
(2013) 08 GAU CK 0068
In the Gauhati High Court
Case No : WP (C) No. 2653 of 2008

Sri Ajoy Kumar Choudhury

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 19-08-2013

Acts Referred:

Citation : (2013) 08 GAU CK 0068

Hon'ble Judges : Ujjal Bhuyan, J

Bench : Single Bench

Advocate : S. Sarma in WPC No. 2653/2008, Mr. G. Goswami, Ms. B. Devi and Mr. H.K. Das in WPC Nos. 2653/2008 and 5477/2011, Mr. R.P. Sharma and Ms. R. Devi in WPC Nos. 1970/2011 and 2868/2013, Mr. A.R. Tahbildar and Mr. S. Chanda in WPC No. 1970/2011, for the Appellant; J. Handique, GA, Assam in WP(C) Nos. 2653/2008, 1970/2011 and 5477/2011, Mr. P. Pathak in WP(C) Nos. 2653/2008, 5477/2011 and 2868/2013, Ms. P. Barman in WP(C) Nos. 2653/2008, 5477/2011 and 2868/2013, Mr. S. Sarma, Ms. B. Devi, G. Goswami and Mr. H.K. Das in WP(C) No. 1970/2011, Mr. R.P. Sharma, Mr. R. Devi and Mr. A.R. Tahbildar in WP(C) No. 5477/2011, Mr. B.J. Ghosh, GA, Assam, Mr. N. Dutta and Mr. P. Mahanta WP(C) No. 2868/2013, for the Respondent

Final Decision : Dismissed

Judgement

Ujjal Bhuyan, J.—All the above writ petitions and Misc. applications being somewhat inter-related, those were heard together and are being disposed of by this common judgment and order. For the sake of convenience, the cases are taken up in seriatim.

WP(C) No. 2653/2008

2. In this writ petition, petitioner Sri. Ajay Kumar Choudhury has challenged order dated 08.04.2008 of the Chariman, Barpeta Road Municipal Board (Board). The said decision was taken on the basis of a resolution adopted by the Board on 13.03.2008. As per the said order, petitioner was restrained from drawing salary. Allegation against the petitioner was that he had misappropriated certain fund of

the Board while serving as Accountant of the Board. Accordingly, he was removed from the post of Accountant and posted as UDA.

3. In view of certain facts placed on record by the petitioner by way of additional affidavit dated 21.01.2013, including the certificate of the Chairman of the Board dated 23.05.2011 which shows that certain amounts were recovered from the petitioner and that he has been allowed to work as the In-charge-Head Assistant of the Board w.e.f. 01.03.2003, and because of subsequent developments as would be noticed in the course of the judgment, the issue raised in this writ petition may not require adjudication of the Court.

4. This position is fairly admitted by learned counsel for the parties.

5. In view of above, WP(C) No. 2653/2008 is dismissed as infructuous.

WP(C) No. 1970/2011

6. This writ petition has been filed by three petitioners, who are Ward Commissioners of the Board. They have challenged resolution of the Board dated 19.02.2011 appointing respondent No. 5 (Sri Ajay Kumar Choudhury) as Head Assistant of the Board. As per the said resolution, promotion of one Sri. Dhanjit Das, UDA as Head Assistant was set aside and Sri. Ajay Kumar Choudhury was promoted to the post of Head Assistant. This order has not been challenged by Sri. Dhanjit Das but by the petitioners, who are Ward Commissioners of the Board. However, the said issue need not be gone into, as the Court is of the opinion that in view of the subsequent developments as would be noticed in the course of the judgment, the challenge made in the writ petition no longer survives.

7. Learned counsel for the parties fairly agree to the above position.

8. Accordingly, WP(C) No. 1970/2011 is dismissed as infructuous.

WP(C) No. 5477/2011

9. In this writ petition, the petitioner Sri. Ajay Kumar Choudhury has challenged two orders dated 01.10.2011 and 25.10.2011 passed by the Chairman of the Board. While the order dated 01.10.2011 has not been placed on record, a perusal of the order dated 25.10.2011 (translation does not appear to be correct) would show that petitioner was asked to hand over all the documents and charge of the Office of Head Assistant to one Sri. Dhanjit Das (respondent No. 15). It further discloses the displeasure of the Board in the conduct of Sri. Ajay Kumar Choudhury in not handing over charge to Sri. Dhanjit Das.

10. This Court by order dated 01.11.2011 passed an interim order directing that the petitioner Sri. Ajay Kumar Choudhury should be allowed to continue to function as Head Assistant in the Office of the Board without any hindrance.

11. Petitioner has not enclosed the order of the Board whereby he was appointed as Head Assistant. However, from the additional affidavit filed by him in WP(C)

No. 2653/2008, it is seen that he was allowed to hold temporary charge of the Office of Head Assistant.

12. Sri Gunajoy Choudhury, who subsequently got himself impleaded as respondent No. 16, filed an application for vacation of the interim order dated 01.11.2011, which was registered as Misc. Case No. 2583/2012. This Court by order dated 08.11.2012 allowed the said Misc. Case and vacated the interim order dated 01.11.2011. Relevant portion of the order dated 08.11.2012 is as under:-

Opposite party No. 1 as the writ petitioner has filed WP(C) No. 5477/2011 challenging the legality and validity of two orders dated 1.10.2011 and 25.10.2011 passed by the Chairman, Barpeta Road Municipal Board asking him to hand over charge of the office of the Head Assistant to one Shri Dhanjit Das.

