
(2014) 03 GAU CK 0037
In the Gauhati High Court
Case No : WP(C) No. 1925 of 2013

Tapan Deka

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 03-03-2014

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2014) 2 GLT 434

Hon'ble Judges : Tinlianhang Vaiphei, J

Bench : Single Bench

Advocate : B. Ullah and Mrs. S. Ahmed, Advocate for the Appellant; U.K. Goswami, Standing Counsel, Education Department, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Tinlianhang Vaiphei, J.—These three petitioners along with some other persons were appointed as stipendiary teachers on a fixed pay of Rs. 1,800/- on different dates and at various schools with the conditions, among others, that they should have to undergo Junior Basic Training immediately. There is no dispute that they joined their services without any delay, and have accordingly been paid a fixed pay of Rs. 1,800/- per month till date. They successfully underwent the Junior Basic Training course and have rejoined their respective schools for duty after completion of one year. The simple case of the petitioners is that once they have successfully completed the Junior Basic Training, they, as per the terms and conditions of their appointment orders, are entitled to draw a regular pay scale as admissible to regularly appointed teachers. However, the respondent authorities have refused to do so whereupon this writ petition has been filed by them. At the outset, Mr. U.K. Goswamy, the learned standing counsel for the Education Department, submits that the facts of this case are strikingly similar to the facts in Babul Deka and Others Vs. State of Assam and Others, and must, therefore, meet the same fate. I have carefully gone through Babul Deka (supra) and am of the view that there is force in the contention of the learned standing

counsel for Education Department. Babu Deka (supra) was a case in which the appellants therein were also appointed as teachers on stipend pursuant to a scheme formulated by the Government. Their appointment letters also indicated that completion of Basic Training was a condition for grant of regular scale of pay. The subsequent decision of the Government of Assam to recall the benefit of regular pay scale was challenged by those stipendiary teachers by filing a writ petition. The learned Single Judge dismissed the writ petition whereupon the writ appeal was filed before the Division bench of this Court. The relevant observations are found at paragraph 20 of the judgment, which read thus:

(20) The posts occupied by the various petitioners in the present litigation are held to be the posts not created by any law/rules made under Article 309 of the Constitution. On the other hand, it is the case of the State of Assam that these posts are created pursuant to a Scheme framed by the Union of India, which provided for fixed remuneration for the occupants of each one of the posts. Further, the Union of India agreed to make available necessary funds to meet the expenditure involved in making the payment of the remuneration of various persons such as the writ petitioners herein to be employed pursuant to the terms of the Scheme only for a limited period.

(21) It is, therefore, the state of Assam to either continue or discontinue the employment of the writ petitioners or other similarly situated persons after the financial assistance from the Union of India comes to an end. Such a decision is to be taken by the State of Assam on a consideration of various relevant factors, such as, the financial resources, the need to continue such posts, etc.

(22) It is not the case of the State of Assam that the need to continue the various posts created under the Scheme propounded by the Union of India ceased, but it is the case of the State of Assam that having regard to their priorities, they are not in a position to earmark sufficient amounts of funds to continue the employment of the writ petitioners and other persons similarly situated.

(23) In the abovementioned background, as the posts such as the one occupied by the writ petitioners are not the posts created by any law/rules made under Article 309 of the Constitution, they are not part of any cadre regulated by law made under Article 309 of the Constitution and, therefore, they cannot seek anything more than what is offered to them under the contract of employment.

(24) No doubt, in the order of appointment it was indicated that the writ petitioners and others would be put against a regular scale after completion of the training, but such a statement in the appointment orders is without any basis in law. The Legislature never authorized such an action on the part of the Executive. Therefore, it is plainly beyond the jurisdiction or authority of law conferred upon the appointing authority. It, therefore, does not create any legally enforceable rights in favour of the writ petitioners.

2. Need I say more? This writ petition, undoubtedly, has no merit and is,

accordingly, dismissed. Nevertheless, it may be said in favour of the petitioners that the dismissal of this writ petition will not bar the respondent authorities from paying regular pay scale in future if they think it fit to do so. As directed by the learned Single Judge, which was not interfered with by the Division Bench of this Court, the respondent authorities shall earmark a reasonable percentage of vacancies in the so-called non-plan posts i.e. the post created pursuant to the abovementioned Article 309 of the Constitution. No costs.