

(2009) 06 GAU CK 0002
In the Gauhati High Court
Case No : W.A. No. 358 of 2008

Mukunda Kalita

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 02-06-2009

Acts Referred:

Constitution of India, 1950 — Article 162, 226

Citation : (2009) 5 GLT 584

Hon'ble Judges : Jasti Chelameswar, C.J.; Brojendra Prasad Katakey, J

Bench : Division Bench

Advocate : K.K. Mahanta, B. Choudhury and B.P. Sinha, for the Appellant; V.M. Thomas, T.J. Mahanta and P. Bhattacharjee, for the Respondent

Final Decision : Dismissed

Judgement

Jasti Chelameswar, C.J.—Heard Mr. K.K. Mahanta, learned Counsel for the Appellant. Also heard Ms. P. Bhattacharjee, learned Counsel for the Respondent Nos. 4 and 5 and Mr. V.M. Thomas, learned Standing Counsel, Education Department.

Aggrieved by a common judgment dated 20.3.08 in four writ petitions the unsuccessful writ Petitioner in WP (C) No. 6266/07 preferred the present appeal.

2. Briefly stated, the Appellant was initially appointed on 22.8.05 as a Lecturer in the 4th Respondent's college. The college employed number of teachers and non-teaching staff. It is a college purely run by private individuals.

3. The State of Assam, as a matter of policy, from time to time extended some amount of financial assistance to the various educational institutions of the State. While extending such assistance the State chose to undertake the payment of salaries to a fixed number of teachers and non-teaching staff with regard to each one of the educational institutions. Such of those posts to which the State chose to undertake the obligation of making the payment of salaries came to be called "sanctioned posts" in the administrative jargon of the State of Assam though the

expression "sanctioned posts" itself is not defined anywhere in this context.

4. The Appellant admittedly was recruited by the 4th Respondent management against one of those "non-sanctioned" posts. All the four writ petitions which came to be dismissed by virtue of the judgment under appeal deal with various facets of the grievance. The grievance of the Appellant is in connection with his claim to be adjusted against a "sanctioned post" which fell vacant subsequent to the recruitment of the Appellant against a "non-sanctioned" post. The further details of each one of the four writ petitions may not be necessary for the purpose of the present appeal.

The Appellant's claim is based on a memorandum of the State of Assam dated 17.7.04 issued by the Secretary to the Government of Assam, Education Department. From the body of the memorandum it appears that such a memorandum was issued pursuant to a Cabinet decision dated 9.6.04. Though the memorandum clearly does not say so, it appears in the context of the above mentioned facts that it is a memorandum issued by the State in exercise of the executive powers under Article 162 of the Constitution of India.

5. The learned Judge by the judgment under appeal dismissed the writ petitions on the ground that having regard to the tenor and context of the above mentioned memorandum, the memorandum has no application to the case of the Appellant herein.

6. The above mentioned memorandum came to be issued, as already noted, pursuant to a Cabinet decision dated 9.6.04 in the background of the fact that as on that date some 300 college teachers were working at different colleges of the State of Assam which colleges were receiving financial assistance to some extent from the State of Assam. But these 300 teachers were recruited by the concerned colleges against "non-sanctioned" posts, as described earlier. Some 140 of the teachers approached this Court earlier by filing writ petitions. This Court disposed of the writ petitions directing the State to consider the possibility of extending the benefit of financial assistance to the posts in which the said writ Petitioners were working. It is in the above mentioned background that the Government of Assam considered the issue and took a decision to undertake the responsibility of providing financial assistance to those colleges where the above mentioned 300 teachers were working on certain terms and conditions embodied in the memorandum.

7. The learned Judge by the judgment under appeal held that the benefit of the above mentioned memorandum is available only to those teachers who were appointed prior to 17.7.04, that is the date of the memorandum and the benefit sought to be conferred by the above mentioned memorandum is not available to those appointments of teachers made subsequent to the above mentioned date in any college against a "non-sanctioned" post.

8. Admittedly, the Appellant herein came to be appointed subsequent to 17.7.04, against a "non-sanctioned" post.

We do not see any illegality or fallacy in the conclusion reached by the learned Single Judge by the judgment under appeal. At para 4 of the above mentioned memorandum after narrating the entire background history which led to the decision of the Cabinet dated 9.4.04 the memorandum stated as follows:

4. ...The following procedure/modalities are hereby prescribed for adjustment of service of college teachers working without sanctioned posts as mentioned above.

The above extracted sentence to our mind leaves no doubt about the applicability of the above mentioned memorandum that the benefit sought to be conferred by the memorandum is only available to persons appointed before 17.7.04.

9. In the circumstances we see no merits in the writ appeal and the same is dismissed at the admission stage.

10. The learned Counsel for the Appellant submitted that the various grievances of the Appellant against the management are still required to be examined notwithstanding the decision of this Court regarding the obligation of the State in the light of the Appellant seeking the benefit of the above mentioned memorandum dated 17.7.04.

11. Rights and obligations of the 4th Respondent management and the Appellant herein, if any, are purely contractual. The dispute arising out of such contractual obligation cannot be adjudicated upon in a proceeding under Article 226 of the Constitution. It is open for the Appellant, if so advised, to approach the appropriate forum seeking redressal of his grievance, if any, against the 4th Respondent management only.