
(2006) 06 GAU CK 0085
In the Gauhati High Court

Nirmala Bhagawati

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 08-06-2006

Acts Referred:

Citation : (2009) 3 GLR 906

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—The writ petition is directed against the order passed by the authority declining to accede to the request of the petitioner to change her date of birth, which would have entitled her to one more year of service.

2. The petitioner was initially appointed as Assistant Teacher in the school called Sarvajanan Higher Secondary Balika Bidyalaya, by an order dated 17.1.1966. The school was set up and established in 1948 and got the recognition of the Government in 1952 and came under the ad hoc grants in 1953 and eventually under deficit system of grant in 1957. The school was provincials with effect from 1.2.1977 and was upgraded as a Higher Secondary School with effect from 29.10.1991.

3. The petitioner was allowed to act as the Vice-Principal of the School by an order dated 5.11.1993 issued by the inspector of Schools, Tinsukia after having served as the Assistant Headmistress for a considerable length of time. By yet another order dated 24.3.1994, the petitioner was allowed to act as the Principal-in-charge of the school. According to the petitioner, the then Principal of the School while forwarding the service particulars of the teachers and the employees of the school as on 20.9.1993 indicated the date of birth of the petitioner as per HSLC certificate as 1.1.1940. On that basis, it is the case of the petitioner that she was 13 years 2 months of age as on 21.3.1953.

4. It is the further case of the petitioner that when she took over charge of the

post of Principal, the respondent No. 3, i.e., the Inspector of School directed her to submit her service book as the same was missing as reported by the office assistant of the School. In spite of her best efforts, the service book could not be traced out. Efforts were made to reconstruct the service book and she submitted the reconstructed service book to the respondent No. 3 by her letter dated 31.8.1996. However, the petitioner has not stated as to what was the date of birth recorded in the new service book.

5. According to the petitioner, she has been made to retire prematurely by the respondent No. 3 by his order dated 6.5.1997 showing her date of retirement as 31.1.1997 instead of 31.1.1998 and thereby curtailing one year of service. Being aggrieved the petitioner approached this Court by filing the writ petition registered and numbered as Civil Rule No. 2393/1997. The writ petition was disposed of by order dated 22.1.2002 with the following direction:

Considering the above submissions and the fact that the State has not filed any counter controverting the allegations made in the writ petition, particularly with reference to her date of birth as available in the matriculation certificate and the certificate issued by the concerned school (Annexure-B) and pass appropriate orders giving all financial benefits to which she might have been entitled to had she been allowed to continue till 31.1.1998. The whole exercise in this behalf be completed within 3 months.

6. After the aforesaid order passed by this Court, the Inspector of School, to whom the above direction was issued considered the matter and by the impugned order dated 26.9.2002 rejected the claim of the petitioner and thereby disallowed her plea of premature retirement than the actual date of retirement with effect from 31.1.1998. Hence, this writ petitions for setting aside and quashing of the order and for a further direction to grant her all financial benefits taking her actual date of retirement as 31.1.1998.

7. The writ petition was admitted by order dated 21.2.2003. The respondents have not chosen to file any counter affidavit, but instead the Commissioner & Secretary to the Government of Assam in the Education Department issued order dated 23.11.2004 granting partial relief to the petitioner by way of providing pensionary benefits to the petitioner by taking the service of the petitioner up to 31.1.1998.

8. The order reads as follows:

GOVERNMENT OF ASSAM EDUCATION (SECONDARY) DEPARTMENT ORDER No. B(3)S-248/2002/Pt/46 Dated Dispur, the 23rd November, 2004

Perused the writ petition No. WP(C) No. 1165/2003 filed by Smt. Nirmala Bhagawati, incharge Principal (Retd.) of Sarbajanin Higher Secondary Balika Vidyapith Tinsukia v. State of Assam and Ors.

