
(2012) 03 GAU CK 0033
In the Gauhati High Court
Case No : Writ Petition (C) No. 5348 of 2011

Shri Chadiram Narah

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 01-03-2012

Acts Referred:

Citation : (2012) 2 GLD 648

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : U.K. Nair, for the Appellant; M.R. Pathak, SC, H.K. Barman, GA and B. Gogoi, for the Respondent

Judgement

B.K. Sharma, J.—In this batch of writ petitions the order under challenge is the one dated 07.04.2011 (Annexure-13) passed by the Commissioner and Secretary to the Govt. of Assam in the Education (Elementary) Department by which the claim of the petitioners for payment of salary withheld from August 2007 has been rejected. The order so passed is pursuant to the judgment and order dated 05.02.2009 passed in a batch of writ petitions including W.P.(C) No. 2651/2008 and W.P.(C) No. 2735/2008 in which the present petitioners were the writ petitioners alongwith some others. To be precise, the present petitioners involved in W.P.(C) No. 3532/2011, W.P.(C) No. 5384/2011, W.P.(C) No. 3535/2011, W.P.(C) No. 3437/2011 were the petitioners No. 2, 4, 5 and 6 respectively in W.P.(C) No. 2651/ 2008. On the other hand, the petitioners involved in W.P.(C) No. 3886/2011, W.P.(C) No. 3870/2011, W.P.(C) No. 3859/2011, W.P.(C) No. 3888/2011 and W.P.(C) No. 3956/2011 were the petitioner Nos. 1, 2, 3, 4 and 5 in W.R.(C) No. 2735/2008. According to the petitioners, they were appointed pursuant to various judgments and orders passed by this Court. One of such judgments is the Division Bench Judgment dated 15.02.1991 passed in writ petitions being C.R. No. 1637/1989, CR. No. 1638/1989, C.R. No. 1748/1989 and CR. No. 1926/1989.

2. The said writ petitions were disposed in which it was held that those honorary

teachers having had 10 years of service would be entitled to regular appointment. The direction was issued for payment of salary from March, 1991. The petitioners have also placed reliance on the judgment and order dated 19.05.1994 passed in another writ petition being C.R. No. 97/1994 by which the learned Single Judge of this Court in reference to the aforesaid Division Bench judgment, issued direction to take a decision with regard to regularisation of services of the petitioners in the light of the said Division Bench judgment. Another judgment on which the petitioners have placed reliance is the Division Bench judgment dated 25.04.1998 passed in C.R. No. 212/1987 by which the Division Bench in reference to the provision of Assam Elementary Education (Provincialisation) Rules, 1997, issued direction to consider the case of the petitioners involved in the said writ petitions in the light of the observations made in the said judgment. It was observed that while selecting candidates according to the percentage of division preference will be given to the persons having Senior Basic Training, Normal and Junior Basic Training courses.

3. There is no dispute that the petitioners were appointed during the period from 1992 to 1995. It will be pertinent to mention here that some other persons were also appointed in 1989. Their services were dispensed with and/or terminated in May, 1992. All the petitioners were appointed after May, 1992. This aspect of the matter has been referred to as the impugned order speaks of those teachers whose services were dispensed with in May, 1992.

4. After the aforesaid appointments of the petitioners they had been given regular salary. They have also undergone JBT course and on successful completion of the same, they have been paid salary in the time scale of pay. They had the occasion to agitate their grievance when they were not paid salary since August, 2007 by filing the aforesaid writ petitions, namely W.P.(C) No. 2651/2098 and W.P.(C) No. 2735/2008. The writ petitions were taken up alongwith other writ petitions raising the same grievance for hearing and were disposed of by judgment and order dated 05.02.2009. By the said judgment and order, the Commissioner and Secretary, Govt. of Assam in the Education (Elementary) Department was directed to enquire into the matter and pass appropriate order. For a ready reference the operative part of the said judgment and order is quoted below :

37. Noticeably there is yet no refutation of the fact that the petitioners are rendering their services as on date. As alluded hereinabove, appointment of some prima facie appear to be in compliance of the orders of the Court as well as on the basis of selection held. Be that as it may, having regard to the nature of the proceedings and the inherent limitations in the extent of probe into factual details, it is not possible for this Court to arrive at any unhesitant conclusion with regard to their entitlements of salary as claimed. The materials on record are not adequate enough to sustain the claim made and facts and circumstances warrant further verification of the records for an appropriate decision.

