
(2008) 02 GAU CK 0012

In the Gauhati High Court

Case No : Writ Petition (C) No's. 1140 of 2004, 177, 791, 942 and 1136 of 2007

Ramiz Ahmed Barbhuiya

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 27-02-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2010) 1 GLR 732 : (2009) 1 GLT 247

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

Bench : Single Bench

Advocate : A.M. Majumdar, A.J. Atia, P. Chakraborty, A.Y. Choudhury and P. Talukdar, for the Appellant; R. Chokraborty, G.A. and V.M. Thomas, S.C., for the Respondent

Judgement

B.K. Sharma, J.—The first writ petition being W.P.(C) No. 1140/04 was filed by the single petitioner claiming regularization of service as M.E. school teacher and release of salary. Further prayer made in the writ petition is for CBI enquiry in respect of various orders of adjustments of services of the teachers, issued by the respondent No. 5, i.e., the District Elementary Education Officer, Cachar, Silchar. Having regard to the allegations made in the writ petition, this Court while entertaining the writ petition by its order dated 30.3.2004 directed for causing an enquiry by the Commissioner and Secretary to the Government of Assam in the Education Department in respect of the allegations made in the writ petition. With much delay the enquiry was conducted. The other writ petitions are the offshoots of the enquiry report and the resultant orders passed thereafter. All of the writ petitions have been heard together and are being disposed of by this common judgment and order.

2. The facts narrated in the writ petitions and the stand of the respondents, briefly stated, are as follows:

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3. The petitioner claims that he was selected by the Selection Board for appointment as Assistant Teacher in M.E./M.V./M.E.M. school in Silchar Sub-Division and Cachar District. However, nothing has been stated in the writ petition as to the date of advertisement and selection, etc. Mention has been made that the petitioner had earlier filed C.R. No. 2004/89 in which a prayer was made for a direction to release salary and to regularize the services. The writ petition was disposed of by order dated 5.1.1994 with a direction to the respondents to examine the matter and then to take appropriate steps.

4. Although the writ petitioner has not chosen to give any particulars relating to said writ petition, the petition was called for by this Court and the same is on record. On perusal of the said writ petition, it appears that same was filed by the petitioner alongwith some others for a direction to appoint the petitioners as Assistant Teacher in Middle School and to set aside and quash the order dated 20.6.1989 (Annexure-E to the writ petition). The impugned order dated 20.6.1989 was the order of appointment appointing altogether 6 teachers as M.E. School teachers pursuant to the selection by the Sub-Divisional Level Advisory Board for Elementary Education.

5. As per the averments made in the said writ petition, the Director of Elementary Education Assam issued advertisement on 21.6.1986 inviting applications from the eligible candidates for selection of primary and middle school teachers. According to the petitioner, he offered his candidature in response to the advertisement and upon interview, etc., the selection committee prepared the list of the successful candidates. In paragraph 9 of the writ petition, it was stated that the list was not published. However, further statement made was that the petitioner could come to know that his name appeared in the list but the list was withheld by the Advisory Board.

6. As against the aforesaid position in respect of the select list of M.E. school teachers, the select list of primary school teachers was published on 12.10.1987 which was put to challenge by filing writ petitions being C.R. Nos. 1130/87, 40/88, 52/88, 53/88 and 55/88, etc., on the ground that the select list was prepared by the improperly constituted Advisory Board in violation of the statutory rules. According to the petitioner, he was one of the petitioners in the aforesaid C.R. No. 1130/87 in which an interim order was passed on 2.11.1987 directing the respondents not to act upon the select list of L.P. school teachers prepared for the particular constituency, i.e., Udarbund constituency.

7. It is not understood as to why the petitioner being a candidate for appointment as M.E. school teacher filed the writ petition in respect of the select list of L.P. school teacher. Be that as it may, it was contended in the writ petition that the petitioners involved in C.R. No. 1130/87 including the present petitioner was appointed as primary school teacher because of an understanding between the petitioners and the D.I. of schools. They joined the respective schools on 2.7.1988, but on the same date, their appointments were cancelled on the ground that the appointments were obtained by threat.

