

GAHC010189542019



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

WA/260/2019

SRI MANTU CHANGMAI
S/O- LATE LILA CHANGMAI
R/O- VILL.- GHILAMARA
P.O. AND P.S. GHILAMARA
DIST.- LAKHIMPUR
ASSAM
PIN- 787053.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM
EDUCATION (SECONDARY) DEPARTMENT
DISPUR
GUWAHATI-6.

2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-29.

3:THE INSPECTOR OF SCHOOLS

LAKHIMPUR DISTRICT CIRCLE
LAKHIMPUR
DIST.- LAKHIMPUR
ASSAM
PIN- 787001.

4:INDRANI BARUAH

WIFE OF SRI INDRESWAR GOGOI
RESIDENT OF VILLAGE- BHAKAT GAON
P.O. AND P.S. - GHILAMARA
DISTRICT - LAKHIMPUR
PIN-787053
ASSAM.
5:MILESWAR SAIKIA

SON OF LATE MAYARAM SAIKIA
RESIDENT OF VILLAGE NO. 2
BATAMARI
P.O. - BATAMARI
P.S. - GHILAMARA
DISTRICT - LAKHIMPUR
PIN-787053
ASSAM.

Advocate for :
Advocate for : MR. R MAZUMDAR
SC appearing for THE STATE OF ASSAM AND 4 ORS

**BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE KARDAK ETE**

JUDGMENT

Date : 21-06-2024

(Kardak Ete, J)

Heard Mr. P.J. Saikia, learned senior counsel assisted by Mr. R.S. Mishra, learned counsel for the appellant. Also heard Mr. J. Roy, learned senior counsel assisted by Mr. R. Hazarika, learned counsel for the respondents No.5 and 6 and Mr. N.J. Khataniar, learned counsel for the State Respondents.

2. This Intra-Court Appeal is preferred against the judgment and order dated 22.11.2017 passed by the learned Single Judge in WP(C) No.3306/2017, whereby the writ petition filed by the appellant/writ petitioners has been dismissed.

3. The case, in brief, is that the appellant and one Sri Kamala Kanta Phukan

were appointed as Assistant Teachers (Arts) in Dakhin Ghilamara High School (Venture), Dhakuakhana in the district of Lakhimpur, Assam on 18.02.1998 and 25.01.1996 respectively. The respondent No. 5 and 6 were also appointed as Assistant Teachers in the same School and a seniority dispute has arisen at the time of process for provincialisation of the services of the Teachers. The seniority dispute of the appellant and Sri Kamala Kanta Phukan with the respondent No. 5 and 6 has been settled by the respondent authority vide order dated 01.08.2014 pursuant to the order and direction dated 13.05.2014 passed in WP(C) No.2876/2013 & WP(C) No.36/2013, whereby, the appellant and Sri Kamala Kanta Phukan were declared seniors to the respondent. No. 5 and 6. Thereafter, the services of the appellant and Shri Kamala Kanta Phukan were provincialised vide order dated 14.08.2014 as Assistant Teachers (Arts) in the said school under the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 (hereinafter referred to as the Act of 2011 in short).

4. The respondents No.5 and 6 have filed the writ petition being WP(C) 4747/2014 challenging the provincialisation of the appellant and Sri Kamala Kanta Phukan as the respondents No.5 and 6 were left out from provincialisation. Vide order dated 17.09.2014 the learned Single Judge by an interim order directed not to provincialise the services of the appellant and Sri Kamala Kanta Phukan till the returnable date. Pursuant to the said interim order passed in WP(C) 4747/2014 the respondent No.2 by an order dated 16.10.2014 withdrew the provincialisation order dated 14.08.2014, by which, the services of the appellant and Sri Kamala Kanta Phukan were provincialised under the Act of 2011. Being aggrieved, the appellant and Sri Kamala Kanta Phukan had filed WP(C) 513/2015, challenging the order dated 16.10.2014.

5. During the pendency of the aforementioned two writ petitions, the Division

Bench of this Court in WP (C) No. 5825/2012 (Chandan Kr. Neog and Ors. Vs. State of Assam) and other connected writ petitions, vide Judgement and Order dated 23.09.2016, has held the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 constitutionally invalid. In view of such development, the learned Single Judge vide common order dated 31.10.2016 dismissed the two writ petitions i.e. WP(C) 4747/2014 filed by the respondents No.5 and 6 and WP(C) 513/2015 by the appellant and Sri Kamala Kanta Phukan on the ground that no live issue survives for adjudication in those two writ petitions.