38. The omission on the part of the respondents to offer their counter or to

produce the records is an appalling failure of State. While recording my strong displeasure on this inexplicable default on the part of the respondents which has the potential of undermining the process of administration of justice deserving judicial censure, in my estimate, having regard to the interest of the State revenue, the best course advisable would be, to remit the issue to the appropriate State authorities for due verification of the petitioners' claim for salary as made and take a decision in accordance with law. Ordered accordingly.

39. The Commissioner and Secretary to the Government of Assam, Education (E & S) Department, would cause immediate steps to be taken in this regard. Needless to say, the petitioners, in view of their stake in the matter would be afforded all reasonable opportunities or participating in the process. The aforementioned State authority would, if felt necessary, delegate the exercise to any subordinate competent departmental authority preferably the Director of Elementary Education, Assam to conduct the process. In doing so, the enquiring authority would examine all relevant records, with due opportunity to the petitioners and determine the issue on the basis thereof as well as the backdrop of the observations made hereinabove. The exercise, as ordered, should be completed within a period of two months from the date of receipt of certified copy of this order and the resultant decision would be communicated to the petitioners forthwith thereafter. Needless to say, in case the petitioners or anyone or more of them are found entitled to their dues, immediate steps would be taken to disburse the same. Any slackness or failure to comply with the directions made hereinabove would be viewed very seriously occasioning stringent actions against the erring authorities.

5. Pursuant to the aforesaid direction, the Commissioner and Secretary passed the order dated 07.04.2011 impugned in this proceeding in respect of the petitioners involved in the earlier writ petition being W.P.(C) No. 2651/2008. As regards the remaining five petitioners involved in W.P.(C) No. 2735/2008, a separate order has been passed which is also under challenge and the same are quoted below :

GOVT. OF ASSAM EDUCATION (ELEMENTARY) DEPARTMENT DISPUR ::
GUWAHATI-6

ORDER

Read : The directions of the Hon'ble High Court in the judgment and Order dated 05.02.2009 passed in W.P.(C) No. 2651/2008 (Shri Kusha Kanta Dutta & 5 others)

Also Read: The report and findings of the Director, Elementary Education, Assam vide letter No. EHA 134/2008/376 dated 05.03.2010.

Findings : There are 6 petitioners viz. 1) Shri Kusha Kanta Dutta, 2) Smt. Tarini Handique, 3) Shri Mohan Chandra Ngate, 4) Shri Chandiram Narah, 5) Smt Malati Handique and 6) Shri Pradip Sarma.

Shri Kusha Kanta Dutta was serving as Honorary Teacher at Kopahtoli LP School

appointed by Managing Committee of the School on- 06.03.1984. The other petitioners were also serving as Honorary Teachers in different schools appointed by the respective managing Committee in different years from 1981 to 1983. All the 6 petitioners were appointed as Assistant Teachers by the then Deputy Inspector of Schools in December, 1989 against nonexistent posts. Subsequently their services were terminated in 1992 and they were paid salary for 29 months for the period they worked. It appears from the report and findings of the Director, Elementary Education, Assam and also available records that Shri Kusha Kanta Dutta filed a writ petition CR No. 3057/1991 (Petitioner No. 10) for his permanent appointment. The Hon"ble High Court by order dated 03.12.1992 in CR No. 3057/1991, Shri Prabir Baruah & Others v. State of Assam & others, directed that 8 months yet to be completed for 10 years of service be condoned and also directed the Director, Elementary Education, Assam to pass necessary orders. The Hon"ble High Court contemplated drawl of contempt proceeding against Director, Elementary Education for non-compliance of the order dated 03.12.1992 in CR No. 3057/1991 by order dated 16.12.1998 passed in CR No. 6352/1998. The Director of Elementary Education, Assam issued direction to Deputy Inspector of Schools, Dhemaji vide letter No. EHA 603/98/98 dated 26.02.1999 to appoint Shri Kusha Kanta Dutta. The Deputy Inspector of School, Dhemaji appointed Shri Kusha Kanta Dutta vide order No. Dis/DMJ/ HC/98-99/9427-34 dated 18.03.1999.

Smt. Tarini Handique filed a writ petition CR No. 756/1993 in the Hon"ble High Court. The Hon"ble High Court by order dated 01.04.1993 disposed of the writ petition observing that the fact of the case is covered by the order passed by the Court in CR No. 1637/1989 and order dated 23.07.1992 passed in CR No. 268/1992. Also directed that Director, Elementary Education, Assam shall examine and verify the claim of the petitioner in terms of the judgment in Civil rules mentioned above, The Director, Elementary Education, Assam directed the Deputy Inspector of Schools, Dhemaji to appoint Smt. Tarini Handique against regular vacancy vide his order No. EHA 73/93/25300 03 dated 11/11/1993. The Deputy Inspector of Schools, Dhemaji appointed Smt. Tarini Handique as Assistant Teacher at Akajan L.P. School vide his order No. 6387-92 dated 09.06.1995.

