
(2005) 03 GAU CK 0027
In the Gauhati High Court
Case No : Civil Rule No. 3347 of 1997

Md. Sirajul Haque

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 05-03-2005

Acts Referred:

Citation : (2005) 2 GLR 676 : (2009) 3 GLT 219

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : A.M. Mazumdar and S. Islam, for the Appellant; D.K. Sarma and M.K. Mishra, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—By means of this writ application, the petitioner has prayed for his appointment as Lecturer of Economics in P. B. College, Gauripur in terms of the resolution adopted by the Governing Body of the College. The petitioner was initially appointed in the College way back in 1977. His such appointment was for a temporary period. Thereafter, his services was dispensed with. Placing reliance on certain subsequent events, after the dispensation of the services of the petitioner, the petitioner agitated his grievance by filing this writ petition in the year 1997. According to the petitioner he was illegally removed from the post by the Governing Body of the College and that he was entitled to be reinstated in his service.

2. The respondents have filed an affidavit-in-opposition controverting the claim of the petitioner. The basic theme of the counter affidavit is that the post in which the petitioner was initially appointed in 1977 was abolished in the year 1981 by Annexure-O to the counter affidavit. Further stand of the respondents is that the petitioner on the same very cause of action had approached the Civil Court by filing Title Suit No. 53/1980. The suit was decreed in favour of the petitioner and the College authority being aggrieved preferred Title Appeal No. 1/1989. On appeal, the judgment and decree passed by the trial Court was

reversed making a grievance against which the petitioner approached this Court by filing Second Appeal No. 24/1990. The Second Appeal was also dismissed by judgment and order dated 20.1.1993. The entire facts were narrated in the judgment and order dated 20.1.1993. Thus, the issue raised in this writ petition already stood concluded in the proceeding before the Civil Court.

3. I have heard Mr. A. M. Mazumdar, learned senior Counsel for the petitioner assisted by Mr. S. Islam, Advocate and Mr. M.K. Mishra, learned counsel for the respondent No. 4. I have also heard Mr. D. K. Sarma, learned Standing Counsel, Education Department appearing for the respondent Nos. 1, 2 and 3. At the very outset Mr. Mazumdar fairly submitted that after the judgment and decree passed in the Civil proceeding initiated by the petitioner himself, the issue raised in the writ petition does not survive. However, he submits that having regard to the long pending proceeding in which the petitioner is involved, appropriate direction may be issued to the official respondents to consider the case of the petitioner against any available vacancy in any College.

4. Mr. Mishra, learned counsel for the respondent No. 4 submits that the writ petition being not maintainable, no such direction is called for. He submits that the writ petition is liable to be dismissed on the sole ground of suppression of materials fact inasmuch as the petitioner while approaching this Court invoking its writ jurisdiction did not disclose about the proceeding before the Civil Court. He further submits that in any case, the post against which the petitioner was appointed having been abolished, there is no question of re-instatement of the petitioner in service.

5. Mr. D. K. Sarma, learned Standing Counsel, Education Department submits that after the decision in the civil proceeding, the instant writ petition is not maintainable. He submits that no direction is warranted in this case directing the official respondents to consider the case of the petitioner.

6. I have considered the submissions made by the learned counsel for the parties and the materials on records. There is no dispute that the issue which has been raised in this writ petition has already been gone into by the Civil Court on the basis of the proceeding initiated by the petitioner himself. The said proceeding came to an end with the passing of the judgment and order dated 20.1.1993 in Second Appeal No. 24/1990 in which it was clearly held that the prayer made by the petitioner for his reinstatement in service was not tenable. After such conclusion of the proceeding in the Civil Court, the petitioner could not have approached this Court by filing the instant writ petition and that too suppressing the fact of the aforesaid civil proceeding. On this score alone, the writ petition is liable to be dismissed.

7. There is another aspect of the matter. As submitted by Mr. Mishra, learned counsel for the respondent No. 4, the post in question has already been abolished way back in 1981. If that be so, there is no question of re-instating the petitioner in service. As regards the submissions made by Mr. Mazumdar, learned

senior counsel to issue direction to the official respondents to consider the case of the petitioner for his absorption elsewhere, I am afraid, no such direction can be issued more particularly having regard to the facts and circumstances involved in this case.

8. It will be open for the petitioner to respond to any future advertisement which might be issued by the respondents and to compete with other candidates. If he is entitled to any weightage for his past service or experience, same shall be extended to him in accordance with the rules.

9. Subject to the above observations, the writ petition stands dismissed.