

(2024) 02 GAU CK 0009

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 5783 Of 2022

Sunil Kumar Mitra

APPELLANT

Vs

State Of Assam And 6 Ors.

RESPONDENT

Date of Decision : 06-02-2024

Acts Referred:

Citation : (2024) 02 GAU CK 0009

Hon'ble Judges : Kardak Ete, J

Bench : Single Bench

Advocate : B. Kumar, S. Bora

Final Decision : Disposed Of

Judgement

1. Heard Mr. B. Kumar, learned counsel for the petitioner. Also heard Ms. S. Bora, learned Standing Counsel for the Elementary Education Department, for the respondent no. 1 and Mr. S. Bora, learned Standing Counsel, BTC for the respondent nos. 2 to 7.

2. By filing this writ petition, the petitioner has challenged the termination order dated 19.11.2009 and prayed for a direction to the respondent authority to consider for reinstatement in the post of Assistant Teacher as per the policy decision taken by the BTC, in pursuance of the order of this Court dated 06.02.2015 passed in WA No. 182/2013 (Gobinda Barman and 4 Ors. Vs. The State Of Assam and 6 Ors.)

3. The petitioner was appointed as Assistant Teacher in Bagrikhuti Milan M.E. School on 04.12.1999 by the District Elementary Education Officer, Nalbari. Thereafter, the post of Assistant Teacher was converted from plan post to Non-plan vide order dated 27.03.2001.

4. While the petitioner was serving as Assistant Teacher vide order dated 19.11.2009, the service of the petitioner was terminated due to non-fulfilment of the terms and conditions, which are as follows:-

A. Advertisement issued by the DEEO, 19.1. of Schools of Nalbari inviting application as a candidates to fill-up the posts in the schools.

B. Approval of State Level Empowered Committee of the personal department of Govt. of Assam to fill-up the posts.

C. The records of holding interview and preparation of score sheets by the interview Board.

D. List of Selected Candidates indicating vacancies of the schools to fill-up the selected candidates.

E. Approval of EBAC for the appointment.

5. It is contended that many persons similarly situated with the petitioner were also terminated on the same grounds.

6. On being aggrieved of the said termination orders many similarly situated persons approached this Court by filing various writ petitions. The said batch of writ petitions were dismissed by learned Single Judge, vide common judgment and order dated 21.03.2013. Thereafter, the matter was taken to appeal by way of writ appeal being WA No. 182/2013. During the course of hearing of the writ appeal, the respondent/BTC has placed the policy decision taken by respondent authorities and the judicial notice was taken by the Hon'ble Division Bench.

7. On consideration of the issue, the Honble Division Bench has passed the following order vide dated 16.02.2015, which is reproduced herein below:-

"It is submitted by the counsel for the appellants that the appellants (herein) were receiving salaries up to 17.10.2006 and thereafter the termination was effected. The BTC and as well the government of Assam took a decision to regularise all those teachers who are in service and are regularly receiving salaries up to 17.10.2006. In the first phase of the exercise, it is submitted that 221 teachers have been found to be eligible for regularisation as per the above norm.

It is the contention of the appellants that the appellants are also similarly placed and they should also receive the similar treatment at law.

The counsel appearing for the BTC submits that the policy decision is taken that the persons receiving regularly salaries from the month of March, 2006 would be regularised and the implementation of the policy is in process. The government of Assam has also agreed to the said policy.

In view of the above submission the writ appeals are disposed of with direction to respondents to effect regularisation as per the policy decision of all those eligible teachers who were regularly receiving salaries up to 17.10.2006.

Needless to say, if any of the appellants is aggrieved in the decision-making with regard to the tenure of their service rendered and receipt of salaries they can approach this Court by separate petitions."

8. Thereafter, the petitioner approached this Court as the case of the petitioner, who is also similarly situated with the writ appellants in the said writ appeal was not considered and left out, by filing writ petition i.e. WP(C) 3374/2015, which was disposed of on 10.06.2015, whereby, this Court has observed that the petitioner in the instant case was also in service and regularly receiving their salary up to November, 2009.

9. It has also further observed that if any of the petitioners are aggrieved by the decision of the respondent authorities with regard to the tenure of their service so rendered and of the question of receiving salaries by them, they can approach this Court again.

