
(2016) 06 GAU CK 0062
In the Gauhati High Court
Case No : W.P. (C) No. 1349 and 1787 of 2015

Sayqul Islam Laskar

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 16-06-2016

Acts Referred:

Citation : (2017) 2 GauLR 394 : (2016) 3 GauLT 643

Hon'ble Judges : Arup Kumar Goswami, J.

Bench : Single Bench

Advocate : Mr. A.M. Barbhuiya, Mr. P. Saikia and Mr. B. Gogoi, Advocates, for the Appellant; Mr. M.H. Mazarbhuiya and Mr. I.H. Barbhuiya, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

Arup Kumar Goswami, J.— Heard Mr. AM Barbhuiya, learned counsel for the petitioner (Sayqul Islam Laskar). Also heard Mr. MH Mazarbhuiya, learned counsel for Sirajul Hoque Barbhuiya, who is arrayed as respondent No.6 in the first writ petition and as respondent No.7 in the second writ petition. Also heard Mr. P. Saikia, learned standing counsel, Secondary Education Department and Mr. B. Gogoi, learned standing counsel, Finance Department in the first writ petition. Mr. I.H. Barbhuiya, learned counsel for the respondent No.6 in the second writ petition is also heard.

2. The writ petitions pertain to provincialization in the post of Office Assistant in the Mahammadia Senior Madrassa, Hailakandi. The writ petitions have a chequered history as number of writ petitions had come to be filed earlier. However, it will not be necessary to burden this order with the details regarding the factual matrix involved as the writ petitions are not disposed of on merit but per force of circumstances, are disposed of with certain directions to the Secretary, Secondary Education, which will be indicated in the later part of this order.

3. The last of the writ petition involving the petitioner (Sayqul Islam Laskar) and Sirajul Hoque Barbhuiya (respondent No.6/7) is W.P.(C)No.2656/2013. The aforesaid writ petition was disposed of by an order dated 19.6.2014(Annexure-15 to the WP©No.1787/2015). The operative portion of the order reads as under:

??" After hearing the learned counsel of the parties, both the writ petitions are disposed of with the direction that on or before 25.07.2014, the writ petitioner of WP(C) 2656/2013, namely, Sayqul Islam Laskar shall submit a fresh representation before the Commissioner and Secretary, Education (Secondary) Department, Assam with his all grievances along with a copy of this writ petition including the annexure therein and the certified copy of this order. In the event of submitting such representation by the said petitioner Sayqul Islam Laskar within the time specified and as directed above, the Commissioner and Secretary, Education, (Secondary) Department, Assam shall on hearing the said petitioner Sayqul Islam Laskar; the Superintendent and the other authorities of Mohammedia Senior Madrassa, Hailakandi; the respondent No.6 Shirajul Haque Barbhuiya and the Director of Madrassa Education, Assam and on verifying the records, shall dispose of the said representation of the petitioner Sayqul Islam Laskar by a speaking order on or before 12.09.2014 and shall furnishing a copy of the said speaking order to the petitioner Sayqul Islam Laskar.

Till such disposal of the representation of the petitioner Sayqul Islam Laskar as stated above by the Commissioner and Secretary, Education, (Secondary) Department, Assam; the teaching and non-teaching staff of Moham-media Senior Madrassa, Hailakandi District shall not be provincialised.

In terms of the above, this writ petition stands disposed of."

4. A perusal of the said order goes to show that, amongst others, the Commissioner & Secretary, Education (Secondary) Department was directed to dispose of the representation of the petitioner after hearing the petitioner and the respondent No.6/7 herein and after verification of records.

5. It is pointed out by Mr. P. Saikia, learned standing counsel, Secondary Education Department that there is no Commissioner & Secretary in the Education (Secondary) Department but there is a post of Secretary, Education (Secondary) Department.

6. Mr. AM Barbhuiya, the learned counsel for the petitioner has submitted that a semblance of hearing had taken place before the Deputy Secretary to the Government of Assam, Education (Secondary) Department and no hearing had taken place before the Secretary, Education (Secondary) Department. In fact, the notice dated 1.11.2014 (Annexure-17 to the WPC©No.1787/2015) goes to show that the hearing was fixed before the Deputy Secretary to the Govt. of Assam, Education (Secondary) Department. He has pointed out that the date of order passed in W.P.(C)No.2656/2013 was wrongly recorded as 14.7.2014 instead of 19.6.2014 in the said notice as well as in the order dated 27.2.2015

(Annexure-22 to the WP©No.1787/2013), which came to be passed by the Secretary to the Government of Assam, Education (Secondary) Department. He has also drawn attention of the Court to paragraph-8 of the writ petition in support of his submissions. Mr. Barbhuiya has further submitted that he himself appeared before the Deputy Secretary to the Government of Assam, Education (Secondary) Department for the purpose of hearing.

7. In the affidavit filed by the respondent No.7 in the second writ petition, statements made in paragraph-8 are not controverted. Perusal of the notice dated 1.11.2014 (Annexure -17 to the WP©No.1349/2015) goes to show that all the parties were asked to appear for hearing in the office chamber of the Deputy Secretary to the Govt. of Assam, Education (Secondary) Department. No affidavit is filed by the State respondents stating that hearing was conducted by the Secretary (Secondary) Education.

8. It would be apposite to observe that the date 14.7.2014 recorded in the notice dated 1.11.2014 and the order dated 27.2.2015, is the date of issuance of certified copy of this Court's order dated 19.6.2014 passed in W.P. (C)No.2656/2013.

9. In the order dated 27.2.2015, which was issued purportedly in compliance of the order passed in W.P.(C)No.2656/2013, conspicuously there is no mention of any hearing being afforded to any of the parties. All that was adverted to in the said order is with reference to records. If the personal hearing was granted, as directed by this Court, the same should have found a mention in the order.

10. It appears to the Court that some hearing was taken by the Deputy Secretary to the Government of Assam, Education (Secondary) Department and the order was, later on, passed by the Secretary to the Government of Assam, Education (Secondary) Department. Such an order cannot stand in law in view of the law laid down by the Hon'ble Supreme Court in the case of Gullapalli Nageswara Rao & Ors. v. Andhra Pradesh State Road Transport Corporation & Anr., reported in AIR 1959 SC 308. In the aforesaid case, the Hon'ble Supreme Court had laid down the principle that if the hearing is done by one authority and the order is passed by another authority, the same does not conform to the principles of natural justice and the hearing becomes an empty formality.

11. In that view of the above matter, I am of the considered opinion that the order dated 27.2.2015 cannot be sustained in law and the same is, therefore, set aside.

12. The Secretary to the Government of Assam, Education (Secondary) Department is now directed to comply with the directions contained in the order dated 19.6.2014 passed by this Court in W.P.(C)No.2656/2013 in to, within a period of 2(two) months from the date of receipt of a certified copy of this order, which can be produced by any of the parties, before him.

13. The interim order dated 5.6.2015 passed in W.P.(C)No.1349/2015 directing

maintenance of Status-quo by the parties will continue till the matter is considered and decided by the Secretary to the Government of Assam, Education (Secondary) Department.

14. With the above directions, both the writ petitions stand disposed of.