
(1995) 11 GAU CK 0018
In the Gauhati High Court
Case No : Civil Rule No. 1419 of 1991

Zamira Begum Rahman

APPELLANT

Vs

Assam State Electricity Board

RESPONDENT

Date of Decision : 10-11-1995

Acts Referred:

Constitution of India, 1950 — Article 226, 226

Citation : (1996) 1 GLJ 98

Hon'ble Judges : J.N.Sarma, J

Bench : Single Bench

Advocate : S.Medhi, N.N.Saikia, J.Chutia , A.Roy, Advocates appearing for Parties

Judgement

1. This writ application has been filed for issue of a Mandamus directing the authority to grant the petitioner status of a Headmistress of a High School and to give her seniority from the date of her appointment as Headmistress and other consequential benefits thereto.

2. The brief facts are as follows: On 28.2.73 the petitioner was appointed as Headmistress by ASEB in Sumer Primary School. In the year 1974 and 1975 two Boards were constituted, that is, Assam State Electricity Board and Meghalaya State Electricity Board after reorganisation of the States. That after bifurcation the employees of the composite Assam State Electricity Board applied to be absorbed by the Assam State Electricity Board. But this practice was stopped subsequently. In 1983 the petitioner applied to be absorbed in the Assam State Electricity Board, on 10.2.89 by resolution No. 13 Assam State Electricity Board decided as follows :

(i) The Board considered the Agenda, item and decided to request Meghalaya State Electricity Board to transfer the service of Mrs ZB Rahman, Headmistress in Sumer ME School to this Board on humanitarian ground. This was on the basis of a representation submitted by her husband who was an Engineer in Assam State Electricity Board and to live together the petitioner applied for her absorption in

the newly constituted Assam State Electricity Board. Thereafter Meghalaya State Electricity Board transferred the petitioner on 25.4.83 and the service of the petitioner was placed at the disposal of Assam State Electricity Board. At the instance of the Assam State Electricity Board the release of the petitioner by Meghalaya State Electricity Board was kept in abeyance". Thereafter on 11.10.84 the Assam State Electricity Board requested the Meghalaya State Electricity Board to release the petitioner and on 2.2.85 the petitioner was released by Meghalaya State Electricity Board. On being released on 16.2.85 the petitioner was appointed and posted as Assistant Teacher at CTPS High School, that is, Annexure XI to the writ application. On 11.3.85 the petitioner reported for duty and her joining report is as follows : "After being released from Meghalaya State Electricity Board as Headmistress of Sumer High School I do hereby report for duty in the capacity of an Assistant Teacher under compelling circumstances today the afternoon of 11.3.85. When he salary was paid she made a protest as follows : (not quoted : Editor)

3. In reply to it the Manager (IR) ASEB wrote as follows : (not quoted : Editor)

4. But though this promise was made nothing was done, and she submitted an appeal which is Annexure 16 and that is quoted below : (not quoted : Editor)

5. An affidavit in opposition has been filed wherein it has been stated as follows:

(i) That on 25.11.78 ASEB constituted a Committee to examine the question of allocation of staff.

(ii) On 16.1.81 the Committee recommended that no personal from MSEB and Mizoram be brought over to ASEB.

(iii) On 8.5.91 ASEB vide resolution No.6 accepted the above recommendation.

(iv) On 2.9.82 ASEB, passed a resolution that it would not agree or allow any further transfer from MSEB to ASEB.

(v) On 14.9.82 the husband of the petitioner requested the Chairman to revive again and/or to consider again the transfer of the petitioner.

(vi) On 7.11.83 the petitioner submitted an application to Chief Minister for her transfer.

(vii) On 11.11.83 ASEB wrote to MSEB to let it know the present position in respect of the petitioner.

