
(2002) 03 GAU CK 0029

In the Gauhati High Court

Case No : WP (C) No's. 5683, 5696, 6120, 6262, 6499, 6728, 6729, 6760, 6771, 6861 and 7190

Niren Sainary and Another

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 19-03-2002

Acts Referred:

Bodoland Autonomous Council Act, 1993 — Section 24

Citation : (2002) 2 GLT 183

Hon'ble Judges : B. Biswas, J

Bench : Single Bench

Advocate : G. Uzir, M. Ahmed, S.K. Medhi, V. Sema, B. Chetri, N. Upadhyay, B. Goyal, M.U. Mahmud, P.K. Talukdar, A. Kalita, B.K. Sharma, D.K. Sarmah, U.K. Goswami, S.K. Das, B.P. Kataki, P.P. Barua, M. Sarma, U. Das, D. Choudhury, A.K. Choudhury, K.J. Saikia and M.K. Misra, for the Appellant; A.K. Phookan, A.G., R. Chakraborty, B. Talukdar and Sarania, for the Respondent

Judgement

D. Biswas, J.—In Writ Petition (C) No. 6262 of 2001, the petitioner No. 1 is the Ex-Chairman and the petitioner No. 2 is the Chairman in position of the Sub-Divisional Elementary Education Advisory Board for Bodo Autonomous Council Area in Nalbari District constituted under the provisions of the Bodoland Autonomous Council Act, 1993, hereinafter referred to as the Act of 1993. They have approached this Court challenging the orders dated 17.7.2001 issued by the Deputy Inspector of Schools, Nalbari (Annexure-J) and 21.7.2001 issued by the District Elementary Education Officer, Nalbari (Annexure-K). The impugned orders for better appreciation thereof, are re-produced below :

"ORDER

In pursuance of Govt. instruction communicated vide No. A(I)E.508/2001/85, Dtd. 4.7.2001 and DEE's instruction communicated vide Memo No. EGA. 12/2001/159, dtd. 16.7.2001, all appointments of Asstt. teacher in L.P. and Junior basic Schools made by Shri Girin Haloi, I/C Dy. Inspector of Schools,

Nalbari in the month of March, 2001 are hereby cancelled with immediate effect. The B.E.E.O's and Head Teachers of the L.P. School of the district are hereby requested to release all the appointees forthwith and not to allow them to attend duties henceforth.

If any B.E.E.O. and the Head teacher of the school allow such appointees to attend duties after the receipt the order of cancellation, he/she will be personally responsible for payment of salary to the teachers.

(G.C. Deka) I/C Dy. Inspector of Schools. Naibari."

"ORDER

In pursuance of Govt. of order No. A(I)E.508/2001/85, dtd. 4th July, 2001, BEE's order No. DE/Misc/.../99/14357. dtd. Kahilipara, the 30th May, 2001 and DEE's order Memo No. ECA. 12/2001/160 dtd. Kahilipara the 19th July, 2001, all appointments of Asstt. Teacher in M.E./M.V./M.E. Madrassa/Sr. Basic Schools made by I/C D.E.E.O., Amulya Choudhury w.e.f. 1.3.2001 are hereby cancelled with immediate effect. All controlling Officers of the District, Viz the D.I. of Schools, the B.E.E.O., Head Masters of the schools are hereby requested to release the appointees forthwith and not to allow them to attend duties henceforth. If any Controlling Officer allows such appointees to attend duties after receipt of this order of cancellation, he/she will be personally responsible for the payment of salaries to these teachers.

Sd/- (H.H. SARMA) District Elementary Education Officer, NALBARI."

2. Consequent upon above orders, the services of the teachers who were appointed by Shri Girin Haloi, Incharge Deputy Inspector of Schools and Shri Amulya Choudhury, Incharge District Elementary Education Officer made in the month of March, 2001 and thereafter were cancelled. The aggrieved teachers filed the other connected writ petitions challenging the termination of their services. Therefore, it is considered not necessary to advert to the contentions of other writ petitions in detail. However, arguments have been advanced in respect of some petitioners on the ground that they were appointed on compassionate ground as per the Government policy and they stand on a different footing.

3. Mr. G. Uzir, Learned Counsel submitted that it is beyond the competence of the State Government to terminate the services of the teachers in view of the provisions of Section 24 of the Act of 1993. According to Shri Uzir, education upto the level of Higher Secondary became the subject of the Bodo Autonomous Council to the exclusion of the State Government and on and from 1993 selection and appointment to the post of Assistant Teachers in the aforementioned schools situated in the B.A.C. area are within the exclusive jurisdiction of the Bodo Autonomous Council. The Bodo Autonomous Council in exercise of the powers under the Act of 1993 constituted the Sub-Divisional Level Education Advisory Board. The Board after selection referred the names of the candidates to the Interim General Council for approval and, on receipt thereof, the concerned

appointing authorities issued the appointment letters. Shri Uzir further argued that the ban on appointment issued by the State Government was not in force in the B.A.C. area and, that apart, the State Government have no powers to cancel the appointments made by the authorities in compliance with the approval given by the Interim General Council against posts specifically allotted to Bodoland Autonomous Council. Shri A.K. Phookan, Learned Advocate General, Assam defending the impugned orders submitted that the appointments in controversy require scrutiny from two angles, namely, whether the selection and appointments have been made under the administrative control of the Bodo Autonomous Council and as to whether the selection process is fair. According to Shri Phookan, Learned Advocate General, reinstatement of all the dismissed, teachers en bloc without verifying the selection process will not be in aid of justice.

