
(2018) 04 GAU CK 0120
In the Gauhati High Court
Case No : WP(C) 6562 of 2014

TAYEBUR RAHMAN

APPELLANT

Vs

THE STATE OF ASSAM AND 4 ORS

RESPONDENT

Date of Decision : 24-04-2018

Acts Referred:

Citation : (2018) 04 GAU CK 0120

Hon'ble Judges : ACHINTYA MALLA BUJOR BARUA

Bench : Single Bench

Final Decision : Disposed Of

Judgement

1. Heard Mr. M.H. Choudhury, learned counsel for the petitioner. Also heard Mr. N. Sarma, learned standing counsel for the Elementary Education

Department as well as Mr. B. Gogoi, learned standing counsel for the Finance Department.

2. The petitioner who was appointed as a Hindi teacher on 01.04.1974 of Borshilla M.E. School in the Karimganj district was terminated from service

w.e.f. 01.02.1982. The said termination was assailed in TS No.32/1982, which was decreed in favour of the petitioner and subsequently affirmed on

an appeal and as a consequence, he was reinstated on 13.12.1985.

3. On 26.08.1991, he was again terminated. Against the order of termination, the petitioner approached the Assam Administrative Tribunal, which was

registered as Appeal Case No.16 ATT/91. The said appeal was disposed of by an order dated 09.02.1991 requiring the respondents to consider the

representation of the petitioner which was pending before the Secretary to the department. The consideration of the representation resulted in the

order of 26.08.1991 by which, the service of the petitioner was again terminated

w.e.f. 25.11.1982. Being aggrieved Appeal Case No150 ATA/1990

was preferred by the petitioner before the Assam Administrative Tribunal and the said appeal was dismissed by the order of 06.05.1992. As a

consequence, a writ petition being CR No.5163/1994 was preferred by the petitioner. By the judgment and order dated 07.01.2002 in CR No.

5163/1994, the order of the learned Tribunal as well as the order of termination against the petitioner were interfered on the ground of violation of the principle of natural justice.

4. As regards the payment of arrear salary to the petitioner, it was provided in the judgment and order of 07.01.2002 that the entitlement of the

petitioner for the arrear salary up to 26.08.1991 shall be finalized by the authorities within a period of 45 days from the date of such reinstatement and

that if any amount is found due, the same be paid without any delay. Liberty was also granted to the authorities to continue with the departmental

proceeding. It is stated that as of now, the petitioner is still continuing in service.

5. As regards the entitlement of arrear salary, the District Elementary Education Officer (DEEO) had submitted a report dated 07.09.2006 to the

Commissioner & Secretary to the Govt. of Assam in the Education Department. The report states that the petitioner was under termination from

01.02.1982 up to 24.12.1985 and from 25.12.1985 to 28.10.1987, he was on duty after the reinstatement. It was also stated that from 29.10.1987 up to

25.08.1991, the petitioner was absent from duty as because he was prevented by the school authorities from working and from signing the attendance

register, as claimed by the petitioner. From 26.08.1991 to 04.12.2002, the petitioner was again terminated from service and thereafter, he was

reinstated for the second time on 05.12.2002. As regards the period from 29.10.1987 to 25.08.1991, the report of the DEEO states that he had

examined and verified the matter and upon such verification, the Headmaster and other staff of the school had given a reply which is indicated in the

report to be "but their reply as a whole reveal denial of intentionally it seems." The only way the Court can understand the meaning of the

said provision in the report is that although the petitioner was prevented but it was not an intentional act.

6. As nothing further was done towards payment of arrear salary, the petitioner again approached this Court by way of WP(C) No.5785/2013, which

was disposed of by the order dated 03.10.2013 requiring the Commissioner & Secretary to dispose of the claim of the petitioner of arrear salary within a period of one month. Consequent thereof, the order of 16.08.2014 was passed by the Secretary to the Govt. of Assam in the Elementary Education Department. The said order of the Secretary dated 16.08.2014 has been assailed in the present writ petition. From a reading of the order of the Secretary, it transpires that for the period from 01.02.1982 to 24.01.1985 and again from 26.08.1991 up to 04.12.2002, the petitioner did not work and therefore, by applying the principle of no pay for no work, the salary was denied to the petitioner.

7. The order of the Secretary states that from 1982 to 1985, the petitioner did not have the required qualification. But for the period from 01.07.1987 to 25.08.1991, the order of the Secretary does not in any manner state as to why the petitioner was not entitled to his salary for the period. The said aspect when looked into from the point of view of the report of the DEEO dated 07.09.2006 gives the impression that the Secretary in his order had not formed any other adverse opinion contrary to the conclusion of the DEEO that the petitioner was infact prevented from discharging his duty for the said period.

8. The conclusion of the Secretary in the order dated 16.08.2014 as regards the disentitlement of the petitioner from receiving the salary from 01.02.1982 to 24.01.1985 and 26.08.1991 to 04.12.2002 is accepted, but at the same time, as there was no conclusion as regard disentitlement of the salary from 01.07.1987 to 25.08.1991, this Court is of the view that the petitioner is entitled for the salary and allowances for the said period. It is also taken note of that as per another report of DEEO dated 17.09.2011, the petitioner is entitled to receive his salary for the period 01.07.1987 to 25.08.1991.

9. Accordingly, while upholding the order of the Secretary in all other aspect but as regard the payment of salary for the period from 01.07. 1987 to 25.08.1991, it is directed that the respondent authorities shall pay the salary and allowance for the said period to the petitioner within a period of three months from the date of the receipt of the certified copy of the order.

10. Mr. N Sarma, learned standing counsel states that the period for payment of salary should actually be from 29.10.1987 to 25.08.1991 as reflected

in the report of the DEEO and therefore, while passing the order for payment of salary to the petitioner, the Commissioner shall verify the said aspect.

Accordingly, the writ petition stands disposed of.