
(2005) 08 GAU CK 0023
In the Gauhati High Court
Case No : Writ Petition (C) No. 93 of 2003

Safiqur Rahman Choudhury

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 30-08-2005

Acts Referred:

Assam Municipal Act, 1956 — Section 14

Citation : (2005) GLT 273 Supp

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Advocate : M. Bhuyan, B. Sarma, P. Hazarika and M. Talukdar, for the Appellant;
B.P. Bora, G.K. Bhattacharyya and J.R. Borah, for the Respondent

Judgement

R.B. Misra, J.—In this writ petition a prayer has been made by the Petitioner for quashing the Resolution Nos. 3 and 4 passed in a General Meeting of the Nagaon Municipal Board, Nagaon on 12.11.2001 and the order of reinstatement of the Respondent No. 6, Sri Mukut Chandra Borah, passed by the Chairman of the Nagaon Municipal Board, Nagaon (for short the "Board"), pursuant to the Resolution No. 3.

2. According to the Petitioner, he was initially appointed as a Bill Writer in the year 1973 in the Board. Thereafter he was promoted to the post of Lower Division Assistant and subsequently to the post of Upper Division Assistant on 1.5.1979. The Petitioner was expecting his promotion to the post of Head Assistant in the Board. The Respondent No. 6 was placed under suspension for dereliction of duties, misappropriation of Board's fund and for misbehaviour. The Respondent No. 6 was alleged to have tampered/interpolated the word "Pari darshak (Inspector)" by making it "Parya-Byekhak (Supervisor)" in, the order of his promotion dated 6.11.1996 for which he was asked to explain. Looking into the entire records including the materials in the Service Book, the Executive Officer of the Board by its order dated 17.6.1997 retired the Respondent No. 6 compulsorily, as per provisions contained in Fundamental Rule 56. The said order

of compulsory retirement was challenged before this Court in Civil Rule No. 2884/97. this Court on 5.1.2001 by a well-reasoned judgment dismissed the same by upholding the action of the Executive Officer of the Board. Against the above judgment and order dated 5.1.2001, the Respondent preferred Writ Appeal No. 34/2001 before the Division Bench of this Court but subsequently withdrawn. According to the Petitioner when the order of compulsory retirement of the Respondent No. 6 was passed, Sri Atul Bora holding the post of Upper Division Assistant promoted to the post of Head Assistant, had retired from service on 1.1.2002 on attaining the age of superannuation. The Board in its General Meeting held on 26.7.2001 by a resolution had extended the term of service of Sri Atul Bora for another two years as the Head Assistant of the Board. However, Sri Atul Bora was released finally from service on 31.1.2004.

The learned Counsel for the Petitioner submitted that whoever desires to continue in service beyond the age of superannuation has to submit an application before the Chairman of the "Board" at least three months prior to his retirement along with a fitness certificate from the Civil Surgeon of the district concerned and the Chairman of the Board, thereupon, shall place such request before the "Board" keeping in mind the concerned employee's efficiency and physical fitness and also with prior approval of the State Government, such employee's intention of seeking continuance could be considered for extension of service. According to him, the Petitioner had submitted a representation on 9.11.2001 to the Chairman of the "Board" for promotion to the post of Head Assistant with effect from 1.1.2002.

3. Mr. Bhattacharyya, learned Counsel for the Respondent No. 6, has submitted that the Respondent No. 6 had also submitted a representation on 2.11.2001 before the Chairman of the Board for reinstating him to his original post under the Board subject to withdrawal of the Writ Appeal No. 34/2001 pending consideration before the Division Bench of this Court. The Board in its meeting held on 12.11.2001 by Resolution No. 3 had resolved unanimously to reinstate the Respondent No. 6, Sri Mukut Chandra Bora to the post of Head Assistant. The text of the Resolution No. 3 as contained in Annexure No. 6 of the writ petition is extracted hereinbelow:

