
(2010) 12 GAU CK 0009
In the Gauhati High Court
Case No : Writ Petition (C) No. 6517 of 2010

Pranoy Kanti Das and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 10-12-2010

Acts Referred:

Assam Elementary Education (Provincialisation) Rules, 1977 — Rule 3, 3(1)

Citation : (2011) 4 GLR 458 : (2011) 1 GLT 517

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : A.K. Goswami, A.R. Bhuiya, M.A.I. Hussain and M. Talukdar, for the Appellant; M.R. Pathak for Edn. Deptt., for the Respondent

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—Heard Mr. A. K. Goswami, learned senior counsel assisted by Mr. A. R. Bhuyan, learned Counsel for the Petitioners. Also heard Mr. M. R. Pathak, learned Standing Counsel, Education Department.

2. By means of this writ petition filed by the Petitioners numbering 94, it has been prayed that the Respondents be directed to pay salary to the Petitioners stated to be payable from 2001. At the very outset, Mr. Goswami, learned Counsel for the Petitioners has submitted that some of the writ Petitioners had the occasion to approach this Court by filing WP (C) No. 6930/2001 making the same prayer. The said writ petition was disposed of by the following order:

28.9.2001

Heard Mrs. B. Devi, learned Counsel for the writ Petitioner and also Mr. A. Thakur, learned Counsel for the State Respondents.

The case of the Petitioners in brief is that their services were adjusted/appointed by the orders passed on 22.2.2001 (Annexures-6 to 28) by the Deputy Inspector of Schools, Silchar. Their grievance is that despite being adjusted/appointed,

their pay and allowances have not been paid as yet.

This petition is disposed of with a direction to the Respondents, particularly the Commissioner and Secretary to the Government of Assam, Education Department to examine the claim of the writ Petitioners and to make payment of the amount if any found payable to them on such examination provided they were duly appointed by the competent authority in accordance with the provisions of law. The exercise in this behalf be undertaken and completed within a period of two months from the day when a copy of this order is furnished to him by the writ Petitioners.

No costs.

(Emphasis added)

3. From the above order, what is seen is that the Petitioners involved in the said writ petition were entitled to receive salary only if they were duly appointed by the competent authority in accordance with the provisions of law and otherwise not. In *State of Manipur and Others Vs. Y. Token Singh and Others*, and *Govt. of A.P. and Others Vs. K. Brahmanandam and Others*, , the Apex Court has held that if the candidates are appointed de hors the Recruitment Rules, mere continuance in service will not entitle the incumbents to receive salary.

4. The Petitioners in support of their claim for salary, have also placed reliance on the Division Bench judgment of this Court dated 29.4.2010 passed in *Ranjana Begum Laskar and Another Vs. State of Assam and Others*, The Petitioners claim that the issue involved in the said appeal is identical to the issue involved in this case. However, since some of the Petitioners had already approached this Court by filing the earlier writ petition about which mention has been made, their case will be governed by the order passed in the said writ petition quoted above. Be it stated here that in the Division Bench judgment referred to above also, it has been categorically held in paragraphs 12 and 15 that there being infraction of Rule 3(1) of the Rules in question, it is difficult to adjudge the appointments of the Appellants involved therein to be valid. The Petitioners were also appointed along with the said Appellants and thus, their appointments were also not valid. For a ready reference, paragraphs 12 and 15 of the said judgment is quoted below:

12. The pleadings of the parties and the rival arguments have been duly considered. That the Appellants were initially appointed by the Managing Committees of their respective schools on honorary basis and that too after the provincialization of their institutions is an admitted fact. Whereas they claim that their services had been validly regularized in terms of the aforementioned order of the Deputy Inspector of Schools, Cachar, Silchar in accordance with law, the State Respondents contend to the contrary asserting that the same is in gross violation of the Rules. That the State Respondents have wavered in their stand on the issues seeking adjudication in the writ proceedings is writ large from the affidavits as well as official communications brought on record from time to time.

