
(2018) 05 GAU CK 0150
In the Gauhati High Court
Case No : WP(C) 5462 of 2015

Smti Prativa Mayee Dey

APPELLANT

Vs

State Of Assam And 5 Ors

RESPONDENT

Date of Decision : 16-05-2018

Acts Referred:

Citation : (2018) 05 GAU CK 0150

Hon'ble Judges : ACHINTYA MALLA BUJOR BARUA, J

Bench : Single Bench

Advocate : I H Saikia

Final Decision : Disposed Off

Judgement

1. Heard Mr. I.H. Saikia, learned counsel for the petitioner. Also heard Mr. N. Sarma, learned standing counsel for the Secondary Education

Department.

2. The petitioner was appointed as an Assistant Teacher in the Pranab Videyapith M.E. school Hojai in the district of Nagaon in the scale of pay of

Rs.1185/- 2395/- plus other allowances as per the order dated 09.04.1993 of the District Elementary Education Officer, Nagaon. While the petitioner

worked as such, the salary and allowances were paid up to May 1995.

3. In the aforesaid circumstance, the petitioner had approached this Court by an earlier writ petition being WP(C) No. 5137/2000. In the said writ

petition, the claim of the petitioner was for payment of salary from 01.06.1995 upto the filing of the writ petition. The said writ petition was given a

final consideration by the order dated 18.09.2000 requiring the petitioner to file a representation before Director of Secondary Education, Assam and

upon such representation being submitted, the Director was required to examine

the matter and pass a speaking order thereto. In other words, the claim of the petitioner for salary from 01.06.1995 upto the filing of the writ petition was given a consideration by this Court in the said writ petition. As required by the order dated 18.09.2000, the petitioner had submitted a representation and the Director upon examining the claim of the petitioner, meaning there by that upon examining the claim for salary from 01.06.1995 onwards, the order dated 27.02.2001 was passed. By the order dated 27.02.2001, the Inspector of Schools had adjusted the service of the petitioner against the retired vacancy. Upon such adjustment, the petitioner continued to receive his salary and allowances in the regular manner. Thereafter in the meantime, the petitioner superannuated from service on 28.02.2017.

4. The present writ petition has been preferred by the petitioner claiming the arrear salary from 01.06.1995 upto January 2001.

5. It is to be taken note of that in the earlier writ petition being WP(C) No.5137/2000, it was the claim of the petitioner for payment of salary from 01.01.1995 upto the filing of the said petition. Therefore, apparently the cause of action and the relief claimed for in WP(C) No.5137/2000 and the present writ petition appears to be one and the same. From the said point of view, this petition would not be maintainable by operation of the principle of resjudicata/constructive resjudicata.

6. It is to be noted that the logical conclusion of the earlier proceeding in WP(C) No. 5137/2000 was the order dated 27.2.2001. It is further taken note of that the order dated 27.02.2001 was not assailed by the writ petitioner at any stage. It has also to be construed that the order dated 27.02.2001 was the ultimate result of the claim of the petitioner of his salary and allowance from 01.06.1995 onwards.

7. But however it is also taken note of that in the order dated 27.02.2001, it was provided that the service of the petitioner was adjusted against the retired vacancy of one Sri Bipulendu Bhattacharjee w.e.f. 01.01.1999. Ordinarily when the service of an incumbent is adjusted against the existing vacant post and in the circumstance when the claim was for arrear salary, it is to be understood that the adjustment made w.e.f. 01.01.1999 also entitles the incumbent for the resultant benefit w.e.f the said date. In other words, the order itself provided that the petitioner be also entitled to salary

and allowances w.e.f. 01.01.1999. But again it is noticed even the said claim was not made by the petitioner immediately upon being deprived of the salary from 01.01.1999 and the present writ petition has been filed in the year 2015. To that extent, an objection raised by Mr. N. Sarma, learned standing counsel for the Secondary Education Department that as per the decision of the Division Bench of this Court in the judgment and order dated 30.05.2012 in WA No. 71/2007 reported in 2013 2 GLT 109, the claim for arrear salary cannot be made for a period prior three years from the date of institution of the petition.

8. Accordingly, Mr. N. Sarma, learned standing counsel takes a stand that the entitlement of the petitioner for salary from 01.01.1999 having occurred on 27.02.2001, therefore, the said claim is beyond the period of three years from date of institution of the present writ petition. However without expressing any view on the said submission, as otherwise, the petitioner was legitimately entitled to all the salary as because he had rendered his service and the respondent authorities had accepted his service and further the authorities themselves having provided that the petitioner is adjusted against the vacant post w.e.f. 01.01.1999, it cannot be said that atleast from 01.01.1999, the petitioner was not entitled to his salary and allowance.

Considering the aforesaid aspect, this Court requires the Director of Secondary Education, Assam to exercise his discretion and pass a reasoned order on the entitlement of the petitioner for his salary w.e.f. 01.01.1999 by taking into consideration the aspect as indicated hereinabove.

9. The aforesaid exercise be done within a period of two months from the date of receipt of the certified copy of the order. Writ petition stands disposed of.