

GAHC010239762017



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

Case No. : WP(C)/4836/2017

ARUN MONDAL
S/O. LT. GOPINATH MANDAL, R/O. KUNWARPUR, P.O. KOLAKHOWA, DIST.
LAKHIMPUR, ASSAM.

VERSUS

THE STATE OF ASSAM and 6 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM, EDUCATION
ELEMENTARY DEPTT., DISPUR, GUWAHATI-6.

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM

KAHILIPARA
GUWAHATI-781019.

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER
LAKHIMPUR

DIST. LAKHIMPUR
ASSAM.

4:THE INSPECTOR OF SCHOOLS
LAKHIMPUR DISTRICT CIRCLE

DIST. LAKHIMPUR
ASSAM.

5:THE MANAGING COMMITTEE
AZAD L.P. SCHOOL

BALITIKA

P.O. KALAKHOWA
DIST. LAKHIMPUR
ASSAM.

6:THE HEAD MASTER
AZAD L.P. SCHOOL

BALITIKA
P.O. KALAKHOWA
DIST. LAKHIMPUR
ASSAM.

7:SARAFAT ALI

S/O. LT. SABJA ALI
R/O. VILL. BALITIKA
P.O. KALAKHOWA
DIST. LAKHIMPUR
ASSAM-787023

Advocate for the Petitioner : MR.J A AHMED

Advocate for the Respondent : SC, ELEMENTARY EDUCATION

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 28-04-2023

Heard Mr. R. Sarma, learned counsel for the petitioner and Ms. N. Phukan, learned Standing counsel for the Elementary Education Department appearing for the respondent nos.1 to 4 and Mr. A. Hussain, learned counsel for the respondent nos.5, 6 and 7.

2. In brief the case of the petitioner is that he was appointed as an Assistant teacher in the Azad LP School, Lakhimpur, which was then a venture school. The service of the teaching and non-teaching employee of the said school was sought to be provincialized and accordingly, in the prescribed format

the name of the petitioner along with others were forwarded for being considered for appointment as Assistant teacher.

3. By an order dated 14.05.2013, the service of the petitioner was provincialized by the Director of Elementary Education Assam (respondent no.2). The petitioner was found involved in a criminal case and accordingly, in connection with trial of Session case no.43(NL)/2009 under section 302/34 IPC, the petitioner was convicted and sentenced for life imprisonment. The aggrieved petitioner approached this Court in appeal and this Court by judgment and order dated 16.08.2016 passed in Criminal Appeal 40/2013, upheld the conviction but converted the sentence from life imprisonment to imprisonment for a term of 5 years. Resultantly, the petitioner was released from jail on 15.10.2016. On his release, the petitioner has submitted an application before the District Elementary Education Officer (DEEO), Lakhimpur (respondent no.3) to allow him to join the school. As nothing happened, the petitioner made an RTI inquiry and in the RTI reply the petitioner was informed that his name was replaced by the respondent no.7 by the impugned resolution dated 17.12.2012 which was taken by the Managing Committee of the said school (respondent no.5) and the petitioner also became aware that the Director of Elementary Education, Assam (respondent no.2), by the impugned order dated 26.11.2013, deleted the name of the petitioner from the list of the teachers whose services were provincialised. The case of the petitioner is that he has not been served with a copy of the said order dated 26.11.2013. Accordingly, the petitioner has approached this Court with a prayer for setting aside the resolution dated 17.12.2012 taken by the respondent no.5 and also for setting aside the order dated 26.11.2013 issued by the respondent no.2.

4. Per contra, the learned standing counsel for the Elementary Education Department has submitted that although the date of the alleged criminal act of the petitioner is not on record but as the trial commenced on 20.10.2009, it can be presumed that the offence took place in the year 2009 or before. But the process of provincialization had commenced on and 24.11.2011, when the papers were submitted before the authorities. The petitioner was convicted for life by the judgment of the learned Sessions Court dated 29.11.2012. Thereafter on 17.12.2012 resolution was taken by the respondent no.5 to delete the name of the petitioner. However, as these subsequent events have not been brought to the notice of the respondent authorities, in the meanwhile the respondent no.2 by an order dated 14.05.2013 had provincialized the service of teaching and non-teaching staff of Azad LP School, Lakhimpur alongwith the petitioner. It is submitted that as the conviction of the petitioner came to the notice of the respondent no.2, then by an order dated 26.11.2013, the name of the petitioner was deleted.