That the Deputy Commissioner, Cachar, Silchar following an investigation into the relevant facts as ordered had returned the finding that the Appellants had in fact been rendering services in their respective schools a revelation, not seriously disputed by the State Respondents. They have concentrated on the invalidity of their induction and continuance in service on the plea of contravention of the Rules. Noticeably the merit list now sought to be relied upon by the Appellants was not a part of records of the writ proceeding and thus, logically the learned Single Judge could not have taking the same into consideration. His findings and conclusions therefore, are de hors the said document.

15. The above notwithstanding, in the teeth of the unamenable prescription of Rule 3 (1) of the Rules we find it difficult to adjudge the appointments of the Appellant to be valid. The aforementioned provision of the Rules having in clear terms outlined the procedure for appointment recognized in law, no substitute thereof can either be contemplated or countenanced. To this extent the finding of the learned Single Judge is sustained. However, it having been held that the induction and the continuance of the Appellants are not wholly de hors any process of evaluation of their suitability, in the face of their assertion of continuance in service, we are inclined to issue appropriate direction to the State Respondents to examine their claim for salary and other allowances admissible in law for the services rendered by them. This is also in view of the fact that the State Respondents though seek to brand their continuance in service as wholly illegal and unauthorized had without any demur utilized the same for public good.

5. Apart from the above, in paragraph 16 of the Division Bench judgment, it has been held that the determination made in the appeal shall not be construed to be precedent in future as the adJudgment has been caused in the unique facts and circumstances of the case. By the said judgment, it was provided that the Respondents should consider the case of the Appellants for payment of salary in accordance with law. As to what is the legal position, has been noted above.

6. The Petitioners have stated in the writ petition (paragraph 12) that they were appointed as honorary teachers. However, no appointment order has been annexed to the writ petition. The orders on which the Petitioners have placed reliance, are all regarding adjustment against the existing vacant post. There is no such mode of recruitment in the Recruitment Rules. This aspect of the matter has been dealt with by this Court in the judgment reported in (2009) 2 GLT159: Musaraf Hussain Laskar v. State of Assam and Ors. wherein referring to Rule 3 of the Assam Elementary Education (Provincialization) Rules, 1977, it has been held that the adjustment of service being not in purview of Rule 3, the D.I. of Schools, adjusting the services of the Petitioners involved therein was illegal.

7. Another aspect of the matter is that when the Petitioners were appointed as honorary teachers, the schools were already provincialized one. As has been held by this Court in Jahangir Alam Vs. State of Assam and Others, the appointments made by the Managing Committee of the schools, which are already provincialized, are illegal and cannot give rise to any kind of right towards

regularization/adjustment of services.

8. Mr. Pathak, learned Standing Counsel, Education Department has also placed reliance on the order of this Court dated 11.6.2010 passed in WP (C) No. 3293/2010: Shia Mohammed Ali v. State of Assam and Ors. in which rejecting the claim of the Petitioners for payment of salary from 1996, it was held that such claim was barred by principles of limitation, delay and laches. Following the said decision, this Court passed similar order on 2.11.2010 in WP (C) No. 6184/2010: Binod Saharia v. State of Assam and Ors.

9. Although the Petitioners has placed reliance on the aforesaid Division Bench judgment, the Appellants/Petitioners involved in the said appeal, had filed the writ petition way back in 2003 but the present Petitioners barring the ones, who had earlier filed WP (C) No. 6930/2001, mentioned above, never approached this Court, it is submitted that some of the Petitioners had also filed other writ petitions in or around some time. As to what was the outcome of the said writ petitions has been indicated above. The Petitioners involved in the said writ petitions are also the Petitioners in the instant case. They have filed the writ petitions with the same prayer and with the prayer for same relief.

10. For all the aforesaid reasons, I do not find any merit in the writ petition and accordingly the writ petition is dismissed.