
(2016) 02 GAU CK 0040
In the Gauhati High Court
Case No : Writ Petition (C) No. 3650 of 2010

Sri Lila Kanta Bora

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 18-02-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 3 NEJ 25

Hon'ble Judges : T. Vaiphei, ACJ.

Bench : Single Bench

Advocate : A.M. Buzurbaruah, Senior Advocate, M. Barman, Advocates, for the Petitioners; R. Mazumdar, SC, Elementary, R.K. Adhikary, SC, Finance, Advocates, for the Respondents

Final Decision : Partly Allowed

Judgement

T. Vaiphei, C.J.(Acting)(Oral) - Having heard Mr. A.M. Buzurbaruah, the learned senior counsel assisted by Ms. B. Barman, the learned counsel for the petitioners, Mr. R. Mazumdar, the learned Standing Counsel for Elementary Education Department and Mr. R. K. Adhikary, the learned Standing Counsel for Finance Department at length, I am of the view that the petitioners have made out a case for granting limited relief in this writ petition.

2. The petitioners numbering 09(nine) were appointed as L.P School Teachers on honorary basis in the year 1981. They were members of the All Assam Honorary Teachers Association, which had filed CR No.370/1991 before this Court for regularisation of their services. By relying on the judgment of this Court in Smti Kunjalata Gogoi v. The State of Assam and others, which held the field in those days, this Court by the order dated 31.05.1994 had directed the respondent authorities to regularise the services of the honorary paid teachers including the petitioners, who had completed 10(ten) years of service as on 31.05.1994. In compliance with the aforesaid direction, the Government of Assam under the Education Department, issued the letter dated 16.02.2001 requesting the Deputy

Inspector of Schools, Hojai to adjust the services of the petitioners against existing vacancies. This letter contained a list of 12 teachers showing the names of the schools and the posts against which they were adjusted. Pursuant to that letter, the Deputy Inspector of Schools issued the order dated 31.05.2001 adjusting the petitioners as so directed. The net result is that the petitioners were to get a fixed pay of Rs. 1,800/- (Rupees one thousand eight hundred) per month till completion of the Junior Basic Training Course. However, notwithstanding such regularisation, the petitioners were not paid the fixed pay of Rs. 1,800/- (Rupees one thousand eight hundred) per month, whereupon they approached this Court by way of WP(C) No.2948/2007, which was disposed of by this Court by the order dated 18.06.2007 by directing the petitioners to submit a representation before the Committee constituted by the State Government in terms of the judgment and order dated 06.04.2010 in *Sudhendu Mohan Talukdar v. State of Assam & ors.*. The petitioners accordingly submitted their representation before the expert Committee, which ultimately recommended a direction to be issued to the respondent No.2 to submit a proposal for payment of salary.

3. The stance hitherto taken by the respondent authorities in not paying the salaries to the petitioners was that the State Level Empowered Committee and the Finance Department had not approved the payment of the petitioners. Subsequently, the Under Secretary to the Government of Assam in the Education Department by the letter dated 05.01.2010 informed the respondent No.2 that the State Government had no objection to regularise the services of the petitioners with a stipendiary fixed pay of Rs. 1,800/- (Rupees one thousand eight hundred) per month. On the basis of the no objection given by the State Government, the respondent No.2 issued the letter dated 27.01.2010 again regularising the services of the petitioners on the fixed pay of Rs. 1,800/- (Rupees one thousand eight hundred) per month and posted them at a different schools. The order was issued after obtaining the concurrence/approval of the Finance (SIU) Department as seen from the paragraph-2 of the order dated 27.01.2010. It is the contention of the learned senior counsel for the petitioners that they ought to have been paid their fixed salaries w.e.f. 31.05.2001, when their services were adjusted by the Deputy Inspector of Schools. At the stage, it may be noted that the petitioners started getting their fixed pay prospectively from January, 2010. The question which emerges on the aforesaid facts is, whether the petitioners are entitled to payment of their stipend honorarium w.e.f. 31.05.2001 or w.e.f. 27.01.2007.

4. Refuting the case of the petitioners, the State respondents in their affidavits in opposition submits that the petitioners were adjusted against valid sanctioned posts at a fixed salary of Rs. 1,800/- (Rupees one thousand eight hundred) per month only from the date of joining of their new places of posting as approved by the Finance (SIU) Department vide the concurrence letter dated 26.11.2009. Therefore, the question of payment of fixed salaries from 2001 does not arise. As there was no approval of State Level Empowered Committee, they are not

entitled to draw their fixed salaries from the year 2001. These are the main contention of the State respondents.

5. A number of contentions have been raised by the learned senior counsel for the petitioners as well as the learned Standing Counsel appearing for the Elementary Education Department and Finance Department. It may be noted that this Court by the order dated 18.06.2007 in WP(C) No.2948/2007 directed the petitioners to submit a representation before the High Power Committee constituted by this Court in *Sudhendu Mohan Talukdar v. State of Assam & ors*, 2006(2) GLT 216. It was in terms of this direction that the Expert Committee recommended that the respondent No.2 would submit a proposal as per the proceeding. Consequently, both the impugned letter dated 05.01.2010 and the order dated 21.07.2010 were issued again regularising the services of the petitioners as stipendiary teachers at a fixed pay of Rs. 1,800/- (Rupees one thousand eight hundred) per month. From this order, it is obvious that the regularisation of the services of the petitioners as stipendiary teachers at a fixed pay of Rs. 1,800/- (rupees one thousand eight hundred) per month was made with prospective effect. It is not known as to whether the petitioners have undergone Junior Basic Training or not. It is not the case of the State respondents that the petitioners never rendered any services to the schools where they have been posted from time to time. According to the learned senior counsel for the petitioners, the period of limitation of three years for filing a suit would start running from 18.06.2007 and, if that is so, if these three years are deducted, the petitioners are still entitled to stipend w.e.f. 18.06.2004. On the other hand, the learned senior Standing Counsel for Elementary Education Department submits that inasmuch as the concurrence of the Finance Department was obtained only on 18.11.2009, there is no question of payment of stipendiary arrears prior to 18.11.2009.

6. In my opinion, when the petitioners admittedly rendered their services, there is no reason why they should not be paid their fixed pay at the rate of Rs. 1,800/-. For the reasons stated in the foregoing, this writ petition is partly allowed. The respondent Nos. 1, 2 and 3 are directed to pay the petitioners their stipend at a fixed pay of Rs. 1,800/- (rupees one thousand eight hundred) per month w.e.f. 27.01.2007. The exercise shall be completed within a period of two months from the date of receipt of this judgment. No cost.