Resolution No. 3.-The former Head Assistant of the Board (sent on Compulsory retirement) Sri Mukut Ch. Bora's letter dated 2.11.2001 addressed to the Chairman has been placed in the meeting for discussion. Said Sri Bora, in his petition mentioned that in serving for a period of about 29 years in the Board in different capacities, he was promoted to the post of Head Assistant and while he was in that post he was placed under suspension by the then Executive Officer of the Board and subsequently sent on compulsory retirement illegally. Sri Bora moved the Hon'ble High Court against that illegal order of compulsory retirement and praying for his reinstatement and the said Writ Appeal petition is under consideration of the Hon'ble High Court and stand undisposed of Shri Bora also mentioned in his petition that previously Sri Atul Chandra Boruah and Sri

Safiqur Rahman Choudhury, both employees of the Board were removed from their services and subsequently reinstated in their services while their petitions challenging the legality of their dismissal order was pending in the Court for disposal which is precedence. The meeting thoroughly discussed about all the facts mentioned in the petition of Sri Bora. In the course of discussion, it appears that before Sri Mukut Ch. Bora was sent on compulsory retirement, he was working as Head Assistant and the then Executive Officer placed him under suspension. It is seen that Sri Borah was placed under suspension by the Executive Officer charging on a light fault. There has not been found any financial anomaly or any such grievous charge against Sri Borah during his service period. On the other hand, Sri Borah is equipped with vast knowledge by his long period of service in the Board. So this meeting considers that if Sri Bora is reinstated in his original post the Board will be a gainer getting his well experienced service. So, considering all aspects this meeting has unanimously decided that Sri Mukut Ch. Bora be reinstated in the same post of Head Assistant which he was holding before he was compulsorily retired and he will be granted all admissible benefits. The meeting held on today has unanimously decided that the absence period of Sri Bora from the date of compulsory retirement upto the date of his office joining on this reinstatement be treated as Earn Leave and the period of leave will not be debited to his leave account and his continuation of service be counted. Moreover, it is decided that out of admissible amount of money payable to Sri Bora in respect of pay, allowance, etc. an amount equal to 20% be deducted by the Board and the balance amount be paid on instalment basis and in future Sri Borah will not be entitled to claim this 20% or any amount of compensation. This meeting further decided to direct Sri Borah to join in his previous post forthwith and to authorize the Chairman to take necessary steps in the matter.

4. By Resolution No. 4 the request of the Petitioner for being appointed to the post of Head Assistant was refused in view of the facts that Sri Atul Chandra Boruah was given extension in the post of Head Assistant. The text of the Resolution No. 4 as contained in Annexure No. 6 of the writ petition is also provided herein below:

Resolution No. 4.-Employee of the Board Sri Safiqur Rahman Choudhury petition dated 9.11.2001 was placed in the meeting today for discussion. In that petition, Sri Choudhury mentioned that he has no objection against the decision of the Board held on 26.7.2001 granting extension of service of Sri Atul Ch. Baruah, Head Assistant for 2 years with effect from 1.1.2002. But he (Choudhury) should be promoted to the post of Head Assistant. It is clear that Sri Atul Ch. Baruah is senior to Sri Choudhury in respect of service. There has been a threadbare discussion on the petition of Sri Choudhury. In respect of the extension of service of a retiring person, he is not degraded with effect from the date of extension and hence, the demand of Sri Choudhury to grant him in the senior post with effect from the date of extension of service of Sri Atul Ch. Baruah, is unreasonable, unlawful and baseless and hence, the petition of Sri Choudhury

has been rejected in the meeting today unanimously.

5. The learned Counsel for the Petitioner has asserted that the "Board" has no power to review its own decision, the Board had exceeded its jurisdiction by reinstating the Respondent No. 6 (without recalling the order dated 17.6.1997 retiring the Respondent No. 6 compulsorily) in the teeth of the order dated 5.1.2001 whereby the compulsory retirement of the Respondent No. 6 was upheld.

6. On the other hand, the learned Counsel appearing on behalf of the Respondent Nos. 4 and 5, has submitted that the Petitioner is not senior enough that in the facts and circumstances he could be promoted to the post of Head Assistant and the Board in exercise of its inherent power had made fresh appraisal of its earlier order and reviewed its earlier order dated 17.6.1997 and had unanimously resolved to reinstate the Respondent No. 6 as Head Assistant vide order 12.11.2001 and for that purpose no previous sanction of the State Government was necessary which is necessary for giving re-employment of a retired person or a person prematurely retired on grounds of physical and mental disability.

