
(2013) 09 GAU CK 0058

In the Gauhati High Court

Case No : Writ Petition (C) No's. 1491, 2021, 2168, 4425 of 2008, 5249, 5265, 5321, 5295, 5523, 5236, 5751, 5387, 5269, 6102, 5718, 5259, 5237, 6062, 5602, 5604, 5513, 5268, 5522, 6127, 5398, 5670, 5828, 5832, 5587, 5817, 5298, 5250, 5280 of 2012 and 1253 of 2013,

Nabab Ali Sheikh and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 16-09-2013

Acts Referred:

Citation : (2014) 1 GLT 406

Hon'ble Judges : Ujjal Bhuyan, J

Bench : Single Bench

Advocate : H.R.A. Choudhury, Mr. D. Das, Mr. A.R. Sikdar, Mr. B.D. Goswami, Mr. N.N.B. Choudhury, Mr. S. Borthakur, Mr. A. Sarma, Mr. A.K. Dutta, Mr. Z. Hussain and Mr. S.B. Laskar, for the Appellant; D. Saikia, Learned Addl. A.G., Assam, for the Respondent

Judgement

Ujjal Bhuyan, J.—All these writ petitions raise common question of law and fact and are accordingly disposed of by this common order. This batch of cases can be broadly divided into two categories-writ petitions of the year 2008 and writ petitions of the year 2012 with one similar writ petition of 2013.

2. For the sake of convenience, facts of the writ petitions of the year 2008 may be briefly noted first.

WRIT PETITIONS OF 2008

3. WP (C) No. 1491/2008 has been filed by an association called Resource Teacher Academic Council representing the interest of Resource Teachers (RT) and Associate Block Resource Centre Coordinators (ABRCC), whose substantive appointments are as teachers in LP schools under the Directorate of Elementary Education, Assam and who are on deputation to the Sarba Siksha Abhijan (SSA) Mission, Assam. They seek continuance of their service under SSA and are aggrieved by reported move of the authority to repatriate them to their parent

department.

4. This Court by order dated 25.04.2008 directed maintenance of status-quo with regard to the service conditions of the members of the petitioner association as on that day.

5. WP (C) No. 2021/2008 has been filed by an association called All Assam Cluster Resource Centre Coordinators Association representing the interest of Cluster Resource Centre Coordinators (CRCC), Additional Block Resource Centre Coordinators (ABRCC), District Planning Officers (DPO) and Resource Teachers (RT) working in SSA. The above personnel, whose interest the petitioner association represents, were substantively employed as Head Master or Assistant teacher in various LP/ME/High/Higher Secondary Schools of the State and they were appointed in SSA on deputation basis following interview and selection in the year 2003. Petitioners are aggrieved by decision taken by SSA on 29-12-2007 to release the members of petitioner association from SSA and seek a direction for their continuance under SSA.

6. This Court by order dated 23.05.2008 directed maintenance of status-quo of the service conditions of the members of the petitioner association.

7. WP (C) No. 2168/2008 has been filed by the same association i.e. All Assam Cluster Resource Centre Coordinators Association. This writ petition has been filed for quashing of communication dated 21.05.2008 issued by the Mission Director, SSA, Assam whereby all the District Mission Coordinators were asked to initiate necessary process for filling up vacant posts of CRCCs. Petitioner association is aggrieved by a condition imposed in the said communication dated 21.05.2008 to the effect that those candidates who had completed 5 years of deputation in SSA in any capacity need not apply.

8. WP (C) No. 4425/2008 has been filed by an individual candidate challenging orders dated 05.07.2008 and 30.06.2008 deciding to release the petitioner from his deputation service in SSA and to revert him to his parent department as Assistant teacher of Nagajani LP School in the district of Darrang on completion of 5 years term in SSA on 30.06.2008.

9. This Court by order dated 01.10.2008 allowed the petitioner to continue in SSA.

10. Basic contention of the petitioners is that Government of India had initially introduced a scheme for universalization of education and to eradicate illiteracy. The scheme came to be known as District Primary Education Programme (DPEP). The said scheme was implemented in the State of Assam from the year 1995. It was, however, abolished w.e.f. 30.06.2003 and was replaced by a new scheme i.e., SSA. Those teachers who were earlier engaged in DPEP were retained in the new SSA scheme. Apart from them, additional teachers were engaged as ABRCC, CRCC, RT etc. on deputation basis from the Education Department, Government of Assam. But such engagements were preceded by a selection process.