8. The aforesaid situation led to filing of the writ petitions being C.R. No. 1348/88, 1546/88 and 1572/88, etc., in which the cancellation of the appointments were put to challenge. Further statement made in the writ petition was that this Court allowed appointment of 230 selected candidates from the select list comprising of 340 persons. According to the petitioners, appointments were made in unauthorised manner There being excess appointment in violation of the order passed by this Court, another writ petition being C.R. No. 1486/89 was filed. In the meantime, services of 70 teachers were terminated and the terminated teachers filed the writ petition being C.R. No. 1751/89.

9. With the aforesaid statements, the grievance of the petitioners including the present petitioner was that the select list for M.E. school teachers was not published. Allegations were also made in respect of the purported irregularities committed for appointment of L.P. school teachers. The petitioner also referred to appointment letter dated 20.6.1989 and stated that although the select list for M.E. school teachers was not published, but on the basis of unpublished select list, appointments were made. It is in the aforesaid backdrop of the case, the prayer of the petitioners as noticed above, was for regularization of his service and to cancel the appointment of others vide Annexure F order dated 20.6.1989 by which 6 persons were appointed as M.E. school teachers.

10. The writ petition was disposed of by judgment and order dated 5.1.1994 with the following direction.

The respondent Nos. 1 to 4 shall not appoint any person from outside the penal for the post of teacher in M.E. and M.V. schools and at the same time the respondents shall consider the appointment of the petitioners if their names are included in the penal subject to availability of the vacancies.

11. After the aforesaid order passed by this Court, the petitioner was appointed as Assistant Teacher of M.E. school, vide Annexure I order dated 9.9.1994. The petitioner has referred to order dated 25.6.1996 passed in the writ petition being C.R. No. 5325/95 in which Annexures 2 and 3 orders were passed directing release of the salaries of the petitioners including the present petitioner, if the claims were found to be correct upon appropriate enquiry. According to the petitioner, in spite of aforesaid order of the court, his service was not regularized/adjusted, nor his salary was released. On the other hand, the respondent No. 5 resorted to illegal action towards regularization/adjustment of the services of the teachers against the vacant posts. In this connection, the petitioner has annexed the Annexure V order dated 30.6.2001 in respect of adjustment of the services of Shri Sahabuddin Laskar and Saytendra Ch. Deb, who are the petitioners in W.P. (C) No. 177/07 involved in this proceeding. It will be pertinent to mention here that Annexure-V order dated 30.1.2007 has been passed upon a reference to the orders passed by this Court in W.P.(C) No. 5085/2000 on 2.11.2000. Records of the said writ proceeding and the order dated 2.11.2000 do not reflect any such position, in fact the said writ petition was in respect of some other matters and did not pertain to Shri Sahabuddin Laskar and Shri Saytendra Ch. Deb.

12. There being serious allegations against the official respondents, more particularly the respondent Nos. 4, 5 and 6, this Court directed for the aforesaid enquiry.

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13. This application has been filed during the pendency of the writ petition urging not to give effect to the enquiry report prepared on the basis of the aforesaid order passed by this Court and the subsequent orders directing termination of the services of the teachers including that of the petitioner. It will be pertinent to mention here that no action was taken on the basis of the first order dated 30.3.2004 passed in the writ petition by which direction was issued for causing an enquiry. This Court passed subsequent orders directing the compliance of the said order. It is on the basis of the such monitoring of the court, the Commissioner and Secretary to the Government of Assam in the Education Department caused the enquiry and the enquiry revealed illegal appointments and consequently services of such illegal appointees were dispensed with which included the petitioner as well. Being aggrieved, he has filed the miscellaneous case, without, however, any formal amendment of the writ petition.

