
(2015) 03 GAU CK 0044

In the Gauhati High Court

Case No : W.A. 301, 302, 303, 304, 305, 306, 307, 308 and 309 of 2012

State of Assam and Others

APPELLANT

Vs

Arunima Chetia and Others

RESPONDENT

Date of Decision : 18-03-2015

Acts Referred:

Citation : (2015) 03 GAU CK 0044

Hon'ble Judges : K. Sreedhar Rao, A.C.J; Prasanta Kumar Saikia, J

Bench : Division Bench

Advocate : R. Mazumdar, for the Appellant; U.K. Nair, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. Heard the appellants and the respondents.
2. The private respondents are working as teacher in several schools in the state of Assam. They filed writ petitions, WP(C) 5384/2011-batch, seeking salaries from July 2007 onward.
3. It is the contention of the private respondents that they have been working as teacher continuously, therefore they are entitled to be paid salaries. It is also submitted that the services of the private respondents have been regularised and that their status as civil servant under the state of Assam cannot be disputed and the denial of salaries is bad in law. The learned single Judge allowed the writ petitions and directed the State to pay the salaries.
4. The learned single Judge in para 12 to 16 of his order made the following observations.

"12. In the counter affidavit filed by the respondents basic facts of regularisation of services of the petitioners in consideration of their honorary service have been admitted. In paragraph-8 of the affidavit in opposition filed in W.P.(C) No. 5384/2011, the Commissioner and Secretary, Education (Elementary)

Department has narrated the facts as to how the services of the petitioners were regularised pursuant to the orders passed by this Court. It has also been contended in reference to the subsequent orders passed by this Court, that there was no direction to regularise the services of the petitioners. Thus, the Commissioner and Secretary has sought to reopen the matter which has attained its finality long back. The petitioners having been appointed during 1992 to 1995 and they having continued in their services for all these years, and having been paid salary till July, 2007, the respondents cannot now take the plea that they are not entitled to get their salary from August, 2007.

13. One interesting feature of the impugned order is that the author of the said order has referred to the judgment and order dated 08.04.2010 passed in W.P. (C) No. 3142/2008 in which it was held that salary will be payable only to those teachers who had challenged the order of termination issued in May, 1992. The said direction was in the context of that issue and not otherwise. Moreover the grievance of the petitioner which arose in August, 2007 cannot be justified on the basis of the said judgment dated 08.04.2010, which has also no application at all to the case in hand.

14. In the instant case, the petitioners were appointed after termination of service in May, 1992. Such appointments were preceded by various orders of this Court. Said orders after attaining its finality cannot be reopened in the manner and method in which the impugned orders have sought to do.

15. For all the aforesaid reasons, I am inclined to accept the writ petitions by setting aside and quashing the impugned order dated 07.04.2011. Consequently, the petitioners will be entitled to receive salary, both arrear and current. The respondents are directed to pass necessary order in this regard as expeditiously as possible, but at any rate, not later than 30.04.2012.

16. Before parting with the case records, it is placed on record that the petitioner in W.P.(C) No. 3535/2011 (Malati Handique vs. State of Assam and Ors.) was appointed on 03.05.1991 pursuant to positive direction of this Court in the Division Bench judgment dated 15.01.1991 passed in aforementioned writ petitions".

5. The state aggrieved by the said order filed these appeals.

6. Sri R Mazumdar, the counsel for the department, submits that the learned single Judge erred in clubbing all the cases and passing common order; since the facts in each of the cases are different, separate orders should have been passed.

WA 301/2012, 305/2012, 306/2012, 307/2012 and 308/2012.

7. There was no court order for regularisation of the services of the private respondents and their appointments were held to be illegal by this Court in WP(C) 2735/2008. There was no direction by this Court also to regularise the services, therefore the government passed an order dated 7th April, 2011 recording the reasons that the appointments of the said respondents are not

legal and there was no direction of the court to regularise their services, therefore the claim of the private respondents for salary was rejected. It is therefore argued that when the appointment itself is illegal and not in accordance with law the claim for salary by the said respondents is untenable.

WA 302/2012, 303/2012, 304/2012 and 309/2012

8. In WP(C) 2651/2008 it was observed that the appointments of the private respondents do not seem to be in accordance with law, therefore the matter was remanded to the Director of Elementary Education to consider their case and pass appropriate order whether their appointments are legal or illegal. The Director of Elementary Education after going through the records have found that all the appointments of the respondents are illegal, therefore they are not entitled to salary.

9. Upon hearing the rival contentions and after going through the order of the learned single Judge in question, it is an admitted fact that all the respondents in the appeals are continuously working as teacher and their salaries are being paid by virtue of the Court's order. Arrears of salary from July 2007 are not being paid. When the respondents are continuously serving as teacher, the question whether they are illegally appointed or otherwise it matter-less. However, for the services rendered by the private respondents and availed by the State, on the principle of "quantum merit" the salaries have to be paid. In that view of the matter we find no ground to interfere in the order of the learned single Judge. Accordingly the appeals are dismissed.