
(2004) 01 GAU CK 0014
In the Gauhati High Court
Case No : Civil Rule No. 4568 of 1998

Sri Anjan Kumar Dutta and Others	Vs	APPELLANT
The State of Assam and Others		RESPONDENT

Date of Decision : 21-01-2004

Acts Referred:

Constitution of India, 1950 — Article 395
Government of India Act, 1935 — Section 241(2)

Citation : (2004) 01 GAU CK 0014

Hon'ble Judges : B. Biswas, J

Bench : Single Bench

Advocate : J.L. Sarkar, M. Chander and S. Dutta, for the Appellant; Singh, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

D. Biswas, J.—Heard Mr. S.L. Sarkar, learned counsel for the petitioners and also Mrs. Singh, learned State Counsel.

2. The petitioners case is that they have been serving as Assistant Teachers having been initially appointed on ad-hoc basis by the Director of Secondary Education, Assam vide appointment orders issued on different dates from the year 1983 onwards. Their case is that they have been allowed to continue in service without interruption with benefits of annual increments falling due on completion of a year of service. The petitioners felt aggrieved because of the notification dated 28th March, 1998 whereby the Director of Secondary Education, Assam called upon the Inspector of Schools in the State of Assam to review the cases of the petitioners and other similarly situated persons for the purpose of re-fixation of pay without incremental benefits already given. This order was passed by the Director of Secondary Education in pursuance of the Office Memorandum dated 23.9.1997 issued by the State Government. Similarly situated teachers who were adversely affected by the aforesaid Memorandum dated 23.9.1997 approached this Court in Civil Rule No. 2948 of 1998 decided by

this Court on 19.1.2001. The judgment in the aforesaid Civil Rule i.e. Tarunt Amuli Vs. State of Assam and Others, dealt with the question raised in the instant writ petition with regard to the entitlement of the ad-hoc teachers of annual increments on completion of a year of service. In para-7, the Court after going through the provisions in the F.R. 24 and FR. 26(a) came to the conclusion that the incremental benefit of an employee whether permanent or ad-hoc could be withheld only for misconduct or for unsatisfactory performance. Holding thus, the Court quashed the notification dated 23.9.1997. It would be apposite to refer to the relevant excerpts from the aforesaid judgment to better appreciate the claim of the writ petitioners:-

7. Ad-hoc employees whether appointed in pursuance of Rules or otherwise acquires a status as Government servant on such appointment. They cannot be treated at par with appointees on contract or fixed pay. Their service conditions will be governed by the Rules and Regulations as may be applicable to other Government servants so long they are retained in service. Fundamental Rules as are applicable to other Government servants should also govern their service conditions in other spheres including pay matters. Here, we may refer to the following provisions of the Fundamental Rules relevant for this purpose :-

F.R. 24. An increment shall ordinarily be drawn as a matter of course unless it is withheld. An increment may be withheld from a Government servant by the State Government, or by any authority to whom the State Government may delegate this power or his work has not been satisfactory. In ordering the withholding of an increment, the withholding authority shall state the period for which it is withheld and whether the postponement shall have the effect of postponing future increments.

F.R. 26(a). All duty in a post on a time-scale counts for increments in that time-scale;

Provided that for the purpose of arriving at the date of next increment in that time-scale, the total periods as do not count for increment in that time-scale shall be added to the normal date of increment.

8. The provisions above clearly show that increment of a Government servant is to be drawn as a matter of course unless it is withheld for misconduct or unsatisfactory performance. The provisions in F.R. 24 and F.R. 26 do not exclude the ad-hoc Government servants. The Fundamental Rules were framed under provisions of the Government of India Act, 1935. The said Act was repealed by Article 395 of the Constitution of India, but the Fundamental Rules made under provisions of Section 241(2)(b) of the Act of 1935 have been saved. The Fundamental Rules are the laws for the State and, therefore, any decision of the Government contrary to the provisions of the Fundamental Rules will have to be struck down. The impugned notification dated 23.9.97 being ultra-vires of the Fundamental Rules cannot be sustained. The learned State counsel could not show any statutory provision which has over-riding effect so as to enable this

Court to uphold the notification.

9. In the result, the writ petition is allowed and the impugned notification dated 23.9.1997 (Annexure-B) is hereby quashed. The ad-hoc teachers continuing in service beyond one year will be entitled to increments in accordance with the provisions of F.R. 24 and 26. The respondent State is further directed to examine their cases for regularization or absorption in service without loss of time strictly in accordance with the provisions of the rules and the law.

3. The writ petitioners of the case at hand being similarly situated are no-doubt entitled to the benefits given to other Assistant Teachers in the aforesaid judgment. Hence, this petition is disposed of with the direction that the ad-hoc teachers continuing in service beyond one year will be entitled to the incremental benefits as per the provisions of F.R. 24 and 26. The respondent state is directed to examine their cases for regularization or absorption in service immediately in accordance with the provisions of the law and the rules. No order as to cost.