

(2008) 11 GAU CK 0058
In the Gauhati High Court

Rina Bordoloi

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 28-11-2008

Acts Referred:

Citation : (2010) 2 GLR 85

Hon'ble Judges : P.K. Musahary, J

Bench : Single Bench

Judgement

P.K. Musahary, J.—Heard Mr. G. Choudhury, learned Counsel for the petitioner and Mr. U. Goswami, learned standing Counsel, for the Education Department.

2. The petitioner assails the order dated 12.1.2007, issued by the Inspector of Schools, Golaghat District Circle, Golaghat, whereby the petitioner's service has been ordered to be adjusted against the post of Office Assistant from 1.2.1985 to 30.4.1996 and as Assistant Teacher from 1.5.1996 onwards. The aforesaid order is said to have been issued in pursuance of Government order No. B(3)-S.100/95/97 dated 26.8.1996. For the purpose of disposal of this matter, it is necessary to highlight the facts of the case, which are as follows:

The petitioner claims to have been appointed as an Assistant Teacher by the Managing Committee of Sanmilita High School, Golaghat on 30.3.1983 and she joined the said school on 1.4.1983. The school was provincialized with effect from 1.2.1985 and her service was also regularized as an Assistant Teacher as per order dated 8.7.1985 issued by the respondent No. 3, namely. Inspector of Schools, Jorhat District Circle, Jorhat. In the aforesaid school, one Shri Surendra Nath Dutta, was also appointed by the said Managing Committee as an Office Assistant and his service was also subsequently regularized as an Office Assistant in the said school. But Shri Surendra Nath Dutta challenged the order of regularization of his service as an Office Assistant by filing a writ petition being civil rule No. 1859/1989 claiming that, he was initially appointed as an Assistant Teacher and his service should have been regularized as an Assistant Teacher at the time of provindalization of the said school and not as an Office Assistant. This

Court, vide judgment and order dated 9.11.1994, held that the petitioner must be deemed to be an Assistant Teacher of Sanmilita High School, Golaghat, with effect from 1.2.1985 in the Graduate scale and he should be paid salaries with effect from 1.2.1985 as an Assistant Teacher with a direction to the respondent-authorities to recover the amount from respondent No. 2 (present petitioner), if so advised. The present petitioner being aggrieved, challenged the aforesaid judgment and order dated 9.11.1994 by filing a Writ Appeal being WA No. 2/1995. The Division Bench of this Court vide its judgment and order dated 17.2.1995 modified the aforesaid order and directed the Commissioner and Secretary to the Government of Assam, Education Department, to call for the entire relevant records and adjudicate on the question by passing a speaking order as to who was entitled to hold the post of Assistant Teacher on the date of provincialization of the said school. In compliance of the aforesaid order, the Commissioner and Secretary to the Government of Assam, Education Department, after examining the records held that Shri Surendra Nath Dutta has been working as an Adhoc Teacher in Sanmilita High School, Golaghat, since 1.1.1980 and did his B.Ed. training on deputation and passed an order to the effect that the post of Assistant Teacher be given to Sri Surendra Nath Dutta and the petitioner Smt. Rina Bordoloi be adjusted against the vacancy that arose in May, 1996, due to retirement of a teacher in the said school. It was further ordered that the seniority be re-established to ensure that Sri Surendra Nath Dutta is senior to Smt. Rina Bordoloi. A consequential order to that effect was passed on 27.7.1997 (Annexure-6 to the writ petition) by the respondent No. 3, namely, Inspector of Schools, Golaghat. District Circle, Golaghat. The matter was adjudicated and settled, but subsequently, after about 10 years, the respondent No. 3, i.e. Inspector of Schools, G.D.C., Golaghat, issued the impugned order dated 12.1.2007, directing adjustment of the petitioner's pay as an Office Assistant with effect from 1.2.1985 to 30.4.1996 and as an Assistant Teacher with effect from 1.5.1996 onwards.

3. Mr. G. Choudhury, learned Counsel for the petitioner, submits that the position as regards the appointment of the petitioner and Sri Surendra Nath Dutta, as an Assistant Teacher and the inter-se seniority between them are accepted by the petitioner and as no dispute has also been raised on the said decision, the petitioner has infact duly accepted the position that Sri Surendra Nath Dutta has been working as an Assistant Teacher with effect from 1.1.1980 and his service was accordingly provincialized and as such, he is senior to the present petitioner but the respondent authorities have resorted to a coercive measure to recover the salaries from the present petitioner as Assistant Teacher with effect from 1.2.1985 to 30.4.1996 and to pay the same to Sri Surendra Nath Dutta, that too, after a long gap of about 10 years from the passing of order dated 26.8.1996 (Annexure-5 to the writ petition) by the respondent Commissioner and Secretary, Education Department, and order dated 27.7.1997, passed by the respondent No. 3, i.e., Inspector of Schools, G.D.C., Golaghat. The learned Counsel for the petitioner also submits that if the impugned order dated 12.1.2007 is executed,

the petitioner would be required to refund the salaries drawn as an Office Assistant with effect from 1.2.1985 till adjustment as an Assistant Teacher on 30.4.1996.