5. Accordingly, it is submitted that the disciplinary proceeding, if initiated against the petitioner now, it would be an empty formality as the petitioner has already been convicted of offence under section 302/34 IPC and the petitioner had spent 5 years in custody as convict.

6. It is noted that the respondent no.7 had approached this Court by filing WP(C) 2051/2013, claiming placement of his name as First Assistant teacher in Balitika Azad LP School, Nowbaisa by projecting that the petitioner who was the 1st Assistant Teacher of the school, his name was dropped of being

convicted in the hereinbefore referred criminal proceeding and further submitting that the service of the petitioner was terminated by resolution dated 17.12.2012.

7. The learned counsel for the petitioner has successfully demonstrated that the petitioner was not impleaded in WP(C) 2051/2013. Be that as it may, this Court by order dated 22.07.2013, had directed the Director of Elementary Education, Assam to make a necessary inquiry in the nature as provided under section 10(4) of the Assam Venture Educational Institutions (Provincialisation of Services), Act, 2011 and thereafter for effective modification in the particulars of the school in question.

8. It is evident that when the respondent no.2 had deleted the name of the petitioner by order dated 26.11.2013 and included the name of the respondent no.7 as Assistant teacher in his place, when the petitioner was in jail to serve the sentence. Further it appears that on 17.12.2012 when the Managing Committee of the Azad LP School had taken a resolution to terminate the service of the petitioner, at that stage the concerned Azad LP School was still in a venture stage.

9. Therefore, the termination of the service of the petitioner became effective w.e.f. 17.12.2012. At that stage, the petitioner was convicted and sentenced for life imprisonment, which was subsequently altered to 5 years in an appeal. Therefore, on 14.05.2013, when the service of the petitioner was provincialised by that time the service of the petitioner stood terminated from the school.

10. Therefore, when the Director of Elementary Education, Assam had passed the order dated 26.11.2013, deleting the name of the petitioner and including the name of the respondent no.7 as Assistant teacher in his place, in the considered opinion of the Court, he was only implementing the status of the petitioner in the school, which was to the effect that the service of the petitioner was already terminated by the order dated 17.12.2012.

11. Under such circumstances, merely because the name of the petitioner was included in the provincialisation order dated 14.05.2013, it would not have an effect as if the petitioner had become a member of the cadre of the Assistant Teacher under the Director of Elementary Education Assam. On 26.11.2013 when the Director of Elementary Education had deleted the name of the petitioner, the petitioner had not joined and/or serving in the said school i.e. Azad LP school as he was serving sentence imposed on him.

12. In that view of the matter, the Court does not find any merit in the challenge made to the order dated 26.11.2013 by the Director of Elementary Education, Assam, or the impugned resolution dated 17.12.2012 adopted by the School Managing Committee of Azad L.P. School, Balitika. As the petitioner did not join the said school as a provincialized Assistant Teacher, there is no requirement of passing any order to effectually terminate the service of the petitioner. In the present case, the State is not required to follow the procedure as prescribed under the Assam Services (Discipline and Appeal) Rules, 1964. Even assuming that by dint of the provincialisation order dated 14.05.2013, the petitioner was deemed to be a govt. servant, notwithstanding whether or not he

had joined or he was serving in the school in question, it is not in dispute that prior to the order dated 26.11.2013, the Managing Committee of the Azad LP school had the power and authority to remove the petitioner from service. Merely by provincialisation of service, the petitioner would not be in service of the Assistant teacher in the said school on his service being terminated pursuant to resolution by the School Managing Committee dated 17.12.2012.

13. However, under such circumstances, the Court does not find any reason for the authorities in the Elementary Education to initiate any proceeding against the petitioner. The purported order dated 26.11.2013 by the Director of Elementary Education, Assam has merely made effective the status of the petitioner of removal from service vide the resolution of the School Managing Committee taken on 17.12.2012. As the petitioner was no longer serving in the said school, his service could not have been provincialized.

14. Thus, the present writ petition fails and the same is dismissed.

15. The parties are left to bear their own costs.

JUDGE

Comparing Assistant