

(2011) 05 GAU CK 0061
In the Gauhati High Court
Case No : W.P.C No. 176 (K) 2009

Smti. Watijungla

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

Date of Decision : 16-05-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 05 GAU CK 0061

Hon'ble Judges : A.K Goswami, J

Bench : Single Bench

Advocate : Tongpok Pongener, for the Appellant; Lucy, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Goswami, J.—Heard Mr. Tongpok Pongener, learned Counsel for the Petitioner and Mrs. Lucy, learned Government Advocate appearing for the Respondent Nos. 1, 2 & 3.

2. The case projected in the present writ petition is that the writ Petitioner was appointed by an order dated 21.11.2001 issued by the Joint Director (HOD), in the Directorate of School Education, Government of Nagaland, as a Hindi Teacher on Adhoc basis in a post which fell vacant in Nazareth School, Pfutsero, consequent upon the death of the incumbent, namely, Shri. Kekuo Angami. According to the terms of the order, the aforesaid appointment was to expire on 30.04.2002

3. It is stated that the service of the Petitioner was continued on the basis of extension orders issued from time to time and the Petitioner continued to work on Ad-hoc basis till 31.12.2006 on the basis of extension order dated 26.03.2006. When the Petitioner prayed for further extension beyond 31.12.2006, the same was not considered. In the meantime, by an order dated 26.08.2008, which was issued by Deputy Inspector of School Education,

Pfutsero, Nagaland, the salary of the Petitioner along with another was for the month of June, 2008 till further extension order is issued by the Director of School Education, Government of Nagaland and as a result, the Petitioner was compelled to approach this Court by a writ petition under Article 226 of the constitution of India which was registered as W.P.(C) No. 7(K)2009. The said writ petition was disposed of by an order dated 02.03.2009.

4. After disposal of the earlier Writ Petition, the Petitioner had come across a letter dated 25.06.2009 addressed to the Additional Advocate General, Kohima Bench, containing instruction in respect of the W.P.(C) No. 07(K) 2009 and along with the said letter, a provisional list of Hindi Teachers as on 30.02.2009(sic), was also enclosed wherein the Petitioners name appears at Sl. No. 545. It is stated that the said provisional list would unequivocally prove that the order dated 26.06.2008 was issued arbitrarily and malafide and that there was No. doubt with regard to the appointment of the Petitioner. It is also stated that in the absence of any written direction from the appointing authority, Respondent No. 3 could not have issued the order dated 26.06.2008 stopping his salary.

5. An affidavit has been filed on behalf by the Respondent No. 3 sworn by the Officer on Special Duty, Directorate of School Education. In the affidavit, it is stated that 1(one) post of Hindi Teacher had fallen vacant on the death of Shri Kekhou Angami at Government High School, Chizami and not at Nazareth School, Pfutsero, Nagaland and in the said post, one Shri. Kevilhou Teno was appointed on 13.09.2000, and the Petitioner was appointed after a gap of 1(one) year. It is also stated that the said appointment was made when one person was already appointed in the vacant post. It is also stated the extension order was also issued without any proper verification and when it was found that appointment of the Petitioner was doubtful, her service was not extended.

6. An affidavit-in-reply was also stated to have been filed. Copy of the said affidavit is, however, not on record. Mrs. Lucy has stated that she had received the copy of the reply affidavit. The learned Counsel for the Petitioner has made available a copy of the said affidavit for perusal of the Court. With reference to the provisional list, it has been stated that the name of one Shri. Kevilhou Teno does not appear in the said provisional list and it is apparent that the appointment order of Shri. Kevilhou Teno is a manufactured document. It is also stated that in respect of the Government High School, Chizami, where the aforesaid Shri. One Kevilhou Teno was supposedly appointed, the name of Shri Thejangulie appears. It is stated that there cannot be any doubt with regard to the appointment order in respect of the Petitioner but a reasonable doubt can be harboured with regard to the appointment of Shri Kevilhou Teno. In the reply affidavit, the Petitioner had also annexed copies of 2 orders passed by this Court, which, according to the writ Petitioner, were analogous to the instant petition.