Smt. Mohan Chandra Ngate filed a writ petition CR No. 97/1994 and the Hon"ble High Court by order dated 19.05.1994 directed the Director, Elementary Education, Assam to take a decision for regularisation in the light of the decisions of Hon"ble High Court in CR No. 1637, 1638, 1748 and 1926 of 1989. The Director, Elementary Education, Assam issued order to the Deputy Inspector of Schools, Dhemaji to appoint Shri Ngate as Assistant Teacher as stipendiary basis. As per order dated 19.10.1994 in CR No. 3738/1994 vide his order No. EHA 294/94/44 dated 07.09.1995 the Deputy Inspector of Schools, Dhemaji issued appointment vide memo No. Dis/DMJ/ HC/122/94/73A/7549-56 dated 20.10.1995.

Shri Chandiram Narah filed a writ petition CR No. 97/1994 in the Hon''ble High Court. The Hon''ble High Court by order dated 19.05.1994 passed in CR No. 97/1994 issued direction that the authorities shall take into consideration the inspection note dated 15.03.1993 of the Assistant Inspector of Schools, Amguri Circle and the inspection note dated 07.04.1993 of Assistant Inspector of schools, Dhemaji Circle and the service put in by the petitioner and take a decision with regard to regularisation of the petitioners in the light of the decisions of the High Court in CR No. 1637, 1638, 1748 and 1926 of 1989. The Director, Elementary Education, Assam issued order to the Deputy Inspector of schools, Dhemaji to appoint Shri Chandiram Narah as Assistant Teacher on stipendiary basis vide his memo No. EHA 294/94/44 dated 04.09.1995. The Deputy Inspector of schools, Dhemaji issued appointment order to Shri Chandiram Narah vide his memo No. DI/DMJ/SH/122/94/72A/7557-64 dated 20.10.1995.

Smti Malati Handique was one of the petitioners in CR No. 1637/89 (Smt. Kunjalata Gogoi & 11 Ors.). The Hon''ble High Court vide order dated 15.02.1991 passed in CR Nos. 1637/89, 1638/89, 1748/89 and 1926/89 observed that "we though it safe that those who have worked for 10 years as Honorary Teachers should have the benefits of regular appointment". The Deputy Inspector of schools, Dhemaji issued appointment to Smt. Malati Handique vide order No. 10283/1993 dated 03.05.1991.

Shri Pradip Sarma was filed a writ petition in Hon''ble High Court and the Hon''ble High Court by order dated 05.04.1993 in CR No. 806/1993 directed the Director, Elementary Education, Assam to examine and pass necessary orders. The Joint Director of Elementary Education, Assam issued direction to the Deputy Inspector of Schools, Dhemaji vide letter No. EHA 53/1993 dated 15.07.1993 to appoint Shri Pradip Sarma in view of his working experience as Honrary Teacher and in pursuance of Hon''ble High Court's order. The Deputy Inspector of Schools, Dhemaji issued appointment orders on the basis of Director, Elementary Education, Assam's instruction and Hon''ble High Court's direction vide his memo No. 3800-07 dated 21.06.1994.

"Decisions: After careful consideration and examination of the report and findings of the Director, Elementary Education, Assam and other available records it appears that the none of the petitioners had challenged the termination order issued by the authority in 1992. In a recent decision of the Hon''ble High Court in the order dated 08.04.2010 passed in W.P.(C) No. 3142/2008, the authority is required to decide for payment of salary in those cases only where the petitioners challenged the termination orders and that too, after verification of certified copy of order of Hon''ble High Court's order with the Registry of Hon''ble High Court through the Standing Counsel of Education department. In terms of the above mentioned order the claim of the petitioners Shri Kusha Kanta Dutta does not seem to be tenable for release of salary and hence it is rejected. So also the claims of the other 5 petitioners are not tenable in terms of the

judgment and order dated 08.04.2010 passed in W.P.(C) No. 3142/2008 and hence those are rejected.

6. I have heard Mr. U.K. Nair, Learned Counsel for the petitioners as well as Mr. M.R. Pathak, learned SC, Education Department. I have also heard Mr. B. Gogoi, learned SC, Finance Department.

