

GAHC010238102017



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

Case No. : WP(C)/3858/2017

BIPUL CHANDRA DEWRI
S/O. BHARAT DEWRI, R/O. DHURAKHAP, P.O. HABIBARANGABARI, P.S.
MIKIRBHETA, DIST. MORIGAON ASSAM.

VERSUS

THE CHAIRMAN, DISTRICT LEGAL SERVICE AUTHORITY and 2 ORS.
MORIGAON

2:MS. CHAMPA DEVI

W/O. KHARGESWAR NATH
R/O. NA-TORABORI VILLAGE
P.S. MIKIRBHETA
DIST. MORIGAON ASSAM
PIN-782105.

3:MUSST. LILIMA BEGUM

W/O. MD. GARIB ULLAH
R/O. DANGORIA VILLAGE
P.S. MIKIRBHETA
DIST. MORIGAON ASSAM
PIN-782105

Advocate for the Petitioner : MR.P P DUTTA

Advocate for the Respondent : MR.M RAHMANR- 2and3

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 15.03.2023

Heard Mr. P.P. Dutta, learned counsel for the petitioner. Also heard Mr. H.K. Das, learned standing counsel for the respondent no.1. Although the names of the learned counsel for the respondent nos.2 and 3 are reflected in the cause list, none appears on call for the said respondents.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the order dated 21.03.2017, passed by the learned Chairman, District Legal Service Authority, Morigaon in PLA Case No. 21/2015.

3. The case of the petitioner is that as Headmaster of Na-Torabori Lower Primary School, he had received public complaints against the respondent nos.2 and 3 and therefore, on 27.08.2014, a General Meeting was convened by the School Managing Committee, wherein resolution was adopted to remove the respondent nos.2 and 3 from the post of Mid Day Meal Cook. The aggrieved respondent nos.2 and 3 approached the District Legal Service Authority, Morigaon against their removal and accordingly, the Permanent Lok Adalat, Morigaon registered PLA Case No. 21/2015 and issued notice to the petitioner, being the Headmaster and Secretary of the said school and to the then President of the school to appear and file their written reply. The petitioner and

the then President of the school had appeared before the Permanent Lok Adalat and had stated that they took the decision for terminating the respondent nos.2 and 3 by way of a resolution. However, as the petitioner did not annex the copy of resolution and procedure along with their written reply and neglected to appear before the Permanent Lok Adalat for hearing, the Permanent Lok Adalat arrived at a conclusion that the termination of the respondent nos.2 and 3 was not justified and they were directed to approach the concerned District Elementary Education Officer, Morigaon for their re-employment and moreover, the said authority was directed to take appropriate action against the petitioner and the then President for not following proper procedure in terminating the respondent nos.2 and 3 as Cook.

4. Opposing the prayer made in this writ petition for setting aside the order dated 21.03.2017, the standing counsel for the respondent no.1 has referred to the statement made in the affidavit-in-opposition and has submitted that the Permanent Lok Adalat has the power and authority to act as a Civil Court and that as per section 22C of the Legal Services Authorities Act, 1987. The proceeding before the Permanent Lok Adalat is deemed to be a judicial proceeding and as the petitioner has failed to participate in the hearing, the Permanent Lok Adalat has the power and authority to pass the order. Accordingly, submissions have been made to justify the order passed by the Permanent Lok Adalat.

5. It would be appropriate to quote the provisions of section 22A and 22B of the Legal Services Authorities Act, 1987:

“22A. Definitions.—*In this Chapter and for the purposes of sections 22 and 23, unless the context otherwise requires,—*

(a) "Permanent Lok Adalat" means a Permanent Lok Adalat established under sub-section (1) of section 22B;

(b) "public utility service" means any—

(i) transport service for the carriage of passengers or goods by air, road or water; or

(ii) postal, telegraph or telephone service; or

(iii) supply of power, light or water to the public by any establishment; or

(iv) system of public conservancy or sanitation; or

(v) service in hospital or dispensary; or

(vi) insurance service, and includes any service which the Central Government or the State Government, as the case may be, in the public interest, by notification, declare to be a public utility service for the purposes of this Chapter.

22B. Establishment of Permanent Lok Adalats.—*(1) Notwithstanding anything contained in section 19, the Central Authority or, as the case may be, every State Authority shall, by notification, establish Permanent Lok Adalats at such places and for exercising such jurisdiction in respect of one or more public utility services and for such areas as may be specified in the notification.*

(2) Every Permanent Lok Adalat established for an area notified under sub-section (1) shall consist of—

(a) a person who is, or has been, a district judge or additional district judge or has held judicial office higher in rank than that of a district judge, shall be the Chairman of the Permanent Lok Adalat; and

(b) two other persons having adequate experience in public utility service to be

nominated by the Central Government or, as the case may be, the State Government on the recommendation of the Central Authority or, as the case may be, the State Authority, appointed by the Central Authority or, as the case may be, the State Authority, establishing such Permanent Lok Adalat and the other terms and conditions of the appointment of the Chairman and other persons referred to in clause (b) shall be such as may be prescribed by the Central Government."

6. From the provisions of section 22A(b), it is apparent that the service of a cook in a lower primary school is not a public utility service. The respondent no.1 has not been able to show any notification by which the appropriate Govt. has declared the service of cook in lower primary school to be a public utility service. Moreover, the respondent nos.2 and 3, though had entered appearance in the Permanent Lok Adalat, but in this case, has not been able to produce such notification. Therefore, in terms of the section 22B of the said Act, the Permanent Lok Adalat used its jurisdiction to decide the issue of discharge of service of a cook by treating the same as public utility service.

7. Under such circumstances, as the Permanent Lok Adalat was not vested with the power and authority to decide about the legality and validity of the termination of service of respondent nos.2 and 3 as cook, which was done as per resolution dated 27.08.2014 by the School Managing Committee, the Court is constrained to hold that the order dated 21.03.2017, passed by the learned Chairman, District Legal Service Authority, Morigaon in PLA Case No. 21/2015 is without jurisdiction and therefore, a nullity.

8. Accordingly, the Court has no hesitation to set aside and quash the

aforesaid order dated 21.03.2017, passed by the learned Chairman, District Legal Service Authority, Morigaon in PLA Case No. 21/2015.

9. Accordingly, the operation of the order dated 21.03.2017 gets merged with this order as final order.

10. Writ petition stands allowed to the extent as indicated above.

11. Parties are left to bear their own cost.

JUDGE

Comparing Assistant