Perused the order No. IS/TDC/OC/62/2002/5562-65, dated 26.9.2002 of the Inspector of Schools, Tinsukia, TDC rejecting the petition dated. 24.6.2002 and

claim of Smt. Nirmala Bhagawati, i/c retired Principal for correcting her date of retirement as 31.1.1998 instead of 31.1.1997 on the basis of the order passed by the Hon"ble Gauhati High Court on 22.1.2002 in C.R. No. 2393/97. Considered also the writ petition filed by Smt. Bhagawati in the WP(C) No. 1165/2003 alongwith the order of the Inspector of Schools, Tinsukia District Circle, Tinsukia dated 26.9.2002.

After taking into consideration all aspects of the matter it is felt that the claim of Smt. N. Bhagawati has some valid ground and deserves consideration. But as the case is an old one and she cannot be put into service for one year now, it is ordered that Smt. Bhagawati retired Principal In-charge of Sarbajanin Higher Secondary Balika Vidyalaya, Tinsukia be given the pensionary benefits for one year upto 31.1.98. The matter is disposed of accordingly.

Sd/- P. Dutta, IAS Commissioner & Secretary to the Govt, of Assam Education Department.

9. Mr. P. Barthakur, learned senior counsel assisted by Mr. T.N. Srinivasan, learned Counsel representing the petitioner produced the above quoted order, during the course of hearing and submitted that in spite of the said order, the petitioner has not been granted the benefits as envisaged in the order itself. He further submitted that the petitioner is entitled to receive her salary for the whole year from 1.2.1997 to 31.1.1998 as the petitioner was made to retire prematurely. Thus, virtually, the petitioner has not agreed to the partial benefits given to her by the aforesaid order.

10. Having noticed the aforesaid order as produced by the learned Counsel for the petitioner which is contrary to the impugned order dated 26.9.2002 passed by the Inspector of Schools as per the direction of this Court by order dated 22.1.2002 passed in Civil Rule No. 2393/1997, this Court directed the Commissioner & Secretary, Education Department, both the earlier and the present, to file individual affidavit explaining the circumstances in which the above quoted order dated 23.11.2004 was passed. In the meantime, Mr. M.K. Choudhury, learned Senior Standing Counsel, Education Department assisted by Mr. M. Dutta, learned Counsel produced the records. He also submitted that the present Commissioner & Secretary on the basis of the order passed in the file by the erstwhile Secretary of the Department, simply issued the above quoted order without any cross verification of the relevant records and the attending circumstances.

11. Both the Commissioner & Secretary Mr. P. Dutta and the Secretary Mr. L.N. Tamuly, have filed their individual affidavit as per direction of this Court. Mr. Dutta, has taken the plea that he simply followed the note in the file with the endorsement of the earlier Secretary Mr. Tamuly and thereby allowed the benefit of one more year of service to the petitioner for the purpose of pensionary benefits. Mr. Tamuly, the erstwhile Secretary of the Department has admitted that, it was he, who had passed the order in the file for preparing and putting up

a draft speaking order allowing the petitioner to enjoy one more year of service for the purpose of pensionary benefits. However, he has stated that he had done the same with the intention that while the draft order would be put up he would pass the same after examining the notes of the Deputy Secretary and the entire records of the case.

12. It is in the aforesaid fact situation, the questions, which are required to be answered is that (i) whether the impugned order dated 26.9.2002 calls for any interference and (ii) whether the order dated 23.11.2004 quoted above, could have been passed by the Commissioner & Secretary in the facts and circumstances of the case. Answers to these questions would also answer the prayer of the petitioner to treat her service up to 31.1.1998 instead of 31.1.1997.

13. The impugned order dated 26.9.2002 has been passed by the Inspector of Schools as per direction of this Court. In his cogent and elaborate order, he has dealt with every aspects of the matter unlike the order passed by the Commissioner & Secretary which is totally non-speaking. The Inspector of Schools dealing with the entire gamut of the matter pointed out the discrepancies in the certificates produced by the petitioner. He has noticed that during the relevant period, there was no practice of recording the age of the female candidate in the matriculation certificate and taking advantage of the same the petitioner wanted to gain one more year of service by producing two controversial and doubtful school certificates about which he has made a detailed discussion in the impugned order. The discussions made by him are indicated below.