7. Mr. Nair, Learned Counsel for the petitioners submits that in the impugned orders nothing is discernible as to why the petitioners are not entitled to get their salary. He submits that the purported decision contained in the impugned orders is not a decision at all. He submits that on a total reading of both the impugned orders, it will go to show that there is total non- application of mind.

8. Mr. Pathak, learned SC, Education Department on the other hand submits that having regard to the observations made in the judgment and order dated 05.02.2009 passed in the aforesaid batch of writ petitions, the Commissioner and Secretary had no other option than to pass the impugned orders. Referring to the observations made in the said judgment, Mr. Pathak, learned SC, Education Department submits that the fact that the petitioners were illegally appointed is easily discernible and consequently there is nothing wrong in passing the impugned orders.

9. So far as the aforesaid Division Bench judgment dated 15.02.1991 to which the petitioners have referred to, they have attained their finality and this Court is not empowered to reopen the same. By the said judgment, directions were issued to consider the case of the petitioners. In fact, the Division Bench judgment dated 15.02.1991 passed in the batch of writ petitions being CR No. 1637/89, CR No. 1638/89, CR No. 1748/89 and CR No. 1926/89, clear direction was to regularise the services of the honorary teachers who had worked for 10 years. Following the said decisions, learned Single Judge of this Court passed the judgment and order dated 19.05.1994 in another writ petition being CR No. 97/1994. By the said judgment the respondents were directed to consider the case of the petitioners for regularisation in terms of the aforesaid Division Bench judgment. Even otherwise also the services of the petitioners having been regularised on the basis of the said judgment and order, even assuming to be on an erroneous view of the matter, the said settled position cannot be allowed to be reopened by a stroke of pen as has been done in the instant case.

10. In the impugned order dated 07.04.2011, the Commissioner and Secretary has simply referred to the facts involved in the case and thereafter has taken abrupt decision to the effect that the petitioners are not entitled to get their salary. While narrating the facts, it has been clearly stated that the petitioners were appointed pursuant to the direction of this Court. However, the fault attributed to the petitioners in the impugned order is that they did not challenge the order of termination of service issued in May, 1992. Irrespective of any challenge to the order of termination, when the petitioners were appointed thereafter, the respondents cannot find fault with the petitioners in not

challenging the order of termination issued in May, 1992. Only ground which is discernible in the impugned order is that the petitioners did not challenge the termination order issued in May, 1992.

11. In the counter affidavit filed by the respondents basic facts of regularisation of services of the petitioners in consideration of their honorary service have been admitted. In paragraph-8 of the affidavit in opposition filed in W.F.(C) No. 5384/2011, the Commissioner and Secretary, Education (Elementary) Department has narrated the facts as to how the services of the petitioners were regularised pursuant to the orders passed by this Court. It has also been contended in reference to the subsequent orders passed by this Court, that there was no direction to regularise the services of the petitioners. Thus, the Commissioner and secretary has sought to reopen the matter which has attained its finality long back. The petitioners having been appointed during 1992 to 1995 and they having continued in their services for all these years, and having been paid salary till July, 2007, the respondents cannot now take the plea that they are not entitled to get their salary from August, 2007.

12. One interesting feature of the impugned order is that the author of the said order has referred to the judgment and order dated 08.04.2010 passed in W.P. (C) No. 3142/2008 in which it was held that salary will be payable only to those teachers who had challenged the order of termination issued in May, 1992. The said direction was in the context of that issue and not otherwise. Moreover the grievance of the petitioner which arose in August, 2007 cannot be justified on the basis of the said judgment dated 08.04.2010, which has also no application at all to the case in hand.

13. In the instant case, the petitioners were appointed after termination of service in May, 1992. Such appointments were preceded by various orders of this Court. Said orders after attaining its finality cannot be reopened in the manner and method in which the impugned orders have sought to do.

14. For all the aforesaid reasons, I am inclined to accept the writ petitions by setting aside and quashing the impugned order date 07.04.2011. Consequently, the petitioners will be entitled to receive salary, both arrear and current. The respondents are directed to pass necessary order in this regard as expeditiously as possible, but at any rate, not later than 30.04.2012. Before parting with the case records, it is placed on record that the petitioner in W.P.(C) No. 3535/2011, Malati Handique v. State of Assam and Ors. was appointed on 03.05.1991 pursuant to positive direction of this Court in the Division Bench judgment dated 15.01.1991 passed in aforementioned writ petitions.