, when the required inspection was carried out by the Inspector of Schools, Nalbari, the name of the petitioner appeared in the report.

3. The said Arnibil Milan venture L.P School was provincialised as per the order dated 15.03.1995 of the Director of Elementary Education, Assam and it was provincialised w.e.f. 01.01.1995. But as the respondent authorities had not taken any steps for provincialising the service of the petitioner and one Naibur Rahman at the time of issuing the order of provincialisation, the petitioner as well as the said Naibur Rahman preferred a writ petition before this Court being CR No.4900/1995. By the order dated 08.03.1996, the said writ petition was disposed of with a direction to the Director of Elementary Education, Assam to make an enquiry regarding the averments made in the writ petition and thereupon pass appropriate orders on their prayer for appointment. Consequent

thereof, the aforesaid Naibur Rahman was appointed on a monthly stipendiary basis by the order dated 16.12.1999.

4. On the other hand, the present writ petitioner was appointed as the second founder teacher of the Arnibil Milan L.P School by the order dated 25.08.2000 of the Deputy Inspector of Schools, Nalbari. Both the aforesaid Naibur Rahman as well as the present petitioner were subsequently terminated from their services. Naibur Rahman was terminated by an order dated 01.12.2008, whereas the present petitioner was terminated by an order dated 18.03.2010. The said order of termination dated 18.03.2010 has been assailed in this present writ petition with a further prayer that the respondents be directed to pay the salary of the petitioner from 2009 onwards.

5. In respect of the termination order of 01.12.2008, by which the aforesaid Naibur Rahman was terminated, a writ petition was preferred being WP(C) No.1242/2010. The said writ petition was disposed of by a judgment and order dated 04.08.2016, wherein this Court arrived at a conclusion that without entering into the correctness or otherwise of the merit of the allegations brought against the petitioner therein, the Court was of the view that no notice or reasonable opportunity of hearing was given to the petitioner. It was further provided that the services of the petitioner having been provincialised, he was entitled to the procedural protection under the provisions of Assam Services (Discipline and Appeal) Rules, 1964. As the required procedure had not been followed and there being violation of principles of natural justice, the order of termination dated 01.12.2008 was held to be null and void.

6. The learned counsel for the petitioner submits that the facts and circumstances of the appointment as well as termination of the present petitioner is same as that of the aforesaid Naibur Rahman. Accordingly, it is prayed that a similar view be also taken in the case of the present petitioner as has been taken by this Court in its judgment and order dated 04.08.2016 in WP(C) No.1242/2010.

7. After giving a due consideration, this Court is of the view that as the facts and circumstances in which the petitioner as well as the aforesaid Naibur Rahman had been appointed as well as terminated are same, there is no reason for this Court to take a different view from what was taken in the judgment and order dated 04.08.2016 in WP(C) No.1242/2010.

8. Accordingly, the impugned order of termination dated 18.03.2010 in respect of the present petitioner is declared to be null and void for not having followed the required procedure and also for violation of the principles of natural justice. As provided in the judgment and order dated 04.08.2010, the petitioner shall also be entitled to the benefit of the policy decision taken by the BTC authorities following the order of this Court passed in Writ Appeal No.182/2013.

9. Accordingly, the respondent authorities shall consider the case of the petitioner for being regularized and further to pay the salary and allowances to

the petitioner till the date of termination. It is stated by the learned counsel for the petitioner that prior to the termination; the petitioner had received his salary up to August, 2009. In such view of the matter, the salary and allowances of the petitioner shall be paid for the period subsequent to August, 2009 till the date of his termination. A copy of the judgment and order dated 04.08.2016 passed in WP(C) No.1242/2010 is kept on record.

In terms of the above, this writ petition stands disposed of.