Engagement on deputation was initially for a period of 12 months. But as per guidelines, period of deputation is subject to extension or termination based on performance. Though the period of deputation was initially for 12 months (1 year), deputation period continued for more than 5 years. Because of such long deputation period, petitioners faced certain difficulties such as contribution to GPF, GIS, Leave Salary etc. Apprehension has been expressed that since deputation continued beyond 1 year without any administrative decision, it may cause dislocation in their service leading to future complications. In such circumstances, petitioners submitted representations before the respondents to retain them in SSA and not to repatriate them to their parent department. Additionally, petitioners have gathered sufficient experience in SSA and are now well trained as resource persons. Their repatriation will adversely effect functioning of SSA as well as hamper teaching activities in their respective schools as they are now out of sync with teaching for so many years, if they are forced to go on repatriation. Petitioners have also based their case on Regulation 7 of Asom Sarba Siksha Abhijan Mission Service Regulations, 2003 which deals with reversion or discharge. It provides that a person in service in SSA on deputation/attachment shall be liable to be reverted to his original service if he fails to render satisfactory service in the post held by him in SSA. There is no allegation or any adverse finding by the authority that the petitioners had failed to render satisfactory service in SSA. Additionally, in WP (C) No. 2168/2008 where communication of the Mission Director, SSA dated 21.05.2008 directing All District Mission Coordinators to fill up the vacant posts of CRCCs has been put to challenge, the contention is that the guidelines framed for recruitment are arbitrary and seek to circumvent adjudication of the cases pending before the Court. As per the guidelines, candidates should not be Headmaster in LP or U.P. Schools; the candidates should not be a single Science/Mathematics/Language teacher in the Schools and most importantly, those who had already completed 5 years of deputation in SSA need not apply again.

11. Thus, petitioners challenge their repatriation to their parent department.

12. As noticed above, in view of status-quo order passed by this Court, petitioners have continued in their deputation service in SSA.

13. On 09.04.2009, this Court passed the following order in WP (C) No. 2021/2008:--

Heard the learned counsel for the parties.

The controversy centers around the decision to repatriate the petitioners and/or the members of the petitioner association figuring in the instant batch of writ petitions from the establishment(s) under Axom Sarba Siksha Abhijan Mission (hereinafter referred to as the Mission), to which they have been deputed in the year 2003-2004. These incumbents were serving as Headmaster/Assistant Teachers in various LP/ME/High/Higher Secondary Schools of the State at the time of their deputation to the Axom Sarba Siksha Abhijan Mission. They contend

that though in the meantime, several years have passed, neither their initial period of deputation has been extended nor their services have been regularized in the loanee establishments) and instead, by the impugned decision, they are sought to be repatriated to their parent department. The petitioners contend that as in the meantime, the posts earlier held by them had been filled up by other incumbents, the decision of repatriation, if effected, would jeopardize their service career. By various interim orders passed in the petitions, the operation of the impugned decision has been kept in abeyance.

Mr. K.N. Chaudhury, learned Additional Advocate General, Assam appearing for the Mission, without prejudice to the rights and contentions of the parties has submitted that in order to case the administrative stalemate prevailing in view of the suspension of the impugned decision, appropriate orders may be passed by this Court for regularization of the deputation period of the petitioners with the Axom Sarba Siksha Abhijan Mission, and that consequential directions may be issued for release of their service entitlements in law, namely, leave salary, contribution to the pension fund, General Provident Fund and Group Insurance accounts.

Mr. Dutta, while agreeing to the offer on principle, has drawn the attention of this Court to the pleaded stand of the Government of Assam, Education (Ele) Department in its affidavit dated 25.08.2008 to the effect that the maximum period of deputation is five years and that on the expiry thereof, a deputationist must revert to his/her parent department, failing which, he/she would be deemed to have been permanently absorbed in the loanee department/organization and that in no circumstance, then the finance department would accept the proposal for deputation beyond that term (five years).

Mr. Dutta in the back drop of the above contention has expressed his reservation, as to whether the aforementioned proposal now made on behalf of the Mission would be accepted by the Finance Department, unless, the issue is comprehensively resolved at the appropriate administrative level.

Responding to this, Mr. Chaudhury, while referring to the office memorandum No. FEG 13/92/Pt./14 dated 19.07.1997, which sets out amongst others, the pleaded stand of the Government of Assam, Education (Ele) Department hereinabove, submits that it would be in fitness of things, if the issue is referred to the Chief Secretary of the State to cause necessary steps to be taken by him to work out a legally acceptable solution to the impasse. The learned counsel for the petitioners have favourably responded to this course of action.