6. The State Government filed petition for review of the Judgement and order dated 23.09.2016. After consideration of the Review Petition No.167/2016 filed by the State respondents, the Division Bench vide order dated 02.01.2017, has disposed of the same by holding that the rights of the employees who have been benefited under the struck down statute can be taken care of by giving retrospective effect to the proposed legislation, if the legislature so decides. It was ordered that, till then, the services of the provincialised category and their status as government employees shall not be disturbed and they will continue to receive all the benefits which they are getting under the Act of 2011, since struck down by the judgment under Review.

7. Thereafter, the State has enacted Assam Education (Provincialisation of Service of Teachers and Re-organization of Educational Institutions) Act, 2017 (hereinafter referred to as the Act of 2017 in short). The appellant and Sri Kamala Kanta Phukan filed a representation dated 15.03.2017 for cancellation of order dated 16.10.2014 and allowed them to continue as Assistant Teachers, which was not considered.

8. The appellant along with Sri Kamala Kanta Phukan, again approached this Court by filing WP(C) 3306/2017 for a direction to the respondent authorities to

review or recall the order dated 16.10.2014 and to consider their case in view of the order passed in the Review Petition. However, the learned Single Judge has dismissed the writ petition vide impugned order dated 22.11.2017 on the ground that the prayer of the writ petitioner in the writ petition is same with that of WP(C) 513/2015 filed by the appellant and Sri Kamala Kanta Phukan and that the order dated 31.10.2016 still being in force and unless the same is reviewed, modified or altered by the competent Court, relief prayed cannot be granted. Hence, this intra-Court Appeal.

9. Mr. P.J. Saikia, learned Sr. counsel, submits that the learned Single Judge has failed to appreciate the fact that the respondent authority has passed the order dated 16.10.2014 withdrawing the provincialisation of the appellant and Sri Kamala Kanta Phukan dated 14.08.2014 in pursuant to the interim order of the Hon'ble Court dated 17.09.2014 passed in WP(C) No.4747/2014 and with the dismissal of the said writ petition, the effect of interim order dated 17.09.2014 comes to an end. Therefore, he submits that the finding of the learned Single Judge is not sustainable in law and as such, the impugned order dated 22.11.2017 is liable to be set aside and quashed.

10. Mr. P.J. Saikia, learned senior counsel, further submits that the learned Single Judge has failed to appreciate the fact that the interim order in the writ proceeding operates only during the pendency of writ proceeding. The appellant and Sri Kamala Kanta Phukan ought to have been brought to the position where they would have been before passing of the interim order dated 17.09.2014. The writ petition being WP(C) 4747/2014 having been dismissed, the interim order dated 17.09.2014 as well as order dated 16.10.2014 passed by the respondent authority cannot be allowed continue after the dismissal of the said writ petition. As such, he submits that the impugned order dated 22.11.2017 may be set aside

and the services of the appellant and Sri Kamala Kanta Phukan may be directed to be restored.

11. Mr. J. Roy, learned counsel for the Respondent No. 5 and 6, while not seriously refuting the submission of learned Senior counsel, Mr. Saikia, submits that under the Act, 2017, there is a provision for filing application/appeal before the Tribunal against the order of the authority. Therefore, he submits that he may be allowed to approach the Tribunal.

12. We have considered the submissions of learned counsel for the parties and perused the judgment and orders passed by the Division Bench and learned Single Judge.

13. It is noticed that the appellant and Sri Kamala Kanta Phukan had preferred the writ appeal against the impugned order dated 22.11.2017 which was registered as WA No267/2018. The appellant has withdrawn the Writ Appeal which was allowed vide order dated 26.09.2018 with a liberty to file a review petition in writ petition WP(C) 513/2014. The appellant filed the review petition being Review Petition No.35/2019, which was dismissed by the learned Single Judge. It is taken note that against the order dated 31.10.2016 and Shri Kamala Kanta Phukan had preferred a writ appeal being WA No.185/2022, which has been heard along with the present appeal on which we would pass a separate order in view of the order we are proposing to pass (infra).

14. The service of the appellant and Sri Kamala Kanta Phukan were provincialized as Assistant Teachers (Arts) vide order dated 14.08.2014, out of 4 posts of Assistant Teachers in Dakhin Ghilamara High School in the district of Lakhimpur, after the settlement of the seniority issue amongst the appellant, Kamala Kanta Phukan and the respondents No.5 and 6. The dispute regarding seniority amongst the parties were settled pursuant to the order of the Court dated 13.05.2014 in

WP(C) 36/2013 and WP(C) 2876/2013, whereby, the appellant and Sri Kamala Kanta Phukan were held to be seniors. Their services were provincialized under the Act of 2011.

