
(2013) 02 GAU CK 0041
In the Gauhati High Court
Case No : Writ Petition (Civil) No. 380 of 2009

Nameirakpam Thoibi Devi	Vs	APPELLANT
State of Manipur and Ors.		RESPONDENT

Date of Decision : 12-02-2013

Acts Referred:

Constitution of India, 1950 — Article 23, 23

Citation : (2013) 3 GLR 43

Hon'ble Judges : T.Nandakumar Singh, J

Bench : Single Bench

Advocate : Mr. Ch. Nikel for the petitioner.??Mr. Jagat for the respondents.,
Advocates appearing for Parties

Judgement

1. Heard Mr. Ch. Nikel, learned counsel appearing for the petitioner and Mr. Jagat, learned Government Advocate appearing for the respondents.
2. There is no point in keeping the present writ petition pending because of the nature of the reliefs sought for in the present writ petition.
3. Gist of the facts leading to the filing of the present writ petition is noted; the petitioner and three others were engaged on contract basis as Accountant in the vocationalisation of education unit, SCERT vide order of the Director, SCERT dated 8.1.1999. In pursuance of the said order, the petitioner joined her service as Accountant in the SCERT on contract basis. Subsequently, by an order of the Government of Manipur dated 7.1.2000 issued by the Secretary, Education (S), Government of Manipur granted post facto approval of extension of the term of engagement of the present petitioner as Accountant and further ordered that the service of the petitioner is to be utilized as Assistant Graduate Teacher in the practicing school attached to the DIET, Kakching vice Shri N. Nabachandra Singh, Assistant Graduate Teacher, incharge Head Master of the school retired on superannuation on 31.1.1999 with immediate effect. Accordingly, service of the petitioner was utilized as Assistant Graduate Teacher in the practicing school attached to DIET, Kakching.

4. It is also stated that term of appointment of the petitioner on contract basis had been extended from timetotime. By an order of the Government of Manipur dated 3.9.2002 the term of deputation of the petitioner's appointment as Assistant Graduate Teacher in the practicing school, Kakching attached to DIET, had been extended for another period of 2 years w.e.f. 7.1.2002.

5. Mr. Jagat, learned G.A. contends that the said order of the Government of Manipur dated 3.9.2002 was the last order for extension of the term of appointment of the petitioner as Assistant Graduate Teacher on contract basis and accordingly her pay and allowances for working as Assistant Graduate Teacher had been paid upto 6.1.2004.

6. It is the case of the petitioner that as the term of the petitioner's contract appointment as Assistant Graduate Teacher had been extended post facto, the petitioner continued to work as Assistant Graduate Teacher with expectation that her term of contract appointment would be extended later on. It is the further case of the petitioner that she has been allowed to work as Assistant Graduate Teacher in the said practicing Junior High School, DIET, Kakching.

7. The Joint Secretary, SCERT, Government of Manipur under his letter dated 30.4.2008 requested the Director SCERT, Manipur to intimate at an early date as to whether

(i) Smt. N. Thoibi Devi, (present petitioner) engaged as Assistant Teacher has been still working in the present post;

(ii) whether her remuneration after 7.1.2004 has been paid or not?

Accordingly, the Director, SCERT, Government of Manipur directed the Headmaster, Practicing Jr. High School, DIET, Kakching to inform as to whether the petitioner has been attending school and her duty is satisfactory and also whether continuation of her service in the school is required at present in the interest of the students as well as the school. The Headmaster, Jr. High School, DIET, Kakching under his letter dated 6.5.2008 informed the Director, SCERT, Government of Manipur that the petitioner has been attending the school and her duty is also satisfactory and further extension of her service in the school is required at present in the interest of the students as well as the school. Copy of the said letter dated 6.5.2008 is available at Annexure A/7 to the writ petition and it reads as follows :

"OFFICE OF THE HEAD MASTER

PRACTISING JUNIOR HIGH SCHOOL

Ref. No. PJHS(D)K Kakching 6.5.2008

To

The Director, S.C.E.R.T

Government of Manipur.