In the above premise, I am of the considered view that an opportunity ought to be accorded to the authorities concerned to undertake the required exercise to arrive at a desirable and valid decision on the issue.

List again on 27.04.2009.

By then, the Chief Secretary of the State would do the needful in conformity with

the letter and spirit of this order.

A copy of this order be furnished to the learned counsel for the parties.

14. A notification dated 17.02.2011 was issued by the Commissioner and Secretary to the Government of Assam, Education (Elementary) Department, which reads as under:--

No. AEE 238/2009/260: In pursuance of the Cabinet decision in its meeting held on 03.02.2011 the Governor of Assam is pleased to regularize the term of deputation of 369 teaching and non-teaching staff of Elementary Education and 53 teaching and non-teaching staff of Secondary Education deputed to Sarba Siksha Abhijan, Assam beyond the 5th year deputation period. List of deputationist is enclosed in Annexure-I & II respectively.

WRIT PETITIONS OF 2012 & 2013

15. As a lead case, WP (C) No. 5265/2012 was argued. Accordingly, facts of that case are briefly noticed as facts of other cases are identical.

16. Petitioners are working as CRCC in Goalpara district under SSA, Assam. They are aggrieved by advertisement dated 17.10.2012 issued by the Mission Director, SSA, Assam.

17. According to the petitioners, they are working as CRCC in Goalpara district under SSA vide orders dated 29.11.2003 and 02.11.2006. Their substantive appointments are as Assistant teacher in different schools under Deputy Inspector of Schools, Goalpara. Following a selection, they were appointed as CRCC on deputation basis. When they were sought to be repatriated, a number of writ petitions were filed in the year 2008, as already noticed above. This Court directed maintenance of status-quo and further directed not to give effect to any release order.

18. When application was filed by the Mission Director for modification of the interim order, this Court passed order dated 06.01.2012 in MC No. 3509/2011 arising out of WP (C) No. 2168/2008 permitting the Mission Director to fill up the remaining vacancies other than those posts held by the petitioners. Likewise, this Court passed order dated 21.02.2012 in MC No. 3469/2011 arising out of WP (C) No. 1491/2008 modifying the earlier interim order to the extent that except the vacancies as relatable to the deputationists or occupied by the petitioners and other similarly situated persons, Mission Director would be at liberty to fill up the remaining vacancies as per sanctioned strength of SSA.

19. On 17.10.2012, Mission Director issued advertisement for selection of CRCC in various districts of the State. By the said advertisement, online applications were invited from the intending working teachers by SSA for recruitment against 3416 vacant posts of CRCC except 205 posts which have been kept aside in view of pending High Court cases. Basic qualifications prescribed for appointment as CRCC were as under:--

? The minimum academic qualification is Graduation from the UGC recognized Universities.

? The applicant must be working as a teacher in Govt./provincialised Lower Primary, Upper Primary or Secondary schools on regular basis or on contractual basis under SSA of the concerned district.

? The teacher should not be Head master of a school.

? If an intending candidate is the only Science Graduate Teacher or Classical subject teacher of a school, he/she is not eligible to apply for the post.

? A teacher from the single/double teacher school is not eligible to apply.

? Maximum age limit is 45 years as on 1st January, 2012.

? A teacher having professional qualification (D.El Ed. or B. Ed.) will get preference.

? A teacher who has experience in educational mission, is TET qualified or is a National/State best teacher awardee will also get preference.

? The candidate should be young and energetic, having social and leadership skills as well as capable of extensive school visits and tours on mission mode and organizing training/workshop time to time.

? Should be computer literate.

20. Petitioners have challenged the above advertisement on the ground that by virtue of the selection contemplated by the impugned advertisement, service of the petitioners in SSA on deputation would be jeopardized as only 205 posts of CRCC have been kept aside for High Court cases though number of petitioners before the High Court and serving in SSA on deputation under protection of interim orders of the High Court would be much higher than 205. The qualifications prescribed have also been questioned as arbitrary, discriminatory and unfair as insistence on those qualifications would effectively prevent the petitioners from applying pursuant to the said advertisement and thereafter once the selection is made, there would be no other option left but to repatriate them.

21. This Court by order dated 08.11.2009 directed as an interim measure that if the petitioners are working as CRCC in Goalpara district, selection for those posts pursuant to the advertisement dated 17.10.2012 should not be held.