14. The duplicate certificate No. 146 dated 1.9.1977 was issued by the then Headmaster of the school showing the age of the petitioner as 13 years 2 months as on 21.3.1953. This certificate was produced by the petitioner as Annexure-B to the earlier writ petition and there was overwriting in the date. The second certificate No. 687 dated 27.8.1996 was issued by the Principal of the School showing her date of birth as 11.11.1940 stating the same to be as per the Admission Register. This date of birth was recorded in the duplicate service book of the petitioner and she also put her signature as a mark of acceptance of the same.

15. To ascertain the genuineness of the two certificates issued from the same school recording different age of the petitioner, a joint verification with the Inspector of Schools, Dibrugarh District Circle, was carried out by the Inspector of Schools, Tinsukia District Circle by visiting the school on 18.9.2002. The school authority could neither produce the Admission Register for the counter foils of the two certificates. The Principal of the school gave a written statement that no records prior to 1989 were available in the school. If that be so, the certificate No. 687 dated 27.8.1996 pertaining to 1953 and even before, could not have been issued from the school.

16. The Inspector of School, has recorded the following reasons as to why the

controversial, doubtful and manipulated school certificates issued by the school recording different ages in respect of the petitioner are not acceptable.

1. According to the certificate issued to her on 1.9.1977, the date of birth of Mrs. Bhagawati, i.e., 21.1.1940. If this date of birth is accepted, she passed the matriculation examination at the age of 13 years 1 month 10 days, which was not at all possible at that time. When she appeared matriculation examination in 1953 one had to read 12 years in school 5 years in LP. School and 7 years in Upper primary and High School. Now child can go to the school at the age of 1 year 1 month 10 days. So this certificate produced by Mrs. Bhagawati, which is also a manipulated one, cannot be accepted.

2. The second certificate, which was issued, not based on records is not at all acceptable. According to this certificate her date of birth is 11.11.1940. If this certificate is accepted then she passed the matriculation examination at the age of 12 years 3 months 20 days after reading 12 years school education, which is total absurd.

3. Sri Ajit Borthakur, subject teacher of Senairam H.S. School, Tinsukia (now retired) is the own younger brother (same father and mother) of Mrs. Nirmala Bhagawati. He (Sri Ajit Borthakur passed the matriculation examination in the year 1955 from Gauhati University and his date of birth according to the matriculation certificate (No. 1405 of 1955) is 1.8.1939. This date of birth of Sri Ajit Borthakur has also been confirmed by himself through an affidavit dated 27.6.1997 submitted before the Sub-divisional Judicial Magistrate (Sadar) Tinsukia. So Mrs. Nirmala Bhagawati, elder sister of Sri Ajit Borthakur was not born after 1.8.1939.

17. With the aforesaid reasons, the Inspector of Schools has drawn the conclusion that it is clear that the age of the petitioner recorded in the certificates is not genuine, but manipulated one and not acceptable to determine her actual date of birth and that production of the two certificates was an attempt on the part of the petitioner to remain in service beyond the actual date of retirement. It has been held by the Inspector of School that the order dated 6.5.1997 issued by the then Inspector of Schools intimating that the petitioner would go on retirement was not an order retiring her prematurely and that the petitioner in the meantime overstayed in service by producing the aforesaid certificates and also by intentionally removing her original service book of which she was the custodian.

18. It is on the above basis, the Inspector of Schools has rejected the prayer of the petitioner by not accepting her plea to release all financial benefits taking her service up to 31.3.1998 as the same is not the actual date of retirement of the petitioner. Strangely enough, when the writ petition making a challenge to this order dated 26.9.2002 was pending, the Commissioner & Secretary passed the above quoted order. No reason has been assigned in the order as to how the petitioner was entitled to continue in service up to 31.1.1998. The benefit which

the Commissioner & Secretary has proposed to extend to the petitioner will go from the public exchequer and not from his own pocket and yet he passed the order acting in a most irresponsible and controversial manner.