7. The learned Counsel for the Petitioner submits that while adjudicating the earlier writ petition, the provisional list of Hindi Teachers was not before this Court. According to him, even though similar nature of prayers were made in the

earlier Writ Petition, the fact that his name appears in the Provisional List dated 30-02-2009 (sic), has conferred him with the right to continue in service and therefore, this Court, in exercise of powers under Article 226 of the constitution of India, can issue directions to the Respondent authority to issue extension orders in favour of the Petitioner w.e.f 01.01.2007 till date and to release her salary and to consider her case for regularisation of service in accordance with the Government Policy dated 23.08.2007, in the light of new disclosure made.

8. Mrs. Lucy submitted that the provisional list is not final and there are many discrepancies in the said list. The name of the writ Petitioner is also reflected in the said provisional list. The anomaly that was projected by the learned Counsel for the Petitioner in respect of Shri. Kevilhou Teno is also of not much consequences in as much as the mistakes and errors creeping in there would be corrected. She submitted that the provisional list of Hindi Teachers would not afford a fresh cause of action to the Petitioner, and the matter, which has been decided and attained finality, should not be reopened by this Court.

9. I have considered the submission made by the learned Counsel for the Petitioner and perused the materials available on record.

10. The perusal of order dated 02.03.2009 indicated that the writ Petitioner had sought for direction to be issued to the Respondents to pay her salary and also to regularise her service in terms of the Office Memorandum dated 27.07.2007 issued by the Chief Secretary to the Government of Nagaland which envisaged the scheme for regularisation of service of contractual employee.

11. This Court noted that the writ Petitioner was not appointed following any selection process and therefore, in view of the Constitutional Bench decision in Mohd. Aslam @ Bhure Vs. Union of India (UOI) and Others, No. writ held that in the nature of mandamus could be issued to the government with regard to the service of the Petitioner. This Court also held that the state Respondents could not be forced to continue the Petitioners" in service. However, the Respondent No. 2 was directed to examine the Petitioners grievances with regard to non payment of dues. The learned Counsel for the Petitioner submitted that the order dated 26.06.2008, which is also impugned in the present petition, was also challenged in the earlier petition.

12. There is No. dispute at the bar that the prayer made by the Petitioner in this writ petition for direction to the authority to issue extension order and to consider her case for regularisation of service in accordance to the Government Policy dated 23.08.2007, was decided by this Court in the negative in W.P.C No. 7(K) 2009. The prayer having been rejected, writ Petitioner is not entitled in law to pray for the very same direction in this writ petition. The prayer for salary was also considered and this Court had issued certain direction with regard to the claim of non payment of dues.

13. The Petitioner, on the basis of the preliminary list of Hindi Teachers, is seeking to renew the prayers which are already considered and rejected by this

Court in W.P.(C) No. 7 (K)2009. The preliminary list of Hindi Teachers, in considered view of the court, does not confer any right of the Petitioner, more so, when there is not dispute at the bar that the Petitioner was not in service much prior to 30.02.2009 (Sic). I find sufficient force in the submission of the learned Counsel for the Respondents that the said list does not result in a fresh cause of action so as to entitle the writ Petitioner to invoke writ jurisdiction of this Court seeking the very same relief which was denied in the earlier round of litigation. The learned Counsel for the Petitioner had relied on the orders passed by this Court which are annexed to the reply affidavit. In the said cases, the government had extended the service of the Petitioners on their own, and, therefore, the said cases are distinguishable to the facts of the present case.

14. In the result, this writ petition is devoid of any merit and accordingly, the same is dismissed. No. costs.

15. The Registry is directed to place the affidavit-in-reply filed by the Petitioner on record. The copy of the reply affidavit filed by the Petitioner and handed over to the court be also kept on record.