4. Section 24 of the Act of 1993 provides that subject to the provisions of the Act and any other law for the time being in force the General Council shall have executive powers in respect of 50 items listed therein of which Item No. 7 reads as follows :-

"7. Education.

(a) Adult Education

(b) Primary Education

(c) Upto Higher Secondary including vocational training."

5. The provisions above clearly indicate that education upto Higher Secondary level including vocational training has been placed at the disposal of the General Council. The notification dated 19.5.1993 issued in exercise of powers u/s 50 of the Bodoland Autonomous Council Act, 1993, by the Governor of Assam shows that an interim Bodoland Executive Council was constituted to implement the provision of the Act of 1993. Subsequent notification issued on 30.6.1996 u/s 50 read with Section 55(1) of the Act of 1993 shows the appointment of the members of the Interim Executive Council. The notification dated 15th June, 1996 was issued by the Governor re-constituting the Interim Executive Council with nomination of 21 persons as members. Therefore, there cannot be any doubt that the provisions of the Act of 1993 have been given effect to. The State Government also issued another Office memorandum dated 14th January, 1994 clarifying that the powers of recruitment to the Class-III and IV posts in respect of 38 items listed in Section 24 have been delegated to the Bodoland Autonomous Council. This notification reads as follows :

OFFICE MEMORANDUM

The areas within the Bodoland Autonomous Council in the State of Assam have been notified under notification No. TND/BAC/26/93/18 dated 10.12.1993 and the General Council of the Bodoland Autonomous Council had been delegated executive power within its area relating to 38 subjects as per Section 24 of the

Bodoland Autonomous Council Act, 1993.

The Bodoland Autonomous Council has been delegated the power to recruit the Class-III and IV employees relating to the above mentioned 38 subjects and failing under Bodoland Autonomous Council Area u/s 25(iii) of the Bodoland Autonomous Council Act, 1993.

It is therefore, clarified that being forth to recruitment in respect of Class III and IV posts as mentioned above should be made by the concerned Departments.

Sd/- Niranjan Ghose, Secretary to the Government of Assam, Personnel (B) Department."

6. It, therefore, follows that the Interim Council was vested with the powers of appointment to Class-III and IV posts which includes the Assistant Teachers in the schools situated in B.A.C. area upto Higher Secondary Level. It, therefore, appears that if the appointments were made by the Council in exercise of executive powers after completion of due selection process against available vacancies, the State Government had no authority to interfere with such appointments. Shri Sarania, Learned Counsel for the B.A.C. also advanced, his argument repudiating the impugned orders and the consequential termination of the services of the Assistant Teachers. After a careful consideration of the provisions of law and the powers vested with the B.A.C. administration, this Court is of the opinion that-, the Government of Assam acted without jurisdiction resulting into termination of the services of the teachers appointed by the District Authorities at the behest of the Council. It can therefore, safely be concluded that the impugned orders 17.7.2001 and 21.7.2001 have no application in respect of the appointment of the writ petitioners. But this conclusion cannot imple this Court to pass an order for reinstatement of all the dismissed teachers enblock without scrutiny on the face of deep-rooted anomalies in the appointment process apparent on record. It appears that 350 posts were earmarked for B.A.C. area. The posts have been filled up by the Deputy Inspector of Schools and District Elementary Education Officer, Nalbari B.A.C. administration has not filed any affidavit in this case to show that the appointments in question were made against sanctioned posts after due process of selection. No record was also produced. In the absence of records of selection it is not possible for this Court to form any opinion about the fairness of the selection process. It would, therefore, be best in the interest of justice to refer the matter to the B.A.C. administration to undertake the following exercise and to pass appropriate orders on completion thereof:

(1) An enquiry be made and initiated and completed within a period of 15 days to ascertain whether the writ petitioners in the connected writ petitions were appointed after due process of selection against available vacancies and to reinstate only those candidates who have been appointed after due selection with all benefits which they might have received had there been no termination of their services;

(2) To pass appropriate orders either ratifying or approving the termination orders of those Assistant Teachers who were appointed arbitrarily without completion of selection process whether against posts available or not available.

(3) To examine the case of the Assistant Teachers who have been appointed under 10% quota reserved for the sons and daughters of the retired teachers on a different footing in accordance with the provisions of the statute.

7. Subject to the directions given above, the writ petitions stand disposed of. Government notifications under challenge are not being interfered with since they have application in respect of schools situated within, the District of Nalbari but outside the B.A.C. area. The above exercise with follow-up action as ordered will mitigate the grievances of the writ petitioners who were appointed after selection in accordance with due process of law.