7. According to the learned Counsel for the "Board", the Petitioner has no locus standi to challenge the decision of the "Board" dated 12.11.2001 to file the present petition. However, the learned Counsel for the Petitioner has controverted by submitting that since the Petitioner's right of promotion was being taken away and the Petitioner's seniority in service was being affected and since the Resolution No. 3 was passed in the teeth of the order dated 5.1.2001 and by Resolution No. 4 his legal rights have been taken away. Therefore, in view of the observations made by the Supreme Court in *P. Lal Vs. Union of India (UOI) and Others*, the Petitioner has every right and locus standi to challenge the impugned order and oppose the actions of the Respondents by way of filing the present writ petition. For this purpose, attention of this Court has been drawn to paragraphs 21 and 30 of *P. Lal v. Union of India and Ors.* (supra).

27. ...Thus, amongst other things, the question of seniority is a matter which is a service matter. Section 14 vests in the Tribunal the jurisdiction, power and authority earlier exercised by Courts, amongst others, in respect of service matters. As admitted by Mr. Jethmalani if Respondent 3 is allowed to remain in service he would be senior to the Appellant. The Appellant's seniority would be affected. If in fact Respondent 3 has ceased to be in service, the question of seniority between the Appellant and Respondent No. 3 would not arise. Thus the Appellant can legitimately point out that Respondent 3 has ceased to be in service. Thus the Appellant's claim is not based on mere expectations or accidental windfall. The Appellant is a person aggrieved and has locus. Even otherwise, as has been explained in great detail, both by the Tribunal as well as the High Court, the Tribunal had jurisdiction to entertain the application filed by the Appellant. Merely because Respondent 3 made a statement before the High Court that he would not claim seniority would not be a ground for holding that

the Tribunal had no jurisdiction. A statement made in a writ petition before the High Court would not deprive the Appellant of locus and/or the Tribunal of jurisdiction.

30. In view of the above, it is held that the High Court erred in coming to the conclusion that the relationship of master and servant had not been terminated. As has been set out hereinabove, the relationship of master and servant had been terminated before Respondent 3 sought to withdraw his request for voluntary retirement on 18.4.1995. Once relationship of master and servant had been severed and/or terminated, by this back-door method, Respondent 3 could not get back to service. The order of the Government of India dated 14.8.1997 cannot be sustained and was correctly quashed by the Central Administrative Tribunal. In this view of the matter the impugned judgment requires to be and is hereby set aside. The order of the Central Administrative Tribunal dated 3.2.1998 is restored.

8. The learned Counsel for the Petitioner while controverting the assertions made by the learned Counsel for the Board has submitted that in view of the observations made by the Supreme Court in Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others, a quasi-judicial authority cannot review its own order unless the power of review is expressly conferred on it by the statute under which it derives its jurisdiction. In view of such settled position of law the "Board" has no power and jurisdiction to pass Resolution No. 3 dated 12.11.2001. I find force in the contentions of the learned Counsel for the Petitioner.

9. Upon hearing the learned Counsel for the parties, I find that the Assam Municipal Act, 1956, does not provide power to the "Board" to review its own decision or take any fresh decision by way of a resolution to overcome the decision of the High Court when the "Board" was aware that the Single Judge by order dated 5.1.2001 had already upheld the compulsory retirement of the Respondent No. 6 and the controversy in question was set at rest then by circumventing the judicial order, the Board has acted illegally without any power, scope or jurisdiction by reinstating the Respondent No. 6 by ignoring the claim of the Petitioner. On the face of it the action of "Board" is discriminatory in view of the observations of the Supreme Court in P. Lal (supra) which protects the stand of the Petitioner, so far as, the locus standi to challenge and file the present writ petition is concerned.

10. In the instant case the "Board" was not empowered to put new life to the issue which was already set at rest. In such view of the matter the Resolution No. 3 is held illegal without any jurisdiction, therefore, it is set aside, consequent upon, the Respondent No. 6 has no legal right to hold the post of Head Assistant any longer on the strength of the resolution dated 12.11.2001.

The writ petition stands disposed with the above observation and directions. In the facts and circumstances of the case, there would not order as to costs.