(viii) On 12.4.84 the Board passed resolution No.9 regarding fixing of seniority of those persons who desires transfer on their own from MSEB to ASEB, and it was decided that their seniority shall be fixed just below the junior most in the cadre, that is Annexure A to the affidavit in opposition which is quoted below: (not quoted : Editor)

6. The Board rejected the case of the petitioner for being considered as a Headmistress on the following grounds :

"5. From the above, it would be seen that while Mrs ZB Rahman was a Headmistress in the Sumer ME School at the time of her transfer to the CIPS High School, she was transferred and posted as an Assistant Teacher in the CIPS High School, on compassionate ground. Moreover the post of Head Master/ Assistant Head Master of a High School is a selection post to be filled up from amongst the list of Teachers on the basis of qualification, length of service, seniority etc in ASEB. As Mrs ZB Rahman joined in the present ASEB only on 11.9.85, there was no scope whatsoever for her being considered for the post of Headmistress in the CIPS High School in view of the Board's clear decision that, an employee of the composite ASEB, who was transferred at his/her own desire after the firm date was over and whose case was considered on compassionate grounds, his/her seniority would be fixed just below the juniormost in the cadre. Smti Rahman on her joining in the CIPS High School became the juniormost teacher and therefore there was no question of her being appointed as the Headmistress of the said High School, superseding the claims of many other senior teachers of the ASEB.

6. In view of what has been stated above, there was no scope for her being considered for the post of Headmistress of CIPS High School where she was joined as Assistant Teacher. Order for fixation of her pay etc have already been issued in keeping with Board's Rules vide No.ASEB (PL) 72/69/3 IB dated 22.6.85. In the circumstances, there is, therefore, no question of any injustice being done to her."

7. I have heard Shri A. Roy, learned Advocate for the petitioner and Shri NN Saikia, the learned Advocate for the respondents. The record of the case also has been produced by Shri Saikia before me. Shri Roy submits as follows : That the posting of the petitioner as an Assistant Teacher was a demotion from her status as Headmistress of a High School from which post she was transferred. That non constitution of the Selection Committee by the ASEB cannot be a ground to deny the status of Headmistress. That from whatever angle the matter is considered the petitioner is entitled to the status of Headmistress and all consequential benefits thereto.

7A. On the other hand Shri Saikia submits that the petitioner got the transfer order at her own request and at her own risk. The petitioner was never a selected person for the post of Headmistres, Headmaster and as such her claim of being absorbed as Headmistress does not arise. Shri Saikia further submits that this writ application was filed on 11.3.91 whereas the order was passed as far back as on 16.2.85. In support of this contention of delay and laches Shri Saikia places reliance on the following decisions :

(i) AIR 1974 SC 2271 (PS Sadasivaswamy vs. State of Tamil Nadu). There the delay was of 14 days and the Supreme Court pointed out that "Therefore, there is no period of limitation for the Court to exercise the powers under Article 226. It would be always sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers in the case of persons who do not

approach it expeditiously for relief and whose stand by and allows things to happen and then approach the Court to put forward the stale claims and try to unsettle the settled matter."

(ii) (1980) 2 SCC 83 (Giridharan vs. State of Bihar). That was a case where there was a delay of more than 17 months and that delay was not explained and in that view of the matter the Supreme Court held that "The decision of the High Court in refusing to entertain the application was right."

(iii) 1994 (3) SLR 568 (NSYadab vs. Union of India & others). That is a case from Delhi High Court and in that case the Delhi High Court found that cause of action arose in 1982 and petition was filed in 1991 and it was held by the Delhi High Court that the petition suffers from laches and accordingly it was dismissed.

8. I find considerable force in this argument of Shri Saikia and I hold that this petition suffers from delay and laches and on that ground alone this petition is to be dismissed.

9. Coming to the merit of the case also it is seen that no doubt a transfer order cannot be passed affecting the status of an employee and if it is done certainly the employee can make a complain. But in the facts of this case it was found that the transfer order was obtained by the petitioner at her own request and the policy of the Board was quite clear and it must be deemed that it was known to her. Having obtained the order of transfer to which she was not entitled to, the petitioner cannot make a somersault and complain. The petitioner is estopped by her own conduct from making the complain. Accordingly there is no merit in this writ application and the same is dismissed. However, I leave the parties to bear their own costs.