
(2008) 08 GAU CK 0039
In the Gauhati High Court

Ranjana Begum Laskar and Another

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 13-08-2008

Acts Referred:

Contract Act, 1872 — Section 70

Citation : (2008) 4 GLT 278

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ranjan Gogoi, J.—Both the writ petitions being founded on similar facts and the reliefs sought for being identical, were heard together and are being disposed of by this common order.

2. The petitioner in WP (C) No. 4549/ 2003 was appointed on 02.02.98 as an honorary teacher in No. 745 Punirmukh L. P. School under Dholai Police Station in the district of Gachar. According to the petitioner, the Deputy Inspector of Schools, Silchar by an order dated 23.02.2001 appointed/adjusted the petitioner against a substantive vacant post in the same school. The petitioner contends that notwithstanding the fact that she had been rendering continuous service with effect from the date of her appointment as an honorary teacher, no salary was forthcoming even after her adjustment against a substantive vacant post. She, therefore, instituted a writ proceeding before this Court i.e. WP (C) No. 7593/2001 seeking a direction for payment of her salary with effect from 23.02.2001. The said writ petition was disposed of by this Court on 19.10.2001 with a direction to the Director of Elementary Education to enquire into the matter and if the petitioner was found to be entitled to her salary, to pass appropriate orders for payment thereof. The petitioner has further stated that similar orders were passed by this Court in cases of other Assistant Teachers who were appointed in a similar manner as the petitioner. As such orders were not being implemented, certain aggrieved persons (not the petitioner) had instituted

a contempt proceeding before this Court i.e. Contempt Case No. 82/2002. In the said contempt case the Director of Elementary Education had filed an affidavit dated 31.05.2002 enclosing a copy of the report of the Deputy Inspector of Schools, Silchar dated 06.04.2002 which was to the effect that the appointments in question including that of the petitioner were not in accordance with law. The petitioner has further averred that on the basis of the said report of the Deputy Inspector of Schools, Silchar dated 06.04.2002, the Director of Elementary Education has passed an order on 30.05.2002 stating that all the concerned persons including the petitioner were appointed by the Managing Committees of the Schools after provincialisation which was without any authority of law and further that there are no records pertaining to their appointment or adjustments available in the office of the Deputy Inspector of Schools, Silchar. In the aforesaid order it was further stated by the Director that the adjustments in question including that of the petitioner were made by the then Deputy Inspector of Schools, one B.C. Sarma, just on the eve of his retirement and that a magisterial enquiry in the matter was going on. As the aforesaid stand taken by the Director created an apprehension in the mind of the petitioner that she may be terminated, the petitioner had moved this Court again by instituting another writ proceeding i.e. WP (C) No. 5775/2002. The said writ petition was disposed of by this Court on 21.09.2002 by directing the respondents therein to follow the due procedure of law before resorting to termination of the service of the petitioner. In the meantime, according to the petitioner, the report of the magisterial enquiry had been submitted which indicated that the appointment of the petitioner is genuine and that she has been found to be attending to her duties regularly. It is in these circumstances that the present writ petition has been filed seeking a direction not to terminate the service of the petitioner and, instead, to regularise the same and pay to the petitioner her salary which has remained unpaid from the date of her adjustment i.e. 23.02.2001.

3. The facts involved in the connected writ petition i.e. WP (C) No. 4550/2003 are identical with those recited above. The petitioner therein was appointed on honourary basis in the Raghuram L.P. School in the district of Cachar on 22.08.99 and was adjusted by similar order of the Deputy Inspector of Schools, Cachar dated 22.02.2001. The other details of case need not be stated in view of the facts already noticed in connection with WP (C) No. 4549/2003.

4. The Director of Elementary Education has filed separate affidavits in both the cases on 14.12.2006 and 12.12.2006. The stand taken in the affidavits of the Director is a common one. The appointments of the petitioners as honourary teachers in their respective schools were made by the Managing Committees after provincialisation of the schools in question. According to the Director, under the Assam Elementary Education (Provincialisation) Rules, 1977, the Managing Committee of a provincialised school is not legally competent to make any appointment. That apart, according to the Director, it has been held by this Court in WP (C) No. 2560/2001 that the honourary teachers do not have any right of regularization. According to the Director, as per the Govt. Office Memorandum

dated 21.01.2004, honorary teachers are only entitled to consideration of their past service during regular selection and for condonation of their age in case such candidates had exceeded the maximum age limit for appointment. In the aforesaid circumstances, according to the Director, the adjustments/regularizations of the petitioners made by the Deputy Inspector of Schools Silchar by orders dated 23.02.2001 and 22.02.2001 respectively are without any authority of law and furthermore such adjustments have been made against non-existent/non-sanctioned posts. The Director, in the affidavit filed, had further stated that the adjustments of the petitioners being illegal and not against any sanctioned posts, the petitioners will not be entitled to payment of any salary from the public exchequer.

