



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

WP(C) No.3005 of 2020

Shri Tridip Sarmah,
Son of Late Khagen Sarmah,
Resident of Village: Chalchali, PO:
Chalchali, PS: Samaguri, District:
Nagaon, Assam, PIN – 782141.

.....Petitioner

-Versus-

1. The State of Assam, represented by the Commissioner & Secretary to the Government of Assam, Education (Secondary) Department, Dispur, Guwahati – 781006.
2. The Director of Secondary Education, Assam, Kahilipara, Guwahati – 781019, District: Kamrup (Metro), Assam.
3. The Inspector of Schools, Nagaon District Circle, Nagaon, District: Nagaon, Assam, PIN – 782001.
4. The School Management and Development Committee, Sri Sri Pitambar Dev Goswami High School, Murhani, Nagaon, represented by its Member Secretary/Headmaster, School Management and Development Committee, Sri Sri Pitambar Dev

Goswami High School, Murhani,
Nagaon, Village: Mourachook, PO:
Chalchali, District: Nagaon, Assam, PIN
– 782141.

5. The Headmaster, Sri Sri Pitambar
Dev Goswami High School, Murhani,
Nagaon, Village: Mourachook, PO:
Chalchali, District: Nagaon, Assam, PIN
– 782141.

.....Respondents

- B E F O R E -
HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

For the Petitioner : Mr. N. Borah, Advocate.

For the Respondents : Mr. U. Sharma, Standing Counsel,
Education (Secondary) Department,
for respondent Nos.1, 2 & 3.

Date of Judgment : 11th January, 2024.

JUDGMENT & ORDER (ORAL)

Heard Mr. N. Borah, learned counsel for the petitioner. Also heard Mr. U. Sharma, learned standing counsel, Education (Secondary) Department, representing the respondent Nos.1, 2 & 3.

2. The petitioner, by way of the present writ petition, has presented a challenge to the resolution dated 11.08.2015 adopted by the School Management and Development Committee (SMDC) of Sri Sri Pitambar Dev Goswami High School, Murhani, Nagaon, by which the services of the petitioner was resolved to be terminated.

The petitioner has also assailed a communication dated 12.08.2015 issued by the President and Headmaster/ Member Secretary of the School Management and Development Committee of the said School, by which the School authorities had terminated his services in terms of the provisions of Clause 9 of the Agreement entered into between him and the School authorities. The petitioner also assails an order dated 31.05.2016 issued by the Director of Secondary Education, Assam in the matter and prays that a direction be issued to the respondent authorities to reinstate him in service as an Assistant Teacher of General Mathematics in Sri Sri Pitambar Dev Goswami High School along with all consequential benefits.

3. The facts requisite for adjudication of the issues arising in the instant writ petition are noticed herein below.

The petitioner, in pursuance to an advertisement issued in the year 2010 by the School Management and Development Committee of the School in question, submitted his application for appointment as Assistant Teacher (on contractual basis) in Mathematics. The petitioner on being selected in pursuance to the said advertisement came to be appointed as an Assistant Teacher in General Mathematics on contractual basis vide an order of appointment dated 14.08.2010. The contractual engagement of the petitioner as mentioned in the order of appointment was for a period upto 31.03.2011. Thereafter, the said contractual appointment of the petitioner was extended from time to time.

4. On 09.08.2015, an FIR came to be lodged against the petitioner by one Smti. Dipali Gayan alleging that the petitioner used to physically abuse her minor daughter while she was receiving tuitions in Mathematics from the petitioner. Basing on the said FIR, Samaguri Police Station Case No.318/2015 under Section 4 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) came to be registered. The petitioner came to be placed under arrest in connection with the said case on 10.08.2015. The learned Additional Sessions Judge No.1, Nagaon, vide order dated 09.11.2015, granted bail to the petitioner.

5. When the petitioner after being granted bail proceeded to resume his services, he was issued with a communication dated 12.08.2015 (*Annexure-E, Page-30 to the writ petition*), by which he was released/terminated from his services as a contractual Additional Mathematics Teacher w.e.f. 10.08.2015. The said communication reveals that the same is based on a resolution of the School Management and Development Committee of the School in question held on 11.08.2015.

6. The petitioner assailed the said communication dated 12.08.2015 and the resolution connected thereto before this Court by instituting WP(C) No.18/2016. This Court, upon consideration of the matter, vide order dated 28.01.2016, was pleased to dispose of the writ petition by requiring the petitioner to prefer a representation before

the Director of Secondary Education, Assam. The Director of Secondary Education, Assam was to dispose of the same on its merit. Thereafter, the Director of Secondary Education, Assam, on consideration of the representation preferred by the petitioner and on affording an opportunity of hearing to the petitioner, proceeded to pass an order dated 31.05.2016 rejecting the representation of the petitioner holding that the petitioner lacks teacher like quality and the reinstatement of the petitioner in services will deteriorate the academic atmosphere of the School. It is against this order dated 31.05.2016 and the earlier communication dated 12.08.2015 that the present writ petition has been filed.

7. Mr. N. Borah, learned counsel for the petitioner submits that the termination as effected in the case of the petitioner vide communication dated 12.08.2015 and upholding of the same vide order dated 31.05.2016 are stigmatic in nature and accordingly, such an order of termination could not have been issued without first holding an enquiry in the matter against the petitioner. Mr. Bora has referred to the judgment & order dated 28.08.2019 passed by the learned Special Judge, Nagaon in the criminal proceeding instituted against the petitioner, i.e. Special (POCSO) Case No.58/2018, wherein the petitioner was acquitted of the charges levelled against him on benefit of doubt. Pursuant to passing of the said judgment & order dated 28.08.2019 by the learned Special Judge, Nagaon, the petitioner, on 06.02.2020, approached

the Deputy Commissioner, Nagaon with a prayer for reinstatement in service. The petitioner thereafter had preferred repeated representations before the respondent authorities praying for his reinstatement in service, which were not considered by the said authorities.