Applicant while serving as Head Assistant in the Barpeta Road Municipal Board was placed under suspension by order dated 5.6.2010. Appeal was filed by the applicant for revocation of the suspension order. As no decision was taken, WP(C) No. 5775/2010 was filed, which was disposed of by this Court by order dated 11.11.2011 by directing the Commissioner & Secretary to the Government of Assam, Urban Development Department to dispose of the appeal filed by the applicant in accordance with law within a period of two months.

Thereafter, the Principal Secretary to the Government of Assam, Urban Development Department passed the order dated 11.1.2012 revoking the suspension order of the applicant and directing his reinstatement as Head Assistant in the Barpeta Road Municipal Board. However, in view of the interim order of this Court, the applicant could not be reinstated in service as Head Assistant.

Ms P. Barman, learned counsel for the applicant submits that the appointment of the writ petitioner was against the suspension vacancy of the applicant and, therefore, he cannot continue in the same post once the applicant is reinstated in that post.

Mr. S. Sarma, learned counsel for the opposite party No. 1/writ petitioner, on the other hand, submits that if the interim order is vacated, the writ petitioner will have to go back to his original post of Upper Division Assistant and that he will have to work under a number of junior officers.

Grievance of the writ petitioner as ventilated in the writ petition will certainly be looked into while deciding the writ petition. On perusal of the documents annexed to the Misc. Application as well as the writ petition, it appears that the opposite party No. 1/writ petitioner was functioning as Head Assistant in the vacancy which occurred because of the suspension of the applicant. Once suspension is revoked by the authority and the applicant is directed to be reinstated in service as Head Assistant, the opposite party No. 1 will have to vacate the said office. Prima facie, there would be no justification to continue

with the interim order.

In view of above, interim order passed by this Court on 1.11.2011 stands vacated.

13. It is thus clear that petitioner was functioning as Head Assistant in the vacancy which occurred because of the suspension of respondent No. 16. Once the suspension was revoked and the respondent No. 16 was directed to be reinstated as Head Assistant, neither the petitioner nor Sri. Dhanjit Das can claim any right to hold the said post. To that extent, direction of the Chairman of the Board to the petitioner to hand over charge of the Office of Head Assistant to Sri. Dhanjit Das cannot be sustained and the said order dated 25.10.2011 would accordingly stand interfered with.

14. In view of the re-instatement of respondent no. 16 as Head Assistant, it is he who is to hold the post of Head Assistant in the Board. Claim of the petitioner to continue as Head Assistant is without any substance.

15. Subject to the observations made above, writ petition is dismissed.

WP(C) No. 2868/2013

16. The Board represented by its Chairman Sri. Dilip Kumar Saha has filed the present writ petition challenging the legality and validity of the following orders:-

(i) Order dated 11.01.2012,

(ii) Order dated 29.11.2012, both passed by the Principal Secretary to the Government of Assam, Urban Development Department,

(iii) Order dated 16.05.2013 passed by the Commissioner, Lower Assam Division.

17. By the order dated 11.01.2012, orders of dismissal and suspension issued by the Chairman of the Board in respect of Sri. Gunajoy Choudhury, Head Assistant were revoked. Sri. Gunajoy Choudhury was directed to be re-instated in service as Head Assistant with a warning to conduct himself properly in future.

18. The above order was passed in terms of order of this Court dated 11.11.2011 passed in WP(C) No. 5775/2010, as already noticed in paragraph 14 of this judgment.

19. By the order dated 29.11.2012, the Chairman of the Board was requested to allow Sri. Gunajoy Choudhury to join the post of Head Assistant in the Board. The above order was passed following the order of this Court dated 08.11.2012 passed in MC No. 2583/2012 vacating the stay order dated 01.11.2011 passed in WP(C) No. 5477/2011.

20. The last order under challenge is dated 16.05.2013 passed by the Commissioner, Lower Assam Division curtailing the financial power of the Chairman of the Board with immediate effect. Deputy Commissioner, Barpeta has been entrusted with the financial power of the Board until further order(s).

21. This Court by order dated 07.06.2013 had issued notice and suspended the order dated 16.05.2013 till the next date i.e. till 24.06.2013. The said order was not extended thereafter.

22. A preliminary objection has been raised by both the learned State Counsel as well as by Mr. N. Dutta, learned Senior Counsel appearing for the newly impleaded respondent No. 7 Sri. Dulal Sutradhar, a Ward Commissioner of the Board, about the maintainability of the writ petition. They have contended that the instant writ petition has been filed by the present Chairman Sri. Dilip Kumar Saha without any authority of the Board. Board has not taken any resolution or decision to file the present writ petition.

23. Section 10 of the Assam Municipal Act, 1956 provides that there shall be established for each Municipality a body of Commissioners designated as the Municipal Board having authority over the municipality. Such a Board shall be a body corporate having perpetual succession and a common seal, and can sue and be sued by that name.

24. A careful reading of Section 10 would show that it is only the Board which has the authority to sue and not the Chairman of the Board.

25. There is no averment in the writ petition to the effect that there was any resolution of the Board authorizing the Chairman to file the present writ petition, though in the affidavit sworn on 22.05.2013 in support of the writ petition, the petitioner has stated that he is representing the Board. However, no such resolution or decision of the Board has been annexed to the writ petition or placed on record. Moreover, vakalatnama is signed by only Sri. Dilip Kumar Saha as the Chairman of the Board without any common seal of the Board.

26. In such circumstances, the Court is of the view that the writ petition filed in the present form is not maintainable.

27. Since it has been held that the writ petition is not maintainable, it is considered not necessary to go into the other aspects of the matter. WP(C) No. 2868/2013 is, therefore, dismissed as not maintainable, without prejudice to the institution of any appropriate proceeding in accordance with law, if so advised.