W.P.(C) No. 177/07

14. This writ petition has been filed by the aforesaid Sahabuddin Laskar and Saytendra Ch. Deb whose services have been terminated pursuant to the aforesaid enquiry caused on the basis of the aforesaid direction of this Court. According to the petitioners, they were appointed as honorary teachers on 1.3.1990 and 1.2.1984 respectively and their services were duly approved by the DEEO and D.I. of Schools respectively. According to the petitioners, their services were adjusted by Annexure 2 order dated 30.1.2001 passed by the DEEO, Cachar about which mention has been made in the first writ petition in which it has been indicated that, the writ petition and the order which has been made the basis of such adjustment, do not pertain to the writ petitioners. Although initially the petitioners received their salaries, but their salaries were stopped from July 2002 in view of the enquiry initiated in the matter of adjustment of their services. The petitioners have referred to the aforesaid writ petition in this regard. They have annexed a copy of the enquiry report. The petitioners have also referred to the FIR lodged against them. On the basis of the enquiry conducted, the enquiry officer has furnished his report indicating the illegal appointments of the petitioners. It is in such a situation, the writ petition has been filed.

W.P.(C) No. 791/07

15. This writ petition has been filed by five writ petitioners making a grievance against the direction for dispensation of their services pursuant to the aforesaid enquiry conducted by the respondents. The services of the petitioners have been terminated by order dated 8.2.2007 (Annexure 10). It is the stand of the petitioner that before terminating their services, they were not afforded with any

opportunity of being heard. According to the petitioners, they were initially appointed as honorary teachers in the year 1991-92 and thereafter on the basis of the orders passed by this Court in W.P.(C) Nos. 4709/99, 6095/2000, 3468/2000 and 4704/99 which were filed by the petitioners praying for regularization of their services, their services were adjusted against the vacant posts vide orders dated 2.2.2001, 5.2.2001 and 17.2.2001. Their salaries were stopped pursuant to the order passed on 9.4.2002 questioning the legality of their very appointments. Being aggrieved, they filed several writ petitions in which direction was issued for release of their salaries. Thereafter, the aforesaid enquiry was conducted and on the basis of the reports furnished, their services have been dispensed with.

W.P.(C) No. 942/07

W.P.(C) No. 1136/07

16. These writ petitions are on the same set of facts as in the aforesaid writ petitions, i.e., W.P.(C) No. 791/07.

Stand of the respondents

17. According to the respondents, the services of the petitioners have been dispensed with since they were appointed illegally and without any sanction of law behind. It is their stand that in the process of purported adjustment/regularization of the services of the petitioners, the recruitment rules were merrily flouted. It has been stated in the affidavits that alongwith the petitioner in W.P.(C) No. 1140/04, 24 other teachers were appointed against non-existent post. Although their appointments mentioned about approval of the chairman of the Sub-Divisional Advisory Board, but in fact there was no such approval and/or meeting of the Board. Further there was also no approval of the State Level Empowered Committee (SLEC). Further stand of the respondents is that the services of the petitioners were adjusted/regularized on non-existent records.

18. In the aforesaid backdrop of the matter, it is for the decision of this Court as to whether the services of the petitioners have been dispensed with validly. Before that, it will also have to arrive at, as to whether the petitioners were appointed validly.

19. I have heard Mr. A.J. Atia, Learned Counsel for the petitioner in W.P.(C) No. 1140/04. Ms. P. Chokraborty, Learned Counsel representing the petitioners in W.P.(C) No. 177/07 and Mr. A.M. Majumdar, Learned Senior Counsel assisted by Mr. A.Y. Choudhury, Learned Counsel for the petitioners in W.P.(C) Nos. 791/07 and 942/07 and Mr. P. Talukdar, Learned Counsel appearing for the petitioner in W.P.(C) No. 1136/07. I have also heard Mr. V.M. Thomas, learned standing counsel, Education Department.