15. The respondents No.5 and 6 have challenged the said provincialisation of the service of the appellant and Sri Kamala Kanta Phukan wherein, the learned Single Judge vide order dated 17.09.2014 in WP(C) 4747/2014 directed not to provincialise the services of the appellant and Sri Kamala Kanta Phukan till the returnable date. Pursuant to the said interim order dated 17.09.2014, the respondent authority withdrew the provincialisation of the appellant and Sri Kamala Kanta Phukan vide order dated 16.10.2014. Against the said order dated 16.10.2014, the appellant and Sri Kamala Kanta Phukan have filed WP(C) 513/2014. During the pendency of the two writ petitions mentioned above, this Court has held the Act of 2011, under which the services of the appellant and Sri Kamala Kanta Phukan were provincialized, constitutionally invalid and struck down the same. In view of such development, the learned Single Judge, on having found that there exist no live issues for adjudication, both the writ petitions along with the miscellaneous applications were dismissed. It is also noticed that the respondent authority vide order dated 07.12.2016 has also rejected the claim of the petitioner for re-consideration on the ground that the learned Single Judge vide order dated 31.10.2016 has dismissed the writ petitions in view of the striking down of the Act of 2011 as unconstitutional.

16. The State has filed review petition which was registered as Review Petition No.167/2016. This Court vide order dated 02.01.2017 has disposed of the review petition by holding that the rights of the employees who have been benefited under the struck down statute can be taken care of by giving retrospective effect of the proposed legislation, if the legislature so decides. It was ordered that the services of the provincialized category and their status as government employees

shall not be disturbed and they will continue to receive all the benefits which they are getting under the Act of 2011, since, struck down by the judgment under review.

17. In the meantime, the State has enacted the Act of 2017. Under Section 24, it is provided that all the teachers whose services were provincialised prior to 23.09.2016 to continue and their cases shall be reviewed as the eligibility norms set forth for provincialisation under the new Act.

18. We find that the writ petitions filed by the respondents No. 5 and 6 as well as appellant along with Kamala Kanta Phukan and the Interlocutory Application for vacating of the interim order passed in WP(C) 4747/2014 wherein, it was directed not to provincialise the services of the appellant and Sri Kamala Kanta Phukan were dismissed vide order dated 31.10.2016 by the learned Single Judge, having found that no live issue survives for adjudication in the said two writ petitions in view of the fact that the Act of 2011, under which the services of the appellant and Sri Kamala Kanta Phukan were provincialized, has been declared unconstitutional and struck down by this Court.

19. Having considered above, we are of the view that since the above writ petitions and the application for vacating the stay having been dismissed on having found that no live issues survives, in view of the declaration of the Act of 2011 as unconstitutional and struck down by this Court and the subsequent development whereby, this Court in the review petition has held the rights of the employees who have been benefited under the struck down statute can be taken care of by giving retrospective effect to the proposed legislation and the enactment of the Act of 2017, the writ petition filed by the appellant and Sri Kamala Kanta Phukan, ought not to have been dismissed only on the ground of the order dated 31.10.2016.

20. The challenged in the writ petition being WP(C) 3306/2017 filed by the

present appellant and Sri Kamala Kanta Phukan is against the order of withdrawal of the provincialisation pursuant to the interim order passed in the WP(C) 4747/2014. The interim order dated 17.09.2014 having been merged along with the dismissal of the earlier two writ petitions, we are of the view that the provincialisation order in favour of appellant and Sri Kamala Kanta Phukan, would stands revived.

21. It is well settled that once a final order is passed, all the earlier interim orders merged into final order and the interim order cease to exist. In the present case, the order dated 31.10.2016 passed by the learned Single Judge, whereby the two petitions being WP(C) 4747/2014 and WP(C) 513/2014 and the miscellaneous application for vacating the stay orders have been dismissed not on merit, but, in view of the Act of 2011, under which the services of the appellant and Sri Kamala Kanta Phukan were provincialised, being held unconstitutional and struck down and having found that no live issue survives for adjudication in the writ petitions. The withdrawal of the provincialisation of the appellant and Sri Kamala Kanta Phukan, were pursuant to the interim order passed in the said writ petition. Therefore, same stands revived.

22. In view of what has been discussed herein above, we are of the view that the learned Single Judge has erroneously dismissed the writ petition on the ground that the order dated 31.10.2016 whereby the writ petition being WP(C) 513/2015 has been dismissed being still in force and unless the same is modified or altered, the prayer cannot be considered. Thus, the impugned order dated 22.11.2017 passed by the learned Single Judge in WP(C) 3306/2017 is hereby interfered with. Consequently, the same is set aside and quashed. The provincialisation order dated 14.08.2014 shall stands revived. 23. Accordingly, Writ Appeal stands allowed and disposed of.

24. However, it is provided the respondents No.5 and 6 are at liberty to approach the appropriate forum which may be permissible under the law.

JUDGE

CHIEF JUSTICE

Comparing Assistant