19. I have verified the records produced by the learned Standing Counsel, Education Department. The records have revealed that pursuant to filing of the writ petition and the admission thereof by order dated 21.2.2003, the then conducting Advocate of the Education Department asked for para wise comments from the Department by sending a copy of the writ petition. To that effect there is a note in the office file dated 20.8.2004. The letter was written by the learned Advocate way back on 21.6.2003. However, sudden spurt of activities started with the note date 26.10.2004, by which it was asked to explain as to why the matter remained unattended. Explanation was furnished on 29.10.2004 and thereafter, by note dated 30.10.2004, while referring to the impugned order passed by the Inspector of Schools, it was advised that para wise comments be called for from the Director of Secondary Education, Assam, and the Inspector of Schools.

20. It was at that stage, as per the indication in the note the file was directly submitted to the then Secretary as per the telephonic direction of the Joint Secretary. Then came the note of Mr. Tamuly, the then Secretary of the Department, which reads as follows:

As discussed, please prepare and put up a draft speaking order allowing her to enjoy pensionary benefits for one year up to 31.1.1998 since she cannot be put into service for one year now.

21. After the above note, the things moved in quick succession and eventually the order dated 23.11.2004 was issued under the signature of the Commissioner & Secretary by the Department as by that time the earlier Secretary Mr. Tamuly demitted his office to join another Department. It is in this context, the justification shown by the Commissioner & Secretary, Mr. P. Dutta as well as the erstwhile Secretary Mr. L.N. Tamuly will have to be tested.

22. It is not understood as to what was the necessity to issue the order dated 23.11.2004 and that too in the high haste in which the same was issued, when the detailed order of the Inspector of the School dated 26.9.2002 finalising the issue as per direction of this Court was already in existence. It is also not understood as to what made the Secretary to get the file all by himself directly, when the preceding note suggested for preparation of para wise comments etc. What is more surprising is that the order was issued without any cross verification of the records and without even discussing about the reasons assigned in the order passed by the Inspector of Schools and, thus, naturally, the order is independent of the impugned order dated 26.9.2002 passed by the Inspector of Schools. The order dated 23.11.2004 has not been issued in super session of the order of the Inspector of Schools, although there is a reference to the same. Be that as it may, the manner and method in which the said order

dated 23.11.2004 has been issued speaks volumes of arbitrary exercise of power by the superior authority.

23. The Inspector of Schools passed the impugned order dated 26.9.2002 incorporating detailed and cogent reasons refusing to accept the plea of the petitioner and the order was passed as per direction of this Court. This Court specifically directed the Inspector of Schools only and none else, to examine the case of the petitioner and then to pass appropriate order. He did so, taking into account all relevant factors including the joint verification report etc. However, the Commissioner & Secretary and the Secretary of the Department has nullified the same by a stroke of pen for some undisclosed reasons to which the writ court cannot be silent spectator. Both the orders have been indicated above. On bare perusal of the same, the high handedness and arbitrary exercise of power only to favour the petitioner by the superior authority is writ large on the face of it. Admittedly, the said superior authorities unlike the Inspector of Schools who took the pain to examine the matter in detail, did not make any reference to the records and yet passed the order only with the mindset of favoring the petitioner.

24. It was the Inspector of School, who was to decide the matter in terms of the order of this Court dated 22.1.2002 passed in Civil Rule No. 2393/1997, operative part of which has been quoted above. The said Inspector of Schools also decided the matter by order dated 26.9.2002 about which discussions have been made above. He took the pain to decide the matter in the manner and method as indicated in the order itself. The view expressed by him is the most plausible one having regard to the facts and circumstances involved in the claim of the petitioner to gain one more year of service. Such pain stacking effort of the Inspector of Schools have been set at naught by a stroke of pen by his superior authority and that too, at a time when the writ petition was pending and the office file was processed for furnishing para wise comments, etc.

