

(2011) 11 GAU CK 0065
In the Gauhati High Court
Case No : Writ Petition (C) No. 4814 of 2011

Mrs. Purabi Kalita

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 01-11-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 1 GLD 300

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Advocate : S. Seal Mr. R. Dhar and Mr. R. Mazumdar, for the Appellant; D. Saikia, Addl. AG, Assam and Mr. A.D. Choudhary, SC, Education Department, for the Respondent

Final Decision : Dismissed

Judgement

I.A. Ansari, J.—With the help of this writ petition, made under Article 226 of the Constitution of India, the petitioner has put to challenge the. Office Memorandum, dated 2.9.2011, whereby the Commissioner and Secretary to the Government of Assam, Education (Secondary) Department, has conveyed the Government's direction to all the authorities concerned to withdraw orders of attachment of teachers from one school to another. The petitioner has also put to challenge the order, dated 80.9.2011, issued by the respondent No. 2, namely, Director of Secondary Education, Assam, too, whereby, acting upon the Office Memorandum, dated 2.9.2011, the petitioner's attachment to Arya Vidyapeth Higher Secondary and Multi Purpose School, Guwahati, has been withdrawn and the petitioner has been directed to rejoin her parent School, namely Bihuguri Higher Secondary School, district Sonipur. Briefly put the case of the petitioner reads as under :

(i) The petitioner came to be appointed as a Subject Teacher/Post Graduate Teacher (Commerce) and posted at Bihuguri Higher Secondary School, district Sonipur, in the year 2007. On the ground that she has two minor children and

that her husband is a Government servant posted at Guwahati, the petitioner made several representations to the respondents/authorities concerned seeking transfer from Sonitpur to Guwahati. As her representations did not yield any favourable result, she filed a writ petition, which gave rise to WP (C) 6312/2006. Following the writ petition, respondent No. 2, namely, Director of Secondary Education, Assam, sent, vide his letter, dated 2.1.2009, a proposal to the Government for attachment of the petitioner to Arya Vidyapeth Higher Secondary and Multi Purpose School, Guwahati. By a letter, dated 7.8.2009, the Government approved the proposal for the petitioner's attachment as had been sought for by the respondent No. 2. An order, 7.8.2009, was accordingly issued by the Government conveying the Government's approval to the proposal for the petitioner's attachment to the Arya Vidyapeth Higher Secondary and Multi Purpose School, Guwahati, temporarily, on condition that if any vacancy occurred in the subject, which the petitioner had been teaching, namely, Commerce, in any school at greater Guwahati, she would be accommodated there. By the order, dated 7.8.2009, aforementioned, it was however, directed that during the period of her attachment to the Arya Vidyapeth Higher Secondary and Multi Purpose School, Guwahati, the petitioner would draw her monthly salary from Bihaguri Higher Secondary School, Sonitpur, which is her parent school. As per her attachment order, the petitioner, immediately, joined as Subject Teacher/Post Graduate Teacher (Commerce) in Arya Vidyapath Higher Secondary and Multi Purpose School, Guwahati.

(ii) As the post of Subject Teacher (Commerce), in Arya Vidyapeth Higher Secondary and Multi Purpose School, Guwahati, had been lying vacant since January, 23.1.2009, due to the death of its incumbent, namely, Dulan Chandra Bordoloi, the petitioner made a representation to the respondent No. 2 herein, on 26.8.2009, seeking to be accommodated in the said post. However, her said representation did not evoke any favourable response.

(iii) On the ground that since a post of Subject Teacher (Commerce) had been lying vacant in Arya Vidyapeth Higher Secondary and Multi Purpose School, Guwahati, and yet she has not been accommodated in the said post, the petitioner, once again, filed a writ petition, which gave rise to W.P. (C) 355/2011. The said writ petition was disposed of by order, dated 24.1.2011, with direction to the respondents/authorities concerned to look into the grievances of the petitioner and do the needful in accordance with law making it clear, however, that if the post of Subject Teacher (Commerce), which had been lying vacant in the Arya Vidyapeth Higher Secondary and Multi Purpose School, Guwahati, was a post meant for reserved quota, then, the respondents/authorities concerned would be free to take necessary decision. Thereafter, the letter, dated 2.9.2011, conveying the Government's policy decision, with regard to attachment of teachers, mentioned above, was issued, whereby the authorities concerned were directed to withdraw the orders of attachment of teachers from one school to another. Acting upon this Government policy, the impugned order, dated 8.9.2011, has been issued by the respondent No. 2 herein, namely, Director of

Secondary Education Assam, withdrawing the petitioner's attachment from the Arya Vidyapeth Higher Secondary and Multi Purpose School, Guwahati, and posting her back to Bihaguri Higher Secondary School, Sonitpur, which is the school from where the petitioner has been receiving her salary even while working, at Guwahati, as indicated hereinbefore.

(iv) Aggrieved by the order, dated 8.9.2011, whereby the petitioner's attachment to Arya Vidyapeth Higher Secondary and Multi Purpose School, Guwahati, has been withdrawn and she has been posted back to Bihaguri Higher Secondary School, Sonitpur, the petitioner has filed the present writ petition.

2. I have heard Mr. R. Dhar, learned counsel for the writ petitioner, and Mr. D. Saikia, learned Additional Advocate General, Assam, assisted by Mr. A.D. Choudhury, learned Standing counsel, Education Department, Government of Assam, appearing on behalf of the State respondents.

