
(2018) 01 GAU CK 0094
In the Gauhati High Court
Case No : 224 of 2012

SRI ATUL CHANDRA CHAKRABORTY & ORS.

APPELLANT

Vs

THE STATE OF ASSAM & ORS.

RESPONDENT

Date of Decision : 11-01-2018

Acts Referred:

Citation : (2018) 01 GAU CK 0094

Hon'ble Judges : Achintya Malla Bujor Barua

Bench : Single Bench

Advocate : K K MAHANTA, KANUNGOE

Final Decision : Disposed

Judgement

1. Heard Mr. K.K. Mahanta, learned senior counsel for the petitioners and Mr. N. Sarma, learned Standing Counsel for the Secondary Education

Department. None appears for the respondent No.4, when the matter is called upon. However, considering the nature of the order that is

proposed to be passed, interest of justice would also be served, if in the resultant consideration, the said respondent No.4 is given a hearing by the

Director.

2. The petitioners being 08(eight) in numbers, assail the order dated 27.07.1999 of the Director of Secondary Education, Assam, by which the

seniority of the respondent No.4 in the concerned school had been determined. Although the order of 23.06.2011 had also been assailed in the

writ petition, but the learned senior counsel for the petitioner in his submission, for the time being, contends that the consequential benefits of

assailing the order of 27.07.1999 would also cover the correctness of the said order.

3. The petitioner No.1 was served as an Assistant Teacher in Rangapara Bengali High School and had received the graduate scale of pay

w.e.f.20.08.1983. Similarly, the petitioner No.2 received the graduate scale of pay from 20.08.1983. The petitioner No.3 received the 4/6

graduate scale of pay from 30.12.1993 and the petitioner Nos. 5, 6, 7 and 8 respectively from 30.12.1993 in the same school. The respondent

No.4, on the other hand, was initially appointed in the Rangapara Bengali High School for a period of four months on the recommendation of the

District Selection Board as graduate/ intermediate teacher in the scale of pay of Rs.1185-375-1183-2395 p.m. It is stated that the said scale of

pay is applicable in respect of intermediate teacher and therefore, it is to be construed that by the order of 25.03.1992, the respondent No.4 was

appointed as an Intermediate Assistant Teacher.

4. It was the case of the respondent No.4 that in spite of being so appointed, he was not allowed to join in the post and accordingly, the

respondent No.4 preferred a writ petition being Civil Rule No.962/1993. The said writ petition was disposed of by the order of 24.08.1994, by

which, it was provided that if the concerned post is still vacant, the petitioner be allowed to join and in the event, the concerned post has been filled

up, the Inspector of Schools shall appoint the petitioner in any school within the district of Sonitpur in the post of Science Graduate Teacher.

Pursuant thereof, by an order of 29.04.1995 of the Inspector of Schools, Sonitpur, Tezpur, the respondent No.4 was appointed and allowed to

join in the Rangapara Bengali High School itself in the vacant post of one Sri Jaydeep Mukharjee, who had resigned in the meantime, in the scale

of pay of Rs.1375-30-1435-40-1635-50-1885-EB-50-2035-60-2395-80-2875-100-3375 p.m. It has been given to understand that the said

scale of pay indicated in the order dated 29.04.1995 pertains to a graduate scale.

5. The respondent No.4 preferred another writ petition being WP(C) No.2160/1995, wherein, a claim was made that although the respondent

No.4 was appointed by an order of 25.03.1992, but he was not allowed to join in the same because of the fault of the respondent authorities and

that he is entitled to a seniority from the date of his initial appointment on 25.03.1992. The said writ petition was disposed of by the order of

09.09.1998, wherein in paragraph-5, this Court had observed that if a person is in an unauthorized way not allowed to join his duty, he cannot be denied his seniority. Accordingly, the Director of Secondary Education, Assam was directed to take a decision on the question of seniority of the respondent No.4.

6. Consequent thereof, the order dated 27.07.1999 was passed by the Director of Secondary Education, Assam. In the said order, after narrating all the aforementioned facts, 5/6 the Director came to a conclusion that as ordered by the High Court, his seniority be counted from the date he submitted the joining report initially. A finding was also recorded by the Director that both the Inspector of Schools and the Headmaster of the concerned school had not allowed the petitioner to join though he had reported for joining. It is noticed that in the order of 09.09.1998, this Court had stated the position of law that if a person is in an unauthorized way not allowed to join his duty, he cannot be denied his seniority and accordingly required the Director to take a decision on the case of the petitioner. In other words, the requirement of the order of this Court is that the Director will apply his mind on the given facts and circumstances of the case and arrive at a definite conclusion as to whether the respondent No.4 was not allowed to join in his duty in an unauthorized manner.

7. A perusal of the order dated 27.07.1999, does not indicate that the Director had taken such a decision. Whereas, on the other hand, it is noticed that the Director had allowed the seniority of the respondent No.4 from the date of his initial presentation of his joining report by stating that it was done as per the order of this Court. As already indicated above, there is no specific order of this Court to give the seniority to the respondent No.4 from the date of his initial submission of the joining report and what was provided by the Court was that in the event, there is a conclusion by the Director that the respondent No.4 was prevented from joining in an unauthorized manner, only in such event, his seniority cannot be denied. Another aspect of the matter is that in the initial order of 25.03.1992, by which the respondent No.4 was appointed, his appointment was in an intermediate scale, meaning thereby he was appointed as an Intermediate Assistant Teacher. Again, when the order of this Court dated 24.08.1994 is looked into, it is noticed that by the said order, this Court had

either allowed the petitioner to join in the post he was appointed, if the same is still vacant or he be appointed in any other school within the District in the post of Graduate Science Teacher. As the facts narrated indicates that the petitioner was allowed to join in the same school, the implication would be that he was allowed to join as per the initial order of appointment dated 25.03.1992. In other words, he was allowed to join in the intermediate post as indicated in the order of 25.03.1992. It is noticed that the Director of Secondary Education while passing the order of 27.07.1999 had also not taken the aforesaid aspect into account. 6/6

8. Although it can be argued that there may be some delay and laches on the part of the petitioner in assailing the order dated 27.07.1999 declaring the seniority in favour of the respondent No.4, but on a perusal of the affidavit in opposition of the respondent No.4, except for the averments that after so many years of delay, this Court should not interfere with the order because, the order was passed after perusal of all record of the case, there is no other averment. The law relating to a delay in assailing an order depicting seniority is that the incumbent enjoying the benefit of such seniority should not be deprived of the same after a long passage of time. But, in the instant case, the respondent No.4 had enjoyed the benefit of the seniority only after the order dated 23.06.2011, whereas the writ petition was preferred on 06.01.2012. Further, there is no material on record to indicate that the order dated 27.07.1999 was made available to the petitioner on any earlier occasion. In the aforesaid view, this Court is of the view that there is no delay in preferring the writ petition against the order of 27.07.1999.

9. In the aforesaid premises, the Director of Secondary Education, Assam is directed to revisit the order dated 27.07.1999 and pass a reasoned order thereof by taking into account the aforesaid conclusion as indicated herein above and also by arriving at a definite conclusion that the respondent No.4 was prevented from joining his duty in an unauthorized manner. Any order to be passed by the Director, shall have superseding effect over the earlier orders and the subsequent order shall prevail over others. In doing so, the Director shall give an opportunity of hearing both the petitioners as well as the respondent No.4 and allow them to produce any materials that they may desire to produce in their favour.

10. The aforesaid exercise of passing a reasoned order be carried within a period of three months from the date of receipt of a certified copy of this judgment and order. In terms of the above, the writ petition stands disposed of.