Subject: Extension of Deputation period and payment of salary in respect of Smt. N. Thoibi Devi. Madam,

In inviting a reference to your office letter No.1/40/99(A)(4) dated 5th May, 2008, I am to say that Smt. N. Thoibi Devi Asstt. Graduate Teacher deputed at Kakching Practising Junior School has been attending School regularly and her duty is also satisfactory and further states that the continuation of her service in this school is very required at present in the interest of the student as well as the school.

With regards,

Yours faithfully,

SoV(M.Yaiskul Singh)

Head Master

Practising Jr. High School, DIET, Kakching."

8. The Director, SCERT, Government of Manipur under her letter dated 15.5.2008 informed the Commissioner, SCERT, Government of Manipur that as per the report submitted by the Head Master, Practising Jr. High School, DIET, Kakching the petitioner has been still working as Graduate Teacher without any extension of her deputation period and also as per the record available in the Directorate, her salary has not been paid w.e.f. 7.1.2004 and requested to take decision in the matter. The letter dated 15.5.2008 of the Director, SCERT read as follows:

"GOVERNMENT OF MANIPUR

DIRECTRATE OF STATE COUNCIL OF EDUCATIONAL RESEARCH
AND TRAINING

No.1/40/97SCERT(AX4) Imphal, the 15th May,2008 To

The Commissioner,

S.C.E.R.T., Government of Manipur.

Subject: Appointment to the post of Graduate Teacher in respect of Smt. N. Thoibi Devi.

Madam,

I am to refer to the Government letter No.4/3/99SESCERT/DIET dated 30.4.2008 on the above subject and to submit the following information that as per report submitted by the Head Master, Practising Jr. High School, Kakching Smt. N. Thoibi Devi has been still working as Graduate Teacher without any extension of her deputation period and also as per records available in this Directorate her salary has not been paid w.e.f. 7.1.2004. The reports submitted by the concerned Head Master is also enclosed herewith for kind reference.

I am, therefore, to request you to take a decision in the matter at an earliest possible.

Yours faithfully,

Sd/(N. Debala Devi)

Government of Manipur."

9. The petitioner also filed representation dated 2.4.2009 to the Director, SCERT, Government of Manipur to pay her pay and allowances as Graduate Teacher w.e.f. 7.1.2004.

10. From the submission of Mr. Jagat, learned G.A. appearing for the respondents, it is clear that the representation dated 2.4.2009 filed by the petitioner has not yet been disposed of.

11. The Constitution of India, which is the fountain head of all the laws, prohibits forced labour. Article 23 of the Constitution of India clearly provides for prohibition of traffic in human beings and forced labour and similar form of forced labour are also prohibited. Any contradiction of this provision shall be an offence punishable in accordance with law.

12. Utilisation of the service of the petitioner without pay and allowances is nothing but forced labour which is forbidden under article 23 of the Constitution of India. It is made clear that in case the service of the petitioner is utilized without pay and allowance, the respondents shall be liable to be punished, in accordance with law. Therefore, the respondents should take extreme care to see if the petitioner had rendered her service without pay and allowances and if so, her pay and allowances should be paid.

13. In the above factual background as well as the above settled law, the representation filed by the petitioner dated 2.4.2009 shall be considered and disposed of keeping in view of the said letter of the Head Master dated 6.5.2008 and also the said letter of the Director, SCERT, Government of Manipur dated 15.5.2008. In case the petitioner had rendered service, her pay and allowances should be paid for the period she had rendered her service.

14. The whole exercise, as per the above direction and observation, should be completed by the respondents within two months from the date of receipt of the certified copy of this order. The petitioner is directed to approach the authority with the certified copy of this order along with the said letter of the Head Master, Practising Jr. High School, DIET, Kakching dated 6.5.2008 and also the said letter of the Director, SCERT dated 15.5.2008.

15. With the above direction, this writ petition is allowed.