3. While considering the present writ petition, it needs to be noted that the State respondents have filed a counter-affidavit, wherein they have explained the reasons for withdrawing the petitioner's attachment from Arya Vidyapeth Higher Secondary and Multi Purpose School, Guwahati, the explanation being, in brief, thus :

The Assam Secondary Education (Provincialisation) Rules, 2003 (hereinafter referred to as the "2003 Rules"), which govern the service conditions of the teachers working in provincialised High and Higher Secondary schools in Assam, has no provision as regards attachment of teachers from one school to another and, therefore, the action, on the part of the authorities concerned, in issuing an attachment order is without any support of law and that, in order to improve the academic environment of educational institutions in the State of Assam, adequate number of teaching staff is required for the purpose of maintaining the pupil-teacher ratio. In the recent past, a large number of additional Teachers were appointed, on contract basis, for High Schools in order to meet the requirement of teachers. In the process of maintaining pupil-teacher ratio, the State Government became conscious of the fact that some teacher had been working on attachment at one place against their original place of posting at another place or even in another district, which was injurious to the academic atmosphere inasmuch as such attachment orders create surplus manpower in one schools; whereas, in some other school, particularly, in the schools, located in remote/under-developed areas, the students had to suffer due to insufficient number of teachers. It was also discovered by the Government that most of the attachment orders had been issued at the behest and personal interest of the person concerned. The Government, therefore, took a conscious decision and issued Office Memorandum, dated 2.9.2011, making it clear that, henceforth, no attachment would be made by any authority and that all the attachment orders, issued earlier, would be cancelled and the incumbent concerned would be sent back to their respective original places of posting from where they had been drawing their respective salary. In terms of the Government policy decision, so

conveyed by the Office Memorandum, dated 2.9.2011, respondent No. 2, namely Director, Secondary Education, Assam, has issued the impugned order, dated 8.9.2011, withdrawing the petitioner's attachment from the Arya Vidyapeth Higher Secondary and Multi Purpose School, Guwahati, and posting her back to Bihaguri Higher Secondary School, Sonitpur. In this process, as many as 17 orders of attachment, including that of the petitioner, have been withdrawn and the persons concerned, including the petitioner, have been sent back to their respective original schools to which they were appointed and from where they had been drawing their respective salary.

4. Coupled with the above, it is the further case of the State respondents that the post, in question, which the petitioner was attached to, is a post meant for reserved quota and, hence, the petitioner cannot be absorbed and/or accommodated in the said post.

5. While considering the rival submissions, it may be noted that the petitioner has not challenged the policy decision of the Government, as contained in the Office Memorandum, dated 2.9.2011. When the policy decision of the Government is not under challenge and could not have been challenged, because of the rationality behind the policy decision, the consequences flowing from there, which led to the withdrawal of the petitioner's attachment from the Arya Vidyapeth Higher Secondary and Multi Purpose School, Guwahati, and sending her back to Bihaguri Higher Secondary School, Sonitpur, could not have been questioned, and has not been really questioned in the present case.

6. What has been pointed out, on behalf of the petitioner, is that it had been promised in the order of her attachment, dated 7.8.2009, that the petitioner would be adjusted if any vacancy arose in future and that as the post of Subject-Teacher (Commerce) had been lying vacant in Arya Vidyapeth Higher Secondary and Multi Purpose School, Guwahati, where she was attached, the petitioner ought to have been adjusted against the said vacant post.

7. Suffice it to point out, with regard to the above, that when the petitioner's appointment was at Bihaguri Higher Secondary School, Sonitpur, when she has been till date, drawing her salary from Bihaguri Higher Secondary School, and when there is no provision, under 2003 Rules, for attachment of teacher, the petitioner could not have been brought to Guwahati on attachment. As far as the petitioner's accommodation/absorption in the vacant of Subject Teacher (Commerce) in Arya Vidyapeth Higher Secondary and Multi Purpose School, Guwahati, is concerned, the same is impermissible in law inasmuch as the respondents have made it clear that the said post falls under reserved quota and this aspect had, indeed, been taken into consideration by the High Court, while disposing of the petitioner's earlier writ petition [WP(C) 355/2011] by order, dated 24.1.2011, directing consideration of the petitioner's grievances by the respondents provided that the post, in question, does not fall under reserved category.

8. By filing additional affidavit, the petitioner has, however, challenged the State respondents' contention that the post in question, falls within the reserved quota. While considering the petitioner's challenge to the correctness of the assertion of the State respondents with regard to the status of the said post, it needs to be made clear that if the petitioner disputes the fact that the said post falls under reserved quota, then, the remedy for settlement of such a dispute lies in a civil suit and not by way of a writ petition, because determination of such a disputed question of fact would require holding of roving enquiry by taking evidence, which cannot and ought not to be done in the fact situation of the present case.

9. Above all, there is no provision, in 2003 Rules, for either attachment of teachers from one school to another or for absorption of a teacher into a post in one school by bringing him/her, on attachment from another school. Viewed from this angle too, the petitioner has no case and the withdrawal of the order of her attachment being based on the policy decision of the Government the same cannot in the absence of any specific material, be said to be mala fide. This Court is, therefore, of the firm view that the present writ petition is wholly without merit and the same must fail.

10. In the result and for the reasons discussed above, this writ petition fails and the same shall accordingly stand dismissed. No order as to costs.