Mr. Choudhury, learned Counsel for the petitioner, further submits that the impugned order dated 12.1.2007 for adjustment of pay from the petitioner has been passed without giving any notice and opportunity of hearing and the same is totally uncalled for and illegal.

4. Mr. Goswami, learned standing Counsel for the Education Department, submits that the impugned order dated 12.1.2007 was passed as per the findings arrived at and that the decision was given by the respondent Commissioner and Secretary, Education Department, after thorough enquiry and also after giving an opportunity of hearing to the petitioner in terms of the direction given by the Division Bench of this Court, vide order dated 26.8.1996, which has not been challenged by the present petitioner rather accepted the same. The adjustment of salary and refund of pay drawn by the petitioner as Assistant Teacher for the period with effect from 1.2.1985 to 30.4.1996 is a natural consequence inasmuch as the petitioner was working as an Office Assistant and not as Assistant Teacher during the said period and it is, therefore, incumbent upon her to refund the same.

5. The indisputable position, as emerged from the respondent Commissioner's order dated 26.8.1996 and the submissions made by the learned Counsel appearing for the parties, is that the impugned order dated 12.1.2007 for readjustment of the salary from the pay drawn by the petitioner as an Assistant Teacher with effect from 1.2.1985 to 30.4.1996, has been issued after a long gap of about 10 years and in this regard, no claim after issuance of the said impugned order has also been made by Sri Surendra Nath Dutta for recovery of the salary for the aforesaid period from the petitioner and refund the same to him. It is also not known as to why the petitioner has not impleaded Sri Surendra Nath Dutta as a party to the present writ proceeding and as such, this Court is not in a position to know whether Sri Surendra Nath Dutta is really insisting on getting his salary of Assistant Teacher for the aforesaid period recovered from the petitioner by way of adjustment or whether he has foregone the same in favour of the petitioner. The other indisputable position is that Sri Surendra Nath Dutta, as recorded in Judgment and Order dated 9.11.1994 passed by the learned Single Judge in civil rule No. 1859/89, was deputed to undergo a course of B.T./B.Ed. Training with effect from 1.4.1983 and he was released from the said training on 31.3.1984. After provincialization of his service, i.e., for the period with effect from 1.2.1985 till the adjustment of the petitioners against the retirement vacancy in May, 1996, the position is also not made clear in the pleadings of the parties as to whether the petitioner has been drawing the salary of an Assistant Teacher in Graduate scale or as an Office Assistant. So also it is not made clear as to whether Sri Surendra Nath Dutta has been drawing the salary of an Office Assistant during the said period although his service was

required to be provincialized as an Assistant Teacher.

6. There is yet another aspect to be examined. Rightly or wrongly, the respondent No. 3, viz., the Inspector of Schools, Golaghat District Circle, Golaghat, issued Annexure-2 order dated 8.7.1985 provincializing the service of the petitioner and Sri Surendra Nath Dutta as Assistant Teacher and Office Assistant respectively. By virtue of the said order dated 8.7.1985, the petitioner rendered service in the post of Assistant Teacher until Sri Dutta challenged the said order in civil rule No. 1859/89 which was disposed of only on 9.11.1994 holding inter alia that Sri Dutta must be deemed to be an Assistant Teacher on and from 1.2.1985 in the Graduate scale. There is no denial that the petitioner was not serving as an Assistant Teacher by virtue of the aforesaid order. No decision has been given as to whether the petitioner would be entitled to get the salary of an Assistant Teacher, if she has been really working as Assistant Teacher as per order for provincialization of her service vide aforesaid order dated 8.7.1985 (Annexure-2 to the writ petition). In view of the fact that this Court disposed of the aforesaid civil rule only on 9.11.1994, there is a valid reason for presumption that the petitioner in fact, happened to serve as Assistant Teacher and Sri Dutta as Office Assistant till 9.11.1994. Now, the question arises as to whether the petitioner would be required to refund the salary she drew for the said period as she was allowed to work by the competent authority and she did really work as an Assistant Teacher.

7. Admittedly, the impugned order has been passed without giving any notice or affording any opportunity of hearing to the petitioner in regard to recovery of salary from her and in view of the aforesaid positions, I hold that the impugned order dated 12.1.2007 is unfair and illegal and the same is liable to be quashed and set aside. For the sake of fair play in action and ends of justice, in my considered view, the respondent authorities, particularly, the respondent No. 3, Inspector of Schools, Golaghat District Circle, Golaghat, should afford an opportunity of hearing to the petitioner Smt. Rina Bordoloi and Sri Surendra Nath Dutta as well, and after hearing them, take a final decision regarding adjustment of pay between the petitioner and Sri Surendra Nath Dutta for the period in question. Such process of consideration and hearing of both the parties be initiated immediately and a decision be given within a period of 2(two) months from the date of receipt of this order. The petitioner shall furnish a certified copy of this order along with a copy of writ petition to the respondent authorities within a period of 2(two) weeks from today for their needful action.

8. With the above observations and directions, this writ petition stands disposed of.