

GAHC010198352017



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3979/2017

LAKHI PRAVA BARUAH
W/O LT. DAMBARU SAIKIA VILL- RATANPUR, DHEMAJI WARD O. 6, P.O.
DHEMAJI DIST. DHEMAJI, ASSAM, PIN - 787057.

VERSUS

THE STATE OF ASSAM and 4 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
EDUCATION ELEMENTARY DEPARTMENT, DISPUR, GUWAHATI-6.

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM

FINANCE DEPARTMENT
DISPUR
GUWAHATI-6.

3:THE DIRECTOR OF ELEMENTARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI-19.

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER

DHEMAJI
P.O. and DIST. DHEMAJI
ASSAM
PIN - 787057.

5:THE DEPUTY INSPECTOR OF SCHOOLS

DHEMAJI

P.O. and DIST. DHEMAJI
ASSAM
PIN - 78705

Advocate for the Petitioner : MR.M P SARMA

Advocate for the Respondent : SC, FINANCE

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 29.03.2023

Heard Mr. R. Islam, the learned counsel appearing on behalf of the petitioner. Mr. B. Talukdar, the learned counsel appears on behalf of the Elementary Education Department.

2. The case of the petitioner herein is that the petitioner was appointed on 19/12/1989 by the Deputy Inspector of Schools, Dhemaji as Assistant Teacher in Dhemaji Nagar L.P.School. Subsequent thereto, while the petitioner was serving, a show cause notice was issued to the petitioner along with other similarly situated persons by the Inspector of Schools, Dhemaji alleging that their appointments were irregular and against non-sanctioned post under the Dhemaji Sub-Division. The petitioner upon receipt of the show cause notice had submitted a reply. However, subsequently on 12/5/1992, the Director of Elementary School issued a letter whereby instructions were issued to the Deputy Inspector of Schools to terminate the irregular teachers by issuing termination notice and the payment of salaries to those irregular teachers for working period was directed to be paid till termination in the light of the orders of this Court. However, the termination notice of the petitioners in Civil Rule No. 212/1997 and Original Petition Contempt No. 105/1988 including the present petitioner was kept in hold until further instructions for which the petitioner was not terminated and she continued to render her service. Thereafter the Deputy Director,

Elementary Education, Assam issued a letter to the Deputy Inspector of Schools, Dhemaji dated 7/7/1992 as regards the regularisation of services of 35 teachers including the present petitioner on the strength of the judgment and order of this Court dated 18/6/1990 passed in Contempt Case No. 105/1988.

3. Pursuant thereto vide a communication bearing No.10708-14 dated 25/8/1992, the services of the petitioner was regularised from 1st of July, 1992 on the strength of the judgment of this Court dated 18/6/1990 and the specific order of the Government vide Memo No. EPG-857/89/2 dated 3/10/1989. It was further mentioned in the said order that the petitioner may be allowed to enjoy the monthly salary w.e.f. July,1992 and the arrear liability may be made as soon as sanction is received from the Director of Elementary Education.

4. It can be seen from the writ petition that there are various interdepartmental correspondences exchanged as regards the payment of the arrear salary to the petitioner and similarly situated persons. Surprisingly on 11th of December, 2007 the Director of Elementary Education had issued a communication to the Commissioner and Secretary to the Government of Assam wherein reference was made to the 35 teachers which includes the petitioner. In that regard it was mentioned that one Mr. A. Doloi, the Deputy Inspector of Schools, Dhemaji had submitted a report stating that a group of 35 teachers were not issued termination order. Out of the said 35 group of teachers, 5 of such teachers were called for personal hearing on 22/9/2007 for which necessary report was submitted to the Government and the Government was requested to instruct the office on the matter for taking necessary action from their end. At that point of time the petitioner's salary which she was receiving from July,1992 stopped. It further reveals that there is communication dated 23/6/2008 issued by the In-charge D.I. of Schools, Dhemaji to the DEEO wherein it has been mentioned that the salaries of the 35 teachers including that of the petitioners were stopped. Subsequent thereto there was a writ petition which was filed i.e. W.P.(C)

No.5085/2008 by 24 out of the 35 teachers. The petitioner herein was one of the petitioners to the said writ petition.

5. This Court disposed off the said writ petition vide an order dated 24/9/2010 by passing certain directions which are extracted herein below :

"In the face, a clear and categorical stand of the official respondents in the instant petition that the petitioners are not amongst the 717 Assistant Teachers whose services had been terminated in the year 1992, we are of the view that the instant petition ought to be disposed of with the following directions:

(1) As claimed by the petitioners, they would produce before the Director of Elementary Education, Assam certified copies of the orders of the court, if any , pursuant to which they claim to have been appointed to the posts which they assert are holding since the year 1989 along with other documents, if any, attesting their participation in any selection contemplated by the Rules preceding their appointments.

(2) The aforementioned State authority would scrutinize all relevant records including those produced by the petitioners as above and examine the tenability of their claim for salary from the month of August-2007 as claimed verifying inter alia, as to whether they are rendering their services against the posts claimed by them.

(3) If on such verification, the appointments of the petitioners are found to be valid in law and if they are found to be actually in service against the posts claimed by them, the Director of Elementary Education, Assam would pass consequential and appropriate orders in connection with their salary. So, as to enable the aforementioned authority to embark upon this exercise and to complete the same with expedition, the petitioners would produce a certified copy of this order before him within a period of 2(two) weeks. The process thereafter be completed within a period of 6(six) weeks provided the petitioners extend their cooperation to the same. Ordered accordingly. No costs. "

6. Although the said directions were issued as far back as on 24/9/2010 but the respondent authorities did not take any steps for which a contempt proceedings was initiated being Contempt Petition (C) No. 121/2013. It appears on record that this Court had issued notice.