8. Mr. Borah, learned counsel for the petitioner in support of his submission has placed reliance on the decision of Hon'ble Apex Court in the case of ***Dipti Prakash Banerjee -Vs- Satyendra Nath Bose National Centre for Basic Sciences, Calcutta & Ors.***, reported in ***(1999) 3 SCC 60*** and the judgments passed by this Court in the cases of ***Raj Nath Dwivedi -Vs- State of Arunachal Pradesh & Ors.***, reported in ***2003 (2) GLT 167***; ***Mrigen Kalita -Vs- North East Regional Institute of Parliamentary Studies Training & Research & Ors.***; reported in ***2012 (4) GLT 686*** and ***Mridul Deka -Vs- Union of India***, reported in ***2018 (1) GLT 40***.

Basing on the said decisions, it is the contention of the learned counsel for the petitioner that the impugned order of termination, as effected in the case of the petitioner being stigmatic in nature, the same cannot be sustained and accordingly, requires to be revoked with further direction for re-engagement of the petitioner along with all consequential benefits.

9. Mr. U. Sharma, learned standing counsel, Education (Secondary) Department representing the State respondents has submitted that the orders of termination

were so passed basing on the facts coming on record and the conduct of the petitioner having been noticed, the authorities had arrived at conclusions that his continuation in service would be counter-productive and against the interest of the students and as such, he prays that the orders issued towards terminating the services of the petitioner require no interference from this Court.

In support of his submission, Mr. Sharma has placed reliance on a decision of the Hon'ble Apex Court in the case of ***Madhya Pradesh Hasta Shilpa Vikas Nigam Limited -Vs- Devendra Kumar Jain & Ors.,*** reported in ***(1995) 1 SCC 638.***

10. I have considered the submissions advanced by the learned counsel appearing for the parties and have also perused the materials available on record.

11. The petitioner was admittedly appointed as a contractual teacher and was continuing in such capacity basing on the policy of the Government in this connection. The petitioner was entangled in a criminal case and he came to be placed under arrest in connection thereof. The authorities of the School in question, on considering the conduct of the petitioner and taking a view that continuance of the petitioner in the School in question would be adverse to its educational environment, proceeded to adopt a resolution towards terminating his services in its meeting held on 11.08.2015. Thereafter, the services of the petitioner came to be terminated vide

communication dated 12.08.2015. The petitioner had approached this Court by instituting WP(C) No.18/2016 and this Court, basing on the submissions made by the learned counsel for the petitioner, had disposed of the said writ petition at the motion stage itself by granting liberty to the petitioner to approach the Director of Secondary Education, Assam by way of filing a representation. The petitioner then approached the Director of Secondary Education, Assam by way of filing a representation dated 04.01.2016.

12. The Director of Secondary Education, Assam thereafter heard the petitioner on 11.03.2016 and disposed of his representation vide order dated 31.05.2016 holding that given the background involved, it was not thought appropriate to direct reinstatement of the petitioner in the School. What is to be noted at this stage is that after passing of the order dated 31.05.2016, the petitioner had not instituted any proceeding assailing the said order dated 31.05.2016. The petitioner waited till the disposal of the criminal case against him. On perusal of the judgment & order dated 28.08.2019 passed by the learned Special Judge, Nagaon, it is seen that the petitioner was acquitted of the charges levelled against him therein on benefit of doubt.

13. The inaction on the part of the petitioner in assailing the order dated 31.05.2016 by way of an appropriate application before this Court or an appropriate forum and the time lapse occasioning thereafter, the right

of the petitioner to be continued in his contractual engagement does not subsist. The petitioner was not active in having his rights adjudicated at the appropriate time and after such long lapse of time, the petitioner cannot be reinstated in his service. The reasoning as advanced in the communication dated 12.08.2015 as well as in the order of the Director of Secondary Education, Assam dated 31.05.2016 are germane to the issue and no error has been committed by either the School Management and Development Committee in issuing the communication dated 12.08.2015 and/or by the Director of Secondary Education in issuing the order dated 31.05.2016.

14. The facts as existing in the matter coupled with the delay on the part of the petitioner in assailing the order dated 31.05.2016 till the institution of the present proceeding on 29.07.2020, negates the right of the petitioner for a direction to be reinstated in his contractual employment. The petitioner having been afforded an opportunity of hearing in pursuance to the directions of this Court and he having availed of the said opportunity, the petitioner cannot be held to contend that the post decision hearing granted to him is not sufficient. The petitioner was never appointed on regular basis but was appointed on contractual basis.

15. In view of the said position and the conduct of the petitioner emanating from the records of the matter

and the fact that he was only acquitted on benefit of doubt in the criminal proceeding instituted against him, I do not think it is a fit case wherein a direction can be issued to the respondent authorities to reinstate the petitioner in his contractual engagement. In view of the conclusions reached by me basing on the facts involved in the present proceeding, the decisions as referred to by the learned counsel appearing for both the parties are not alluded to.

16. Accordingly, the contentions of the petitioner being held to be without any merit, the writ petition does not merit acceptance and the same stands dismissed. There will be no order as to cost.

J U D G E

Comparing Assistant