
(2014) 03 GAU CK 0070
In the Gauhati High Court
Case No : W.P. (C) No. 3859 of 2010

Sheuly Laskar

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 20-03-2014

Acts Referred:

Citation : (2014) 2 GLD 224 : (2014) 2 GLT 827

Hon'ble Judges : Tinlianthang Vaiphei, J

Bench : Single Bench

Advocate : D.K. Sarmah, Advocate for the Appellant; B. Choudhury, Standing Counsel, Advocate for the Respondent

Final Decision : Allowed

Judgement

Tinlianthang Vaiphei, J.—Both Mr. D.K. Sarmah, the learned counsel for the petitioner and Mr. B. Choudhury, the learned Standing Counsel for Education Department have been heard extensively. Aggrieved by the stoppage of the regular time scale of pay by the respondent authorities to her with effect from November, 2003, the petitioner is filing this writ petition for appropriate relief. The material facts of the case are that the petitioner was appointed as stipendiary teacher on a monthly stipend of Rs. 900/- per month by the order dated 19.6.1995 in terms of the direction of this Court in C.R. No. 1089/1995. She came to be posted at Biltila L.P. School. One of the terms and conditions of the appointment is that she would be allowed the time scale of pay after successful completion of the Assam Junior Basic Training. However, the respondent authorities never sent her for the training although many other similarly situated stipendiary teachers were deputed for the training. Finally, by the order date 14.2.2001 issued by the Deputy Inspector of Schools, Silchar allowed her to draw the time scale of pay of Rs. 3,130-6,600/- per month with other allowances from January, 2001. Her happiness turned out to be temporary as the time scale of pay extended to her was subsequently withdrawn with effect from November, 2003, and the same was replaced by a monthly stipend of Rs.

1,800/- on the ground that she did not complete the Assam Basic Training.

2. According to the petitioner, it is not that she had ever refused to undergo the training when being deputed or offered. In the meantime, the petitioner on her own underwent training of similar nature namely, the Certificate in Primary Education (CPE) organized by the Indira Gandhi National Open University (IGNOU) and successfully completed the same with an overall grade point of 3.66 and Grade B, which is categorized as very good qualitative level. At this stage, it may be noted that the Government of Assam in the Education (Elementary) Department in the meantime issued the notification dated 11.4.2003 declaring teachers, who have worked as teachers against sanctioned posts for at least 10 years and have successfully completed certificate (Course) in Primary Education (CPE) conducted by IGNOU in "Distance Mode", as "Trained Teachers". Armed with this, the petitioner once again approached the Respondent No. 2 requesting him to pay her the time scale of pay. Even after this, the time scale was denied to her whereupon she approached this Court in WP(C) No. 1222/2009. This Court by the order dated 23.3.2009 closed the writ petition by leaving the petitioner to submit an appropriate representation before the Respondent No. 2 so as to enable him to take necessary steps in terms of the order dated 11.4.2008 passed by the Division Bench of this Court in W.A. No. 482/2003. This order was promptly communicated to the Respondent No. 2, who, however, issued the impugned order on the ground already stated above. Aggrieved by this, she is now initiating this second round of litigation.

3. The submission of the learned counsel for the petitioner is that the respondent authorities cannot take advantage of their own failure to send the petitioner for the training for denying the benefit of time scale of pay to her inasmuch as she has never refused to undergo the basic training; it was the respondent authorities who never deputed her for the training. According to the learned counsel for the petitioner, the refusal of the respondent No. 2 to deny the time scale to the petitioner even after she had completed the basic training on her own initiative is arbitrary and absolutely unfair, more so, he is taking advantage of his own failure to depute her on training. He, therefore, submits that the impugned is illegal and is liable to be quashed.

4. On the other hand, Mr. B. Choudhury, the learned Standing Counsel for Education Department submits that the SCERT does not recognize the course undertaken by the Assam Junior Basic Training as the same is not contemplated by the order of appointment of the petitioner and, as such, the impugned order does not suffer from any infirmity calling for interference of this Court. He further submits that the petitioner was appointed in the year 1995 and her eligibility is to be governed the rule applicable at the time when she was appointed as stipendiary teacher inasmuch as the eligibility criteria cannot be given retrospective effect. It is further contended by the learned standing counsel that there is a difference between the Junior Basic Training imparted by the SCERT and the CPE under the IGNOU. In the case of the Junior Basic Training Course

imparted by the SCERT, the duration of the training is for one year out of which three months is devoted for practical activities and school based activities of the teachers in their own schools with approximately one hundred seventy one working days for the rest of the nine months training in various training centres like DIET/BTC, etc. However, in the case of CPE, the training is only for six months distance mode training course where classes are held only on Saturdays and Sundays. He, therefore, submits that the two training courses cannot be compared and CPE training undergone by the petitioner cannot satisfy the requirement of the training contemplated by the order of appointment of the petitioner. He finally contends that when no specific circular/notification is issued by the Government of Assam stating that the stipendiary teachers and/or fixed pay teachers who had successfully completed the training under the IGNOU are to receive regular time scale of pay, the Respondent No. 2 cannot allow the petitioner to draw such time scale of pay. He, therefore, strenuously argues that this writ petition is liable to be dismissed being devoid of merit.

5. Having heard the learned counsel appearing for the opposite parties and having perused the pleadings and materials on record, I am of the view that this writ petition deserves to be allowed. At the outset, it may be observed that the respondent authorities, who have the duty to depute the petitioner for undergoing the Assam Junior Basic Training, did not do so for reasons best known to them. Having denied her the opportunity to undergo such training, they cannot use this deficiency on their part as the ground for rejection of the claim for time scale of pay to the petitioner. Secondly, the petitioner on her own had already completed the certificate course in Primary Education under IGNOU by 2008. As per the notification dated 11.4.2003, the Government of Assam has also declared those teachers working against sanctioned post for at least 10 years and have successfully completed the CPE conducted by the IGNOU in "Distance Mode" as trained teachers. In other words, by this notification, the training undergone by the petitioner at IGNOU has conferred upon her the qualification of "Trained Teacher". Once the petitioner is treated as "trained teacher" by the operation of the said Notification dated 11.4.2003, there is no need for a separate notification/circular from the Education Department of Assam to declare again that stipendiary teacher such as the petitioner who had completed CPE under the IGNOU, is entitled to receive regular time scale of pay like the stipendiary teachers passed the Junior Basic Training during July to December, 2008. To say the least, the view taken by the respondent No. 2 is somewhat perverse and arbitrary: he is unnecessarily indulging in the exercise of semantic or what they call legalistic hair splitting. In that view of the matter, I have no hesitation to hold that the decision of the Respondent No. 2 in the impugned order suffers from irrationality, which cannot be sustained in law. For the reasons stated in the foregoing, this writ petition succeeds. The impugned order dated 23.3.2010 is accordingly quashed. The Respondent No. 2 is, therefore, directed to pay the salary and allowances of the petitioner on the basis of the time scale of pay admissible to her with effect November, 2003 within a

period of 3 (three) months from the date of receipt of this judgment.