5. When the writ petition came up for hearing on 26.06.2008, the learned Standing Counsel, Education placed before the Court a communication dated 20.06.2008 addressed to the Director of Elementary Education, to the Commissioner & Secretary to the Govt. of Assam, Elementary Education Department. The subject matter of the said correspondence is "Release of salary in respect of 116 numbers of school teachers". By the said communication, the Director had informed the Commissioner & Secretary to the Department that as per verification reports of April-May, 2007 received from the District Elementary Education Officer, Cachar duly supported by authentication certificates signed by the field officers, the petitioners were found to be working in their respective schools since the date of their joining. By the said communication, the Director had further informed the departmental Commissioner & Secretary that the genuineness of the appointments of the petitioners had been enquired into by the Deputy Commissioner, Cachar as per Government instructions on the basis of which a magisterial enquiry was ordered the report whereof indicated that the appointments of the petitioners were genuine and they were found to be attending their schools. Accordingly, in the said communication, the Director came to the conclusion that the claims of the petitioners are genuine and their salary can be released after-re-adjustment of their services against existing valid sanctioned posts.

6. In the aforesaid communication of the Director dated 20.06.2008, the names of the petitioners are not specifically mentioned, but there is a reference to 116 posts of Assistant Teachers under the caption "Subject". However, as the said communication was placed before the Court in connection with the two writ petitions presently under consideration and what was stated in the said communication was in departure to the stand taken in the affidavits of the Director, the Court by its order dated 26.06.2008 desired to know whether the petitioners are included in the 116 number of teachers referred to in the communication dated 20.06.2008. The Court also felt the necessity of the report of the Deputy Commissioner, Cachar referred to in the letter dated 20.06.2008 to be placed before it along with the basis on which the conclusion of the Deputy Commissioner, Cachar and the Director to the effect that the appointments of the petitioners were genuine have been reached. Accordingly, the case was

adjourned to 14.07.2008.

7. At the resumed hearing on 14.07.2008, a communication dated 11.07.2008 of the Director of Elementary Education to the Com-missioner & Secretary to the Govt. of Assam, Elementary Education Department along with photocopies of certain records had been placed before the Court. The stand taken by the Director in the fresh communication dated 11.07.2008 is to the effect that on re-examination of the subject matter with reference to the documents and correspondences enclosed, including the report of the Deputy Commissioner, Cachar dated 16.12.2002, it transpired that the claim of the petitioner in WP (C) Nos. 4549 and 4550 of 2003 are not genuine. According to the Director, all the 116 teachers referred to in the earlier communication dated 20.06.2008, which included the two petitioners, were initially appointed as honourary teachers by the Managing Committees after provincialisation and were subsequently adjusted by the Deputy Inspector of Schools, Silchar without following the provisions of the Assam Elementary Education (Provincialisation) Rules, 1977. The Director of Elementary Education in the said communication dated 11.07.2008, therefore, has virtually reiterated the stand taken by him in the affidavit filed in the case.

8. A consideration of the facts stated above amply reveals that the two petitioners presently before the Court were appointed as honourary teachers by the Managing Committees of two different provincialised schools. This Court in *Jahangir Alam and Ors. v. The State of Assam and Ors.* 2003 (3) GLT 544 has held that the Managing Committee of a provincialised school has no legal authority to make any appointment and such appointees, by virtue of the service rendered, are not entitled to be regularized. Appointment in a provincialised school has to be on the basis of selection as contemplated by the provisions of the Assam Elementary Education (Provincialisation) Rules, 1977. Adjustment of honourary teachers or for that matter of any teacher against a regular sanctioned vacant post without selection and without following the provisions of the Rules is a void appointment conferring on the concerned incumbent no rights in law. In the present cases, no material has been laid before the Court by the petitioners to show that their adjustments made by the Deputy Inspector of Schools, Silchar by orders dated 23.02.2001 and 22.02.2001 respectively have been so made after following the mandate of the Rules. The report of the Deputy Commissioner, Cachar submitted pursuant to the report of the magisterial enquiry (which forms a part of the records placed before the Court along with the communication dated 11.07.2008 of the Director of Elementary Education) though had indicated the appointments of 116 teachers including the two petitioners to be genuine, the Director of Elementary Education in the communication dated 11.07.2008 has virtually disowned the said report of the Deputy Commissioner. According to the Director, the said report was submitted by the Deputy Commissioner directly to the Commissioner & Secretary of the Department without taking the Directorate of Elementary Education into confidence. The reasons for the conclusion reached in the said report of the Deputy Commissioner with regard to the genuineness of the appointments of the

