
(2012) 07 GAU CK 0038
In the Gauhati High Court
Case No : Writ Petition (C) No. 7664 of 2005

Sri Dilip Kr. Das

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision : 25-07-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 07 GAU CK 0038

Hon'ble Judges : Ujjal Bhuyan, J

Bench : Single Bench

Advocate : P. Chakraborty, Ms. G. Deka, Ms. M. Dole and Ms. M.K. Choudhury, for the Appellant; P. Bhattacharya, Standing Counsel, Education Department, for the Respondent

Judgement

Ujjal Bhuyan, J.—Heard Mrs. G. Deka, learned Counsel for the petitioner. Also heard Ms. P. Bhattacharya, learned Standing Counsel, Education Department. By way of this petition under Article 226 of the Constitution of India, petitioner seeks regular scale of pay as Assistant Teacher of Nikama M.E. School, Cachar w.e.f. 24-12-1998 and also challenges the order dated 20-08-2005 passed by the Director of Elementary Education, Assam showing respondent No. 5 as regularised in the post held by the petitioner.

2. Case of the petitioner is that she had worked as honorary teacher in the Nikama M.E. School from 01-03-1989. Her said appointment by the school Managing Committee was approved by the Block Elementary Education Officer, Sonai. But the school was provincialised earlier in the year 1977. As a post of Assistant Teacher in the school was lying vacant since long, a proposal for regularization of the service of the petitioner as an Assistant Teacher in the school by way of adjustment was moved by the District Elementary Education Officer on 14-12-1998, which was approved by the Director of Elementary Education, Assam on 24-12-1998 (Annexure-2 to the writ petition).

3. As salary was not paid to him, petitioner had earlier moved this Court in W.P.

(C) No. 8068/2002. This Court by order dated 20-12-2002 held that the petitioner is entitled to his monthly salary in the time scale of pay attached to the post of Assistant Teacher of the school on and from 24-12-1998. Accordingly, direction was issued to the authority of the Education Department to make necessary arrangement for payment of arrear salary to the petitioner from 24-12-1998 onwards and thereafter to pay his current salary regularly.

4. This Court by order dated 18-11-2005 while issuing notice in the present case, stayed the regularization of the respondent No. 5 in the Nikama M.E. School, Cachar as made by the order dated 20-08-2005 until further orders.

5. Respondent No. 2, Director of Elementary Education, Assam had filed counter affidavit on 19-02-2007. In his counter affidavit, respondent No. 2 has stated that no record relating to the issuance of the order dated 24-12-1998 could be traced out in his office. He has also pleaded ignorance of the order of this Court dated 20-12-2002. He has stated that since no records could be traced out, there is nothing to show that the service of the petitioner was regularized against any regular vacancy. Therefore, according to him, the question of adjusting any other person against the post held by the petitioner did not arise. Respondent No. 2 has further stated that the order dated 20-08-2005 was issued for regularization of the services of the teachers mentioned therein as per recommendation of the Monoharan Committee and the decision of the cabinet.

6. Respondent No. 5 though served, has not contested the proceeding. Neither any counter affidavit nor any application for vacation of the order dated 18-11-2005 has been filed by him.

7. Learned counsel for the petitioner submits that the issue regarding regularization of the service of the petitioner and his entitlement to salary has already been settled by this Court, which has attained finality. Therefore, the respondents are bound to release the monthly salary of the petitioner regularly. Further, nothing has been placed before the Court by the respondents to justify regularization of the respondent No. 5 in the post held by the petitioner.

8. Learned Standing Counsel on the other hand submits that the petitioner may be relegated to the departmental authority for a fresh examination of the matter.

9. The submissions advanced have been considered.

10. This Court in the judgment dated 29-09-2003 passed in W.P.(C) No. 2560/2001 and other connected cases took the view that a honorary teacher appointed after provincialisation of the school will have no legal right for regularization. However, this Court did not give retrospective effect to the said judgment so as to invalidate the regularizations already made.

11. In its order dated 19-02-2007, this Court held that if the petitioner was working, dehors the validity of his regularization and based on the principle of services rendered, he should be paid his current salary.

12. The fact that the petitioner is working in the school since 01-03-1989 is not disputed. However, in the absence of the relevant record and the categorical statement made by the Director to this effect, this Court would not like to make any comment on the regularization of the petitioner, which as already noticed above was stated to have been approved on 24-12-1998. Moreover, the respondents have also not placed any document or record to justify regularization of the respondent No. 5 in the post held by the petitioner. In view of above, the interim order of this Court dated 18-11-2005 staying the regularization of respondent No. 5 is hereby made absolute. In so far the claim of the petitioner is concerned, this Court is of the opinion that it would be in the interest of justice if the matter is remanded back to the authority for taking a fresh decision relating to regularization of the petitioner and the consequential release of his salary, keeping in view the orders of this court dated 20-12-2002 and 19-02-2007. Accordingly, it is hereby ordered that the Director of Elementary Education, Assam, shall examine the case of the petitioner and shall thereafter pass necessary order in this regard, if necessary by giving hearing to the petitioner, keeping in view the orders of this Court dated 20-12-2002 and 19-02-2007. The fresh decision shall be passed by the Director within a period of 6 weeks from the date of receipt of a certified copy of this order.

13. Writ petition is accordingly disposed of. No cost.