
(2009) 03 GAU CK 0022
In the Gauhati High Court
Case No : Writ Petition (C) No. 790 of 2006

Shri Manik Lal Chandra

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 27-03-2009

Acts Referred:

Citation : (2009) 1 GLD 781 : (2009) 4 GLT 196

Hon'ble Judges : C.R. Sharma, J

Bench : Single Bench

Advocate : B. Ahmed, for the Appellant; M.R. Pathak for Education Department, for the Respondent

Final Decision : Allowed

Judgement

C.R. Sarma, J.—Heard Dr. B. Ahmed, learned Counsel appearing for the Petitioner and Mr. M.R. Pathak, learned Standing Counsel, Education Department, appearing for the Respondents.

2. The Petitioner's case in brief is that the Petitioner has been working as an Assistant Teacher, in the Practicing Government Senior Basic School at Udharbond in Cachar District w.e.f. 4.10.1994. He was initially appointed on ad hoc basis for a period of three months by the Respondent No. 3 vide. Memo No. EBA.3/94/13 dated Guwahati, the 4th October, 1994 (Annexure-4) against the post-allotted Vide Office Order under Memo No. EPD/P/15/94/12 dated 4.3.1994. The said ad hoc appointment was again extended for a further period of three months vide Order dated 13.2.1995, issued by the Director of Elementary Education, Assam, Kahilipara. Thereafter, again, vide Order dated 14th July, 1995, issued by the Director of Elementary Education Department, the service of the Petitioner was extended by another four months. Vide Government Letter No. EPG-567/91/109 dated 16.11.1991 one post of Assistant Teacher was allotted to the Petitioner's school and vide PMA-221/92/198 dated 8.6.1994 on being directed by the Director of Elementary Education vide his letter dated 29.12.1994 and 8th January, 1995, the Headmaster of the Petitioner's school advertised the

post and prepared a penal of fourteen candidates including the Petitioner who was placed at SI. No. 1 and the same was forwarded to the Block Elementary Education Officer, Udharbond, Cachar. Accordingly, the Director of Elementary Education vide his Memo No. EBA.3/94/104 dated Kahilapara 21st September, 1995, in continuation of Memo No. EBA.3/94/103-A dated 14.7.1995, regularized the service of the Petitioner as Assistant Teacher against the post allotted Vide Letter dated 4.3.1994 aforesaid.

3. Though the Petitioner was regularized against the said allotted post. He was not given salary w.e.f. June 1995, as a result of which the Petitioner has been rendering his services without any remuneration. For non-payment of his salary, the Petitioner approached this Court by filling Writ Petition Nos. 3911/01 and 5343/01 and both the Writ Petitions were disposed of with a direction to the Respondent authorities to pay the Petitioner's salary if he was found to be entitled. But according to the Petitioner, the said order was not complied with. It is the Petitioner's case that, in the mean time, there arose substantive vacancies of Assistant Teachers due to retirement of two teachers under non-planned stream and that under the policies of the Government, the Petitioner was required to be considered for conversion of his tenure to the post in the non-planned stream or by way of adjustment, but no action was taken by the Respondent. Rather the Respondent No. 2 issued direction to constitute Selection Committee and Screening Committee locally and start the process of selection for appointment against those vacancies.

In pursuance to the said direction the Head Master of the school invited some local youths, without advertising the vacancies and prepared a penal to fill up the said vacant posts. The panel was forwarded to the Respondent No. 2 and all formalities were completed for appointment. According to the Petitioner the said selection has been made illegally without following the due procedure and if the vacancies are filled up then the Petitioner will be deprived of his legitimate claim. In the circumstances, the Petitioner has come up with this writ petition, seeking direction to keep one of the vacant posts reserved for the Petitioner and to adjust him against such post. The Petitioner has further approached for issuing direction to the Respondents to release his salary w.e.f. June 1995, in terms of his appointment made vide order-dated 4.10.1994 and 21.9.1995.

4. This Court, vide order dated 10.2.2006, after hearing the learned Standing Counsel for the Education Department, was pleased to issue Rule directing the Respondent No. 2 and 3 not to fill up one of the posts of Assistant Teacher in the substantive non-planned vacancies, till the returnable date. This compelled the Petitioner to file a counter-affidavit.

5. Dr. B. Ahmed, the learned Counsel for the Petitioner, taking this Court through the post sanction order issued by the Director of Elementary Education (Annexure-1 and Annexure-2) and the subsequent order of appointment and the order of regularization of the Petitioner in the service has strenuously argued that in spite of regularizing the service of the Petitioner on 21.9.1995 against a

sanctioned post, the Respondent failed to pay the salary of the Petitioner and that the Petitioner has been compelled to render his service without any remuneration for the last 13 years.

6. In reply to the said contention, Mr. M.R. Pathak, learned standing counsel, appearing for the Education Department, submitted that certain anomalies were noticed in some of the appointments relating to the appointment of teachers and that the Government has taken steps for examining the correctness and legalities of such appointments.

7. Carefully perusing the materials on record, more particularly the order dated 21.9.1995 issued by the Director of Elementary Education Department, it is clearly found that the service of the Petitioner, as Assistant Teacher at the Practicing Govt. Senior Basic School, Udharbond, was regularized after his ad hoc appointment. The sanctioned orders dated 4.3.1994 and 16.11.1991, reveal that one post of Assistant Teacher was allotted to the school of the Petitioner. From the letter-dated 27.3.1995, issued by the Head Master of the Petitioner's school, it appears that he had forwarded applications of 14 applicants received for the post of Assistant Teacher. The order-dated 21.3.1995 issued by the Director of Elementary Education indicates that the Petitioner's service was regularized against the said vacant post.

Fact remains, that vide orders dated 1.6.2001 passed in WP(C) No. 3911/01 and 3.8.2001 passed in WP(C) No. 5343/01, this Court directed the Respondents to examine the claim of the Petitioner and to pay his allowances, if he was entitled to get pay in accordance with the law and Rules.

8. In the facts and circumstances as stated above, there is nothing on record as to why the Petitioner has not been paid his salary even after taking his service for a long period.

In view of the submission made by Mr. M.R. Pathak, learned Standing Counsel, Education Department, this Court is of the considered view that the Respondents should expeditiously examine the matter to ascertain if the service of the Petitioner was regularized as per Rules against allotted/sanctioned posts and if so, as to why his pay and allowances have been withheld for such a long period. If the regularization of the Petitioner's service is found to be lawful, steps should be initiated to pay his salary and to fix responsibility as to for whose fault the Petitioner was deprived from his remuneration for such a long period. This exercise should be completed within a period of six months from this date and till then one post of Assistant Teacher in the Petitioner's school should not be filled up.

9. The decision taken in this regard, shall be communicated by the Respondent No. 2 to the Petitioner.

The Petitioner is allowed to produce a certified copy of this order before the Respondent No. 2, who shall take necessary steps as directed herein above.

10. With the above directions this writ petition stands disposed of.