25. The matter having already been decided by the Inspector of Schools in terms of the direction of this Court, his superior authority could not have assumed the jurisdiction in the manner and method indicated above. Be it the Commissioner & Secretary or the Secretary of the Department, he has to exercise his judgment after taking into consideration all relevant factors. He, though superior to the Inspector of Schools could not have acted in the manner so as to set at naught the authority of the Inspector of Schools statutorily conferred on him and also as per direction of this Court. Even otherwise also, what were the materials before the said superior authority towards passing the order dated 23.11.2004 have not been disclosed, rather it is the stand of the Commissioner & Secretary that he simply followed the note of the erstwhile Secretary. On the other hand it is the stand of the Secretary that he would have verified the records once the draft order was put up to him. Thus, admittedly, the order was passed without verification of records. This kind of stand on the part of All India Service Officials does not be have of their status, responsibility and the confidence reposed on them by the State Government.

26. Independent of the above, I have verified the case of the petitioner. On being asked to produce the certificates on the basis of which the petitioner has claimed the date of retirement as 31.1.1998, the learned Counsel for the petitioner submitted the same are not available with the petitioner. However, he submitted that the actual, date of birth of the petitioner is 21.1.1940, but as discussed by the Inspector of Schools the petitioner produced another certificate bearing No. 687 dated 27.8.1996 showing her date of birth as 11.11.1940. The Inspector of Schools also noticed the overwriting on the dates and as to how taking her date of birth as 21.1.1940, she would have passed the matriculation examination at the age of 13 years only meaning thereby that she got herself admitted in the school at the age of one year, which is unbelievable.

27. The learned Counsel for the petitioner, on being asked as to how the petitioner could produce two certificates containing two different age of the petitioner, could not give any satisfactory reply. He could not even produce the originals of the certificates and stated that the same are available with the Inspector of Schools. He also could not even produce the copy of the certificate No. 687 dated 27.8.1996. Thus, the whole conduct of the petitioner leads to the only irresistible conclusion that she conducted herself in a manner so as to gain one more year of service taking advantage of the fact that during the relevant period, the age of the female candidate was not recorded in the matriculation confisate.

28. In view of the above, the writ petition is liable to be dismissed. The impugned order of the Inspector of Schools dated 26.9.2002 will hold the field and the order dated 23.11.2004 passed by the Commissioner & Secretary, Education Department shall have no effect, which even otherwise also has not been given effect to making a grievance against which the learned Counsel for the petitioner made submissions in addition to his submission that even if this order is implemented, same will not be the full relief to the petitioner and that she is also entitled to her pay and allowances for the whole year taking her date of retirement as 31.1.1998 instead of 31.1.1997.

29. Learned Counsel for Mr. Dutta and Mr. Tamuly, the Commissioner & Secretary and Secretary respectively fairly admitted that on a total reading of the facts and circumstances and also the relevant file, the petitioner was not entitled to relief granted by the order dated 23.11.2004 and that this Court may deal with the same, in appropriate manner, towards disposal of the writ petition. Needless to say that the said two officers occupying high positions under the Government cannot burden the Government by way of granting benefits to the petitioner which she is not entitled to. If they are keen to extend the benefits to the petitioner as envisaged in the order dated 23.11.2004, same will have to be from their own pockets and not from the State exchequer.

30. Writ petition is dismissed, leaving the parties to bear their own costs. Let a copy of this judgment and order be sent to the Chief Secretary of the State for his appraisal of the conduct of Mr. Dutta and Mr. Tamuly, the then Commissioner

& Secretary and Secretary respectively of the Department of Education, Government of Assam.

31. Bring this judgment and order to the notice of the Deputy Registrar (J) for his necessary action as Indicated above.