

(2018) 01 GAU CK 0056
In the Gauhati High Court
Case No : 19 of 2017

MRS BEAUTY DEKA

APPELLANT

Vs

THE STATE OF ASSAM and ORS

RESPONDENT

Date of Decision : 25-01-2018

Acts Referred:

Citation : (2018) 01 GAU CK 0056

Hon'ble Judges : Ajit Singh, Manojit Bhuyan

Bench : Division Bench

Advocate : U.K. Das, P. Chakraborty, R. Borpujari

Final Decision : Disposed

Judgement

1. Heard Mr. U.K. Das, learned counsel for the appellant/writ petitioner as well as Ms. P. Chakraborty, learned counsel representing respondent

nos.1, 2 and 3. Mr. R. Borpujari, learned counsel appears on behalf of respondent nos.5 and 6.

2. Challenge is made to the judgment and order dated 01.08.2016 passed in WP(C) 3779/2013. In the said writ petition, instituted by the

appellant herein, reliefs sought for were in respect of setting aside Advertisement of the post of Hindi Teacher at Palashtal Kachamari High School;

for direction to the respondents to adjust her service against the sanctioned vacant post of Hindi Teacher at the said Palashtal Kachamari High

School with regular scale of pay, and for payment of arrear and current salary with effect from August, 2006. The writ petition was disposed of

holding that the appellant was not entitled to any salary and in respect of the prayer for regularization/adjustment of service, the same be

considered by the respondents prospectively. Being aggrieved, the present

appeal is laid.

3. At the outset, it would be worthwhile to place on record that the memorandum of appeal had undergone amendment, on being so allowed vide

order dated 21.11.2017 passed in I.A.(Civil) No.3509/2017. In the amended memorandum of appeal, a new document has been introduced,

being the letter dated 24.01.2017 (Annexure-1A) which is to the effect that the adjustment or regularization of services of the appellant in a vacant

sanctioned post of Hindi Teacher in any High School/Higher Secondary School cannot be considered as on date as the appellant do not possess

TET qualification which is mandatory for recruitment of teachers.

4. As agreed to by the counsel for the parties, we proceed to decide this appeal only on the issue whether the appellant is entitled to

salary/remuneration for the period during which she has been discharging duties as teacher. We are not deciding on the issue of

regularization/adjustment, which on direction of the Court in the related WP(C) 3779/2013 has been considered by the State respondent and

decided against the appellant vide aforesaid communication 24.01.2017. In so far as this communication of 24.01.2017 is concerned, the appellant

will be at liberty to assail the same in an appropriate proceeding before the appropriate forum.

5. It is seen that the appellant was appointed as Hindi Teacher (Senior) on ad-hoc basis at Barbheti Girls' High School under a Centrally

Sponsored Scheme. She was appointed at a fixed pay of Rs.1375/- per month and at the relevant time i.e. in the year 1995, the said High School

was not provincialised. In course of time, her appointment was adjusted against post created in the same school vide Government letter dated

12.10.1999, followed by order of the Director of Secondary Education dated 12.07.2000. In the year 2006 the appellant was transferred from

Barbethi Girls' High School (not provincialised) to Palashtal Kachamari High School (provincialised), on her own request, against a sanctioned

vacant post of Hindi Teacher which fell vacant vice one Shri Probin Chandra Deka who had been transferred out from the school. From the time

the appellant was transferred from the non-provincialised to the provincialised High School, despite against a sanctioned vacant post, no monthly

salary was given to her. This was one of the primary grievance raised in the

related writ petition, but which did not find favour with the learned Single Judge.

6. Facts not in dispute are that the appellant was transferred to Palashtal Kachamari High School against a sanctioned vacant post of Hindi

Teacher. On and from the date of her transfer dated 02.08.2006, she has been rendering her service in the said High School without any let or

hindrance. There has been no cessation of her service as a teacher until today and the respondents have not only allowed her to work but have

also utilized her services. The appellant has undoubtedly earned her salary for the period she has been in service at Palashtal Kachamari High

School. Claim for salary is not based on tort but on the principle of quantum meruit. As in service jurisprudence, it is not implicit that a person

serves under the Government "ex-gratia" or that his salary is in the nature of a bounty. On the above facts and principles, payment of salary, arrear

and current as admissible under the relevant Rules, cannot be denied to the appellant.

7. Having held as above, a caveat is expressed that the appellant's right to recover arrear salary cannot run prior to the period of 3(three) years

from the date of filing of the related writ petition i.e. WP(C) 3779/2013, which was filed on 01.07.2013. This view of ours finds support from the

judgment of a co-ordinate Bench in Harendra Chandra Nath & Ors. vs. State of Tripura and Ors., reported in 2013 (2) GLT 1094.

8. This writ appeal, thus, stands accordingly disposed of by directing the State respondents to pay salary/remuneration to the appellant, as

admissible under the Rules from the period commencing 3(three) years prior to the institution of WP(C) 3779/2013, which was filed on

01.07.2013, within an outer limit period of 4(four) months from today. As regards the issue on regularization of service, which is now impeded by

the communication dated 24.01.2017 as referred to above, liberty is granted to the appellant to test/assail the same in an appropriate proceeding

before the appropriate forum. Ordered accordingly.