10. Despite such order of this Court passed in WP(C) 3374/2015 vide order dated 10.06.2015, on the basis of the order of Hon'ble Division Bench dated 06.02.2015 in Writ Appeal No. 182/2013, the respondent authority has failed to effect regularisation of the service of the petitioner in terms of the policy decision. Thus, the petitioner has filed this present writ petition.

11. Mr. B. Kumar, learned counsel for the petitioner submits that the petitioner was appointed as per the selection process and he was allowed to draw his salaries till the date of his termination. He further submits that since the policy has been taken by the respondent authorities to regularize those Assistant Teachers, whose services were terminated, the authorities are bound to consider the case of the petitioner for regularization, who is similarly situated with the appellants in the WA No. 182/2013.

12. Mr. S. Bora, learned Standing Counsel for the BTC submits that though the BTC has taken the policy decision for regularization of those teachers, who have been terminated on being illegally appointed, to regularize their services, the BTC does not have the financial power for which the S.I.U approval has to be taken from the State Government. As the approval and sanctioned of the State Government was not received, consideration of the writ petitioner and the other similarly situated persons for effecting regularization of service as per policy decision could not be completed. The State Govt. accorded approval in two phases, first-it was for 1009 posts and now in the last part of the December, 2023, 1216 posts have been sanctioned by the State Government, the respondent authority shall consider the case of the petitioner.

13. A Coordinate Bench of this Court vide order dated 19.01.2024 in WP(C) 88/2023 has disposed of the similar writ petition, with the following observation and directions which is reproduced below:-

"10. In view of above, the petitioners are hereby required to submit individually detailed representations before the Director of Education, BTC along with a certified copy of this order enclosing therein all requisite particulars with regard to their appointment, termination etc. on or before 15.02.2024.

11. In the event any such representations are submitted by the petitioners

individually, the same shall be given its due consideration under the policy in place as well as under the directions contained in the judgment and order dated 06.02.2015 passed by Division Bench of this Court in Writ Appeal No.182/2013. If on such considerations and after making due verifications, it is found that the cases of the petitioners are covered under the policy in place as well as the directions contained in the judgment and order dated 06.02.2015, the Director of Education, BTC shall proceed to issue orders towards reinstating the petitioners in their respective services and thereafter, shall regularize their services.

12. The above exercise shall be initiated and completed by the Director of Education, BTC after taking due approvals from the competent authorities within a period of 3(three) months from the date of receipt of the individual representations from the petitioners along with a certified copy of this order.

13. With the above observations and directions, the present writ petition stands disposed of.”

14. It is contended by the learned counsel for the petitioner that the present writ petition is squarely covered by the order of this Court (supra), to which, the learned counsel for the respondents has fairly conceded to .

15. Having considered the submissions of the learned counsel for the parties and on perusal of the order dated 19.01.2024 in WP(C) 88/2023, this Court is of the view that the order passed by the Coordinate Bench of this Court dated 19.01.2024 is squarely covered the case of the petitioner. Thus, the respondent authorities are duty bound to consider for regularization of the service of the petitioner alongwith other similarly situated persons in terms of the policy decision taken by the BTC, which has been taken judicial notice by the Hon'ble Division Bench of this Court in writ appeal No. 182/2013 (Gobinda Barman and 4 Ors. Vs. The State of Assam and 6 Ors.) and directions were issued to effect regularisation of the case of the appellants in the writ appeal who are similarly situated with the petitioner.

16. Accordingly, this writ petition is disposed of with a direction to the petitioner to submit a representation before the Director of Education, BTC, annexing all the relevant documents within 10(ten) days from today. On receipt of such representation, the Director of Education, BTC/respondent no. 5, shall consider the case of the petitioner as per the policy decision as referred to above and in terms of the direction contended in the order dated 06.02.2015 passed in WA No. 182/2013. It goes without saying that, if the case of the petitioner is covered by the policy decision as referred to above, the Director of Education, BTC shall pass an appropriate order reinstating the petitioner by regularizing the service of the petitioner. The above exercise shall be completed within a period of 3(Three) months from the date of the receipt of certified copy of this order.

17. With the above observation and direction, this writ petition stands disposed of. No order as to cost(s).