22. The other writ petitions are also structured on similar lines. Only difference is that petitioners of those cases belong to other districts. Similar interim orders have been passed in those cases.

MISC. CASE No. 1389/2013 IN WP (C) No. 5265/2012

23. Mission Director, SSA, Assam has filed this miscellaneous application for vacation/modification of the interim order dated 08.11.2012 passed in WP (C)

No. 5265/2012. Though similar miscellaneous applications have been filed in the other cases, learned Additional Advocate General, who has argued the case of behalf of SSA, has projected this miscellaneous application as the lead application. Accordingly, this miscellaneous case has been taken up for consideration.

24. Stand taken in the miscellaneous application by the Mission Director is that block resource persons like ABRCC, RT and CRCC are key persons responsible for implementation of SSA activities. Following enactment of Right of Children to Free and Compulsory Education Act, 2009 (RTE Act), National Council for Teachers Education (NCTE) was made the nodal academic authority to prescribe minimum eligibility qualification for appointment as a teacher. Following the RTE Act, it became imperative to re-draw the activities of SSA which required re-mapping of Cluster Resource Centres (CRC). Earlier, CRCCs had to cover only LP Schools i.e. from Class-I to Class-IV but now CRCCs would have to cover both LP and UP Schools i.e. from Class-I to Class-VIII. As per NCTE norms, essential qualification for U.P. teachers is graduation. Therefore, in the impugned advertisement dated 17.10.2012, minimum educational qualification prescribed was graduation. On re-mapping of CRC, altogether 3416 posts of CRCC became available. It is stated that pursuant to the impugned advertisement, written test as well as interview were held. Selection has been completed but not finalized in view of pendency of the Court cases. Under the RTE Act, it has become imperative for the SSA to ensure that quality education is imparted to students till completion of elementary education. In view of change in essential qualification for selection of CRCC, petitioners cannot continue on deputation in SSA without possessing requisite qualification.

SUBMISSIONS

25. Heard Mr. H.R.A. Choudhury and Mr. D. Das, learned Senior Counsel, Mr. A.R. Sikdar, Mr. B.D. Goswami, Mr. N.N.B. Choudhury, Mr. S. Borthakur, Mr. A. Sarma, Mr. A.K. Dutta, Mr. Z. Hussain and Mr. S.B. Laskar, learned Counsel for the petitioners. Also heard Mr. D. Saikia, learned Additional Advocate General, Assam appearing for both SSA and Education Department.

26. Arguments of learned Counsel for the petitioners centered around the following. Petitioners are in service of SSA on deputation for the last about 10 years. In the process, they have gathered sufficient knowledge and experience while working in SSA. At this stage, it would not be in the interest of any of the parties, be it the petitioners, Education Department or SSA to revert them back as Assistant teacher under the Education Department. Clause-7 of the SSA Service Regulations provides that a deputationist shall be reverted from SSA if his functioning is found to be deficient. There is no such finding against any of the petitioners. If the deputation period is not regularized and the petitioners are repatriated to their parent department, it will lead to possible break in their service and consequently jeopardize their service career including post retirement benefits. Alternatively, it is submitted that minimum qualification of

graduation as prescribed in the impugned advertisement dated 17.10.2012 should be relaxed to enable the petitioners to compete for the advertised posts.

27. Strongly opposing the submissions made by learned Counsel for the petitioners, Mr. Saikia, learned Additional Advocate General submits that because of the litigation instituted by the petitioners, functioning of SSA has been severely hampered. There is requirement of more persons with higher qualification in SSA which the petitioners do not have. Petitioners are deputationists from Education Department, Government of Assam to SSA, Assam. As deputationists, petitioners cannot continue in SSA for an indefinite period. They cannot also restrain SSA from filling up vacancies requiring higher essential qualifications as per statutory requirement under RTE Act. Contending that there is no error or infirmity in the impugned advertisement, Mr. Saikia seeks dismissal of all the writ petitions.

ISSUE FOR CONSIDERATION

28. On the basis of the pleadings and submissions made, following issues arise for consideration:--

(1) Whether on the facts and in the circumstances of the case, petitioners are entitled to continue in SSA on deputation and should not be repatriated to Education Department, Government of Assam being their parent department?

(2) Whether as deputationists, petitioners are entitled to challenge impugned advertisement dated 17.10.2012?

DISCUSSION AND CONCLUSIONS

29. It is not in dispute that the substantive employment of the petitioners are in the Education Department, Government of Assam, which is their parent department. They are working in SSA on deputation basis.