7. Thereupon the Director of Elementary Education, Assam passed an order on 27/3/2014 holding inter alia that the 24 writ petitioners including the petitioners who filed W.P.(C) No. 5085/2008 claim was not maintainable as their appointments were against non-existent posts for which the question of release of the salary did not arise.

8. The learned counsel appearing on behalf of the petitioner has further drawn the

attention of this Court to a judgment dated 17/2/2017 in W.P.(C) No.3286/2014 wherein out of the 24 petitioners in W.P.(C) No. 5085/2008, 19 petitioners filed the said writ petition. The petitioner herein however was not a party to the said writ petition. The Coordinate Bench of this Court, vide the judgment dated 17/2/2017 allowed the said writ petition by setting aside the order dated 27/3/2014 and with a further direction to the respondents to release the arrear salaries of the petitioners therein from August 2007 within a period of 4 months from the date of receipt of a certified copy.

9. The learned counsel for the petitioner submits that in the meantime the petitioner has already retired. However, the petitioner is still entitled to the arrear salary from 2007 onwards and claims parity with the judgment and order dated 17/2/2017, the benefit of which has already been granted to those 19 petitioners, who have filed the writ petition i.e. W.P.(C) No. 3286/2014.

10. It appears that on 10/7/2017 this Court had issued notice. In the said order it was also categorically mentioned about the order dated 17/2/2017 passed in W.P.(C) No.3286/2014 whereby the speaking order dated 27/3/2014 was quashed. Almost 6 years have passed by, but the respondents have not cared to file any affidavit.

11. Upon hearing the learned counsel for the parties and upon perusal of the materials on record including the judgment passed by the Coordinate Bench on 17/2/2017 whereby the order dated 27/3/2014 was quashed, this Court finds no reason as to why parity should not be maintained by giving to the petitioner the same relief taking into account that the speaking order dated 27/3/2014 stands already quashed in respect to the 19 petitioners out of the 24 petitioners who initially filed W.P.(C) No.5085/2008. This Court further deems it appropriate to quote paragraph Nos. 12 to 18 of the judgment and order dated 17/2/2017 passed in W.P.(C) No.3286/2014 by the Co-ordinate bench of this Court :-

"12. A perusal of the impugned order dated 27.03.2014 would go to show that the

Director has taken the stand that petitioners were appointed by the then Deputy Inspector of Schools, Dhemaji in the year 1989 against non-existent posts. Names of the petitioners are included in the list of 752 terminated teachers. Monthly salary of the petitioners were stopped from August, 2007 as per Government Instruction dated 09.02.2007.

13. Therefore, the basic stand of the respondents is that names of the petitioners were included in the list of 752 terminated teachers and accordingly their salaries were withheld from August, 2007.

14. Director of Elementary Education, Assam, i.e., respondent No.3 in his affidavit has stated that show-cause notices were issued to 752 Assistant Teachers of LP School in Dhemaji district on the ground that their appointments were illegal and against non-sanctioned posts. Reply submitted by those teachers which included the petitioners were found to be not satisfactory and accordingly Director of Elementary Education by his letter dated 12.05.1992 had directed the Deputy Inspector of Schools to terminate the service of such teachers. However, it is stated that termination of the service of the petitioners was kept pending until further instructions.

15. From the above, it is seen that though termination notices were issued to the petitioners to which petitioners had submitted their reply which were found to be not satisfactory, consequential termination orders were not issued to the petitioners. As a result, petitioners continued in service. Besides, regularisation of service of the petitioners by Deputy Inspector of Schools and their subsequent continuance in service has not been denied by the Director in his affidavit. In fact, Director in his affidavit has stated that decision to terminate the service of the petitioners was kept pending which would mean that no termination order was issued to the petitioners.

16. Be it stated that in the case of Dulu Devi Vs. State of Assam, (2016) 1 SCC 622, which also related to service in LP School in Dhemaji district, Supreme Court referring to the earlier Constitution Bench judgment in State of Punjab V s. Amar Singha Harika, AIR 1966 SCC 1313, held that mere passing of an order of dismissal or termination would not be effective unless it is published and communicated to the officer concerned. If the appointing authority passes an order of dismissal but does not communicate it to the officer concerned, termination would not be effective.

17. In the instant case, petitioners were appointed in the year 1989. They have rendered service for more than 28 years now. As a matter of fact, they were paid salary up-to July, 2007, i.e., for a period of 18 years. Continuance in service by the petitioners is not disputed and as per the admitted stand of the respondents, no termination order has been issued to the petitioners. In such circumstances, withholding of salary of the petitioners would not be justified. Consequently, impugned order dated 27.03.2014 is set aside and quashed. Respondents are directed to release the arrear salary of the petitioners from August, 2007 within a period of four months from the date of receipt of a certified copy of this order. Current salary for the month of February, 2017 shall be released within a period of three months from the date of

receipt of a certified copy of this order.

18. Writ petition is allowed but without any order as to cost(s)."

12. Considering the above, this Court therefore allows the writ petition thereby quashing the order dated 27/3/2014 insofar as the petitioner herein is concerned and further directing the respondents more particularly the Elementary Education Department to release the arrear salary of the petitioners from August 2007 within a period of 4 months from the date of receipt of a certified copy of this order by the Director of Elementary Education, Assam.

13. With the above, the instant petition stands allowed.

JUDGE

Comparing Assistant