FINDINGS

W.P.(C) No. 1140/04

20. As per the own admission of the petitioner, the select list pertaining to M.E. school teacher was never published. In the writ petition filed by him in the year 1989, i.e., C.R. No. 2004/89, the order passed by this Court was not to make any appointment outside the select list of M.E. school teachers. Further direction issued was to consider the appointment of the petitioners if their names were included in the select list. Thus, for appointment of the petitioner, the condition precedent was the inclusion of his name in the select list. The tenor of the pleadings, of the writ petition has been noted above. Although the petitioner was aspirant for the post of MV school teacher, but he made a challenge to the select list of L.P. school teacher. As per the statement made in CR No. 2004/89, some kind of agreement was arrived at with the officials of the Education Department and it was on that basis he was appointed. It is not understood as to how the Education Department officials could arrive at an agreement for appointment of teachers.

21. Although the petitioner was appointed way back in 1994 (9.9.1994), but admittedly no select list was published. If the petitioner was appointed pursuant to any selection against the particular vacancy as mentioned in the order of appointment, there could not have been any occasion for the petitioner to pray for regularization of his services. Thus, the petitioner himself was aware that he was not appointed validly. It is also not his case that the select list was published and pursuant thereto he was appointed. The enquiry conducted as per the order of this Court has revealed that the petitioner was appointed de hors the recruitment rules and if that be so, same cannot confer any right on the petitioner. The enquiry has further revealed that there was no selection worth name.

22. When the petitioner himself has admitted that the select list was not published, he could not have been appointed. Had it been the case of valid appointment of the petitioner, he would have received salary regularly from 1994. Although he was allegedly appointed in 1994, he was never paid his salary. Thus, in such a situation, no mandamus can be issued to regularize the services of the petitioner. In the meantime, his service has been terminated pursuant to the enquiry conducted in which it was found that his very appointment was illegal. If he was appointed illegally, any direction for payment of salary would imply regularization of his illegal appointment.

23. The Apex Court in the case of State of Manipur and Others Vs. Y. Tomen Singh and Others, , dealing with illegal appointments and claim of salary by the illegal appointees, observed, thus:

17. If the offers of appointments issued in favour of the respondents herein were forged documents, the State could not have been compelled to pay salaries to them from the State exchequer. Any action, which had not been taken by an authority competent, therefore, and in complete violation of the constitutional and legal framework, would not be binding on the State. In any event, having regard to the fact that the said authority himself had denied to have issued a

letter, there was no reason for the State not to act pursuant thereto or in furtherance thereof. The action of the State did not, thus, lack bona fides.

18. Moreover, it was for the respondents who had filed the writ petitions to prove existence of legal right in their favour. They had, inter alia, prayed for issuance of a writ of or in the nature of mandamus. It was, thus, for them to establish existence of a legal right in their favour and a corresponding legal duty in the respondents to continue to be employed. With a view to establish their legal rights to enable the High Court to issue a writ of mandamus, the respondents were obligated to establish that the appointments had been made upon following the constitutional mandate adumbrated in Articles 14 and 16 of the Constitution of India. They have not been able to show that any advertisement had been issued inviting applications from eligible candidates to fill up the said posts. It has also not been shown that the vacancies had been notified to the employment exchange.

24. I, in the facts and circumstances of this case, do not see any arbitrariness on the part of the State in its action directing cancellation of appointment of the petitioner. Consequently, the writ petition merits dismissal, which I accordingly do.

W.P.(C) No. 177/07

25. According to the petitioners, they were appointed as honorary teachers and subsequently their services were regularized by Annexure 2 order dated 30.1.2007. When the very basis of the order of regularization is non est, the order of regularization cannot give rise to any claim to the petitioners. The services of the petitioners were adjusted taking the name of the order dated 2.11.2000 passed by this Court in W.P.(C) No. 5085/2000. The said case is not related to the petitioners. Mr. V.M. Thomas, learned standing Counsel has produced the copy of the order passed in W.P.(C) No. 5085/2000. The said matter was in respect of some insurance claim. Thus, on the face of it, the very adjustment of the services of the petitioners was based on forgery. The petitioners were given adequate opportunity of being heard before dispensing with their services. The enquiry report reveals that the petitioners could not produce any documents in support of their claim. Coupled with, thus, the officer who allegedly passed the order of adjustment dated 30.1.2001, namely, Shri J.U. Majumdar, DEEO, Cachar, now Inspector of schools, Karimganj, has certified that his signature in the order of adjustment has been manipulated and the signature appearing in the order does not belong to him.