30. Law relating to deputation and repatriation is by now well settled. In *State of Punjab and Others Vs. Inder Singh and Others*, Hon"ble Supreme Court held as under:--

18. The concept of "deputation" is well understood in service law and has a recognized meaning. "Deputation" has a different connotation in service law and the dictionary meaning of the word "deputation" is of no help. In simple words "deputation" means service outside the cadre or outside the parent department. Deputation is deputing or transferring an employee to a post outside his cadre, that is to say, to another department on a temporary basis. After the expiry period of deputation the employee has to come back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per the Recruitment Rules. Whether the transfer is outside the normal field of deployment or not is decided by the authority who controls the service or post from which the employee is transferred. There can be no deputation without the consent of the person so deputed and he would,

therefore, know his rights and privileges in the deputation post. The law on deputation and repatriation is quite settled as we have also seen in various judgments which we have referred to above. There is no escape for the respondents now to go back to their parent departments and working there as Constables or Head Constables as the case may be.

31. Again, in *Kunal Nanda Vs. Union of India and Another*, Hon"ble Supreme Court held as under:--

6. On the legal submissions also made there are no merits whatsoever. It is well settled that unless the claim of the deputationist for a permanent absorption in the department where he works on deputation is based upon any statutory rule, regulation or order having the force of law, a deputationist cannot assert and succeed in any such claim for absorption. The basic principle underlying deputation itself is that the person concerned can always and at any time be repatriated to his parent department to serve in his substantive position therein at the instance of either of the departments and there is no vested right in such a person to continue for long on deputation or get absorbed in the department to which he had gone on deputation. The reference to the decision reported in *Rameshwar Prasad v. M.D., U.P. Rajkiya Nirman Nigam Ltd.* is inappropriate since the consideration therein was in the light of the statutory Rules for absorption and the scope of those Rules. The claim that he need not be a graduate for absorption and being a service candidate, on completing service of 10 years he is exempt from the requirement of possessing a degree needs mention, only to be rejected. The stand of the respondent Department that the absorption of a deputationist being one against the direct quota, the possession of basic educational qualification prescribed for direct recruitment i.e. a degree is a must and essential and that there could be no comparison of the claim of such a person with one to be dealt with on promotion of a candidate who is already in service in that Department is well merited and deserves to be sustained and we see no infirmity whatsoever in the said claim.

32. Thus, while the process of sending an employee on deputation is consensual, there is no requirement of such consensus in the case of repatriation. A deputationist indisputably has no legal right to continue on deputation and he has also no right to claim absorption in the post to which he is deputed.

33. Viewed in the context of the above legal position, claim of the petitioners lacks substance. Petitioner joined service in SSA on deputation for 12 months. Though they have continued much beyond that period, there is no administrative order or decision extending their period of deputation. Reliance placed on Regulation 7 of the SSA Service Regulations appears to be misplaced as the said provision relates to reversion within the deputation period. The said provision cannot be read in a manner to contend that once deputed to SSA, a deputationist cannot be reverted back to his parent department unless his service in SSA is found not satisfactory. Thus, petitioners cannot claim as a matter of right that they should be allowed to continue in SSA or that they should be permanently

absorbed in SSA in the absence of any statutory enactment or policy framed in this regard. It is also not open to the petitioners to question eligibility qualifications prescribed by SSA for recruitment in SSA on the ground that such qualification shall debar them from competing. SSA being the employer, it is for the SSA to prescribe the qualifications for the various posts under it as it is the best judge of its requirement. Moreover, as per the stand taken, graduation has been prescribed as the minimum educational qualification for recruitment of CRCC in view of laying down of such qualification as per NCTE norms framed under RTE Act.

34. However, notwithstanding the above, certain grievances expressed by the petitioners which have been taken note of by this Court in the order dated 09.04.2009 are required to be looked into. As noticed above, as per cabinet decision, term of deputation of teaching and non-teaching staff of elementary and secondary education deputed to SSA were regularized. Accordingly, respondents may ensure that before repatriating the petitioners, the tenure of deputation of all the petitioners to SSA are regularized so that petitioners are not prejudiced in any manner on their repatriation to their parent department. Respondents should also ensure that the substantive posts held by the petitioners in the parent department are vacant and available for the petitioners to join on repatriation. Subject to the observations made above, all the writ petitions are dismissed. Interim orders passed are vacated. Miscellaneous cases are also accordingly disposed of.