petitioners is not supported by any cogent explanation. In such a situation, coupled with the virtually undisputed fact that the petitioners were appointed by the School Managing Committees after provincialisation and that the Deputy Inspector of Schools, Silchar had unilaterally adjusted the services of the petitioners without there being any vacant sanctioned posts, the Court will be extremely hesitant and reluctant to accept the report of the Deputy Commissioner in order to come to any conclusion that the petitioners are either entitled to continue in service or to be regularised therein by a fresh process. The aforesaid part of the relief sought by the writ petitioners is, therefore, refused.

9. This will bring the Court to a consideration of the entitlement of the petitioners to salary for the services rendered. It has been vehemently contended by Mr D.K. Das, learned Counsel for the petitioners, that in any event both the petitioners having rendered continuous service from February 2001, would be entitled to their salaries for such service that had been rendered by them. 10. In *Sudhendu Mohan Talukdar and Ors. v. State of Assam and Ors.* reported in 2006 (2) GLT 216, a learned Single Judge of this Court has already taken the view that the obligation of the State to pay salary would arise only in the event the appointment is otherwise valid in law and that the public exchequer cannot be burdened by payment of salary to persons who are not validly appointed. However, in the aforesaid case the Court having found the issue with regard to the validity of the appointment of the petitioners therein to be highly disputed requiring determination of questions of fact, the said question was referred to a Committee which was already constituted by orders of the Court passed in another writ petition to undertake a similar scrutiny.

11. The view of the learned Single Judge expressed in *Sudhendu Mohan Talukdar* (supra) that there is no obligation on the part of the State to pay salary to persons who have not been validly appointed, in the considered view of this Court, is consistent with the law laid down by the Apex Court, in *State of Manipur and Others Vs. Y. Token Singh and Others*, and (b) the details of which will be noticed in the succeeding paragraphs. In such circumstances, the Court finds no good reason to depart from the view taken in *Sudhendu Mohan Talukdar* (supra). In the present case, as already held, there can be no manner of doubt that the initial appointments of the petitioners were by the School Managing Committees and their subsequent regularizations/adjustments are wholly illegal and void. In such circumstances, there will be no occasion for the Court to refer the matter to the Court appointed Committee, a prayer which was repeatedly made at the hearing on behalf of the petitioners.

12. To make the discussion complete, it will now be necessary to notice, though very briefly, the views of the Apex Court with regard to the question as to whether the State is under any obligation to pay salary to persons who have been illegally appointed. The above question has been answered in the negative by the Apex Court in its judgment in the case of *State of Manipur and Others Vs. Y. Token Singh and Others*, . Though the view of the Apex Court in the aforesaid

case was in the context of forged/fabricated appointment letters, in the considered view of the Court, such appointments i.e. on the basis of forged documents as well as appointments made by an authority not empowered under the Rules and adjustments/regularizations made against posts not available or sanctioned and in violation of the provisions of the statutory Rules, would both fall in the category of void appointments giving rise to no obligation on the part of the State to pay any salary to such appointees.

13. The above view has been reiterated by the Apex Court in its subsequent judgment in the case of Govt. of A.P. and Others Vs. K. Brahmanandam and Others, . However, in para 22 of the aforesaid judgment the Apex Court after discounting any obligation or liability on the part of the State, had observed that the concerned teachers will be entitled to salary in terms of Section 70 of the Contract Act from the school management committees as the doctrine of quasi-contract u/s 70 of the Contract Act cannot be made applicable against a State. The reason for the view taken is obvious. An officer of appointment, contrary to the Rules, acceptance thereof does not give rise to a valid contract, inasmuch as, the person Making the offer of apartment was not legally competent to do so. However, a relationship resembling a contract does arise between the parties and, therefore, the aggrieved persons may have his remedies u/s 70 of the Contract Act which, however, will not apply to the State as the State was not a party to the creation of the relationship resembling a contract. It must also be noticed that the positive finding with regard to entitlement of the concerned persons to salary, as reached by the Apex Court, was a consequence of the conclusion recorded to the effect that such persons had actually rendered servide. In the present cases, such a conclusion will not be permissible on the materials available.

14. In view of the above, no writ or direction compelling the State to pay salaries to the petitioners, even for the services rendered, can be granted by the Court.

15. However, the petitioners if they are so inclined and so advised, may seek to enforce their claims in a civil Court of competent jurisdiction.

16. Both the writ petitions, consequently, are dismissed subject to the above observations.