26. Apart from the above, the own documents produced by the petitioners depict forgery. The petitioners have annexed Annexure I appointment letter dated 1.2.1984 issued by the Secretary of the School (Saidpur Janata M.E. School). On being asked to produce the resolution adopted toward his appointment, Learned Counsel for the petitioners has produced the copy of the same which contains the signature of the Secretary of the School. The signatures appearing in both the

documents of the same date, i.e., 1.2.1984 differ from each other. Learned Counsel for the petitioners, on being pointed out of the same, could not give any explanation. Thus, the whole basis of the claim of the petitioners is founded on manipulation. This is precisely the reason as to why they could not produce any valid documents before the enquiry authority to substantiate their claim.

27. In view of the above, I do not find merit in the writ petition and accordingly it is dismissed.

W.P.(C) No. 791/07

W.P.(C) No. 942/07

W.P.(C) No. 1136/07

28. In all the writ petitions, the grievance of the petitioners is that their services have been dispensed with without providing any opportunity of being heard. Their services have been dispensed with by the impugned order dated 8.2.2007 on the ground that the selection procedure as envisaged in the recruitment rules was not followed while making their appointments/adjustments. According to the petitioners, they were initially appointed as honorary teachers by the respective managing committee of the schools and subsequently their services were, regularized/adjusted by various orders. Their grievance is that they were not afforded with any opportunity of being heard before terminating their services, but for which they could have apprised the authority about the real state of affairs.

29. During the course of hearing, Learned Counsel for the petitioners produced the documents to sustain their claim that they were initially appointed as honorary school teachers and thereafter their services were regularized. The records have revealed that some of the orders of regularization was by the same authority who allegedly regularized the services of the two petitioners in W.P.(C) No. 177/07. The signature appearing in the order dated 30.1.2001 [Annexure 2 to W.P.(C) No. 177/07] by which the services of said two petitioners were regularized has been certified to be fictitious one, by the same very authority. The signature appearing in the forged order as well as in some of the orders of regularization of the services of petitioners involved in these writ petitions, appeared to be the same. If that be so, the question necessarily arises as to whether the signatures in the orders of adjustment/ regularization of the services of at least some of the petitioners involved in these writ petitions are also forged and fictitious.

30. In the enquiry it was revealed that 25 teachers were illegally adjusted/regularized. However, the enquiry officer in his report stated about verification of the documents pertaining to 21 teachers out of 24 teachers. The enquiry report also mentions about their adjustment/ regularization against the valid vacant posts. It also mentions that the said teachers were initially appointed as honorary teachers, but were dropped at the time of provincialisation of the

school. However, according to the enquiry authority, the authority did not follow the procedure relating to regularization/adjustment of 21 teachers. There is no clear cut finding that in fact the petitioners were appointed illegally. If the petitioners' appointments as honorary teachers before provincialisation of the schools are accepted, then they may have claim for regularization/adjustment of their services on availability of vacancies.

31. Apart from the above, the petitioners were also not afforded with any opportunity of being heard, before terminating their services. In that view of the matter, the case of the petitioners involved in these writ petitions requires fresh consideration of the respondents. Accordingly, the matter is remanded back to the Commissioner and Secretary to the Government of Assam in the Education(E) Department for a fresh decision taking into account all the relevant materials available on record. The said Commissioner shall take assistance of his subordinate officers towards arriving at a just and proper decision. Needless to say that no amount of malpractice in the matter of appointment in a department like Education should be tolerated, but at the same time, the services of the validly appointed teachers, may not be terminated.

32. The decision to be arrived at by the said Commissioner in terms of this direction shall be so arrived at, as expeditiously as possible preferably within four months.

33. The writ petitions are answered in the above manner leaving the parties to bear their own costs.