

GAHC010147672023



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

Case No. : CRP(IO)/209/2023

THE PRINCIPAL CUM SECRETARY DHUBRI LAW COLLEGE
REPRESENTED BY DR. MRIDULA BARMAN, AGE-43 YEARS, P.O., P.S. AND
DISTRICT- DHUBRI, PIN-783324

VERSUS

ABDUL KUDDUS
S/O MD. ROZAB ALI, R/O VILL- SHIAL TARI, P.O. AND P.S.-MANKACHAR,
DIST-SOUTH SALMARA, ASSAM

Advocate for the Petitioner : MR. A C SARMA, MR N BRAHMA,MR B DEORI,MR G BHARADWAJ

Advocate for the Respondent : DR G J SHARMA,

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 16.08.2024

- 1.** Heard Mr. A. C. Sarma, learned senior counsel assisted by Mr. G. Bhardwaj, learned counsel for the petitioner. Also heard Dr. G. J. Sarma, learned counsel for the sole respondent.
- 2.** This Civil Revision under Article 227 of the Constitution of India has

been filed by the petitioner, namely, the Principal-Cum-Secretary of the Dhubri Law College, impugning the Order dated 02.06.2023 passed by the Education Tribunal, Dhubri in Education Case No. 02/2018, whereby the application filed by the above-mentioned petitioner under Order 14, Rule 5 of the Code of Civil Procedure, 1908, for striking out of Issue No. 3, framed by the Education Tribunal in the above-mentioned Education Case, was rejected.

3. The facts relevant for consideration of the instant Civil Revision, in brief, are as follows:

i. The respondent of this Civil Revision Petition, namely, Abdul Kuddus, was appointed as an Assistant Professor of Law, on part-time basis in the Dhubri Law College. The governing body of the Dhubri Law College had suspended the respondent on some disciplinary grounds on 15.06.2015, and the respondent had filed a case before the District Education Tribunal, Dhubri, for setting aside the suspension Order dated 15.06.2015, as well as for release of all area subsistence allowance to which he was entitled to.

ii. The present petitioner appeared before the Education Tribunal and contested the case by filing a written statement, wherein it was contended that the respondent, being a practicing advocate as well as a part-time lecturer, is not entitled to get subsistence allowance.

iii. On the basis of the pleadings of the parties, the Education Tribunal framed the following issues:

- 1) Whether there is any cause of action for filing this petition?
- 2) Whether the suspension of the petitioner is illegal and

liable to be set aside?

3) Whether the petitioner is entitled to get arrear subsistence allowance as per law?

4) To what relief the petitioner is entitled to?

5) Whether the petition is maintainable in view of the judgment of Hon'ble High Court in the Writ Petition (C), No.6101/2015.

4. During the pendency of the aforesaid proceeding, the respondent had, on 25.05.2018, filed an application in the said case, i.e., Education Case No. 02/2018, for release of entire arrear subsistence allowance of Rs. 5,28,000/- to him. The petition filed by the respondent was numbered as Petition No. 89 dated 25.05.2018.

5. The present petitioner filed a written objection to the said application filed by the respondent.

6. By order dated 17.01.2023, the Education Tribunal, Dhubri, dismissed the said petition filed by the respondent, holding therein that there is no merit in the Petition No. 89 dated 25.05.2018 and the petitioner is not entitled to get subsistence allowance.

7. After passing of the aforesaid order on Petition No. 89/2018 filed by the respondent, the present petitioner filed a petition under Order 14 Rule 5 of the Code of Civil Procedure, 1908, for striking out the Issue No. 3 framed by the Tribunal in the case, as the Tribunal, while considering the Petition No. 89/2018, had already decided the said issue.

8. The respondent had filed a written objection against the said application filed by the petitioner. However, by Order dated 02.06.2023, the Education Tribunal dismissed the petition filed by the present petitioner for

striking out Issue No. 3 and the said order is impugned in the instant Civil Revision.

9. Learned senior counsel for the petitioner has submitted that as the Issue No. 3, which pertains to the question as to whether the petitioner (respondent in this case) is entitled to get area subsistence allowance as per law or not has already been decided by the Order dated 17.01.2023, wherein the Tribunal has held that the present respondent is not entitled to receive a subsistence allowance and for arriving at this said finding, the Tribunal has mentioned various reasons for the same. Learned senior counsel for the petitioner has submitted that, as the Issue No. 3 has already been decided by the Education Tribunal, it need not to be reconsidered in the Misc. Education Case No. 02/2018 as it would operate as *res judicata* and the proper course of action would be to exercise powers under Order 14 Rule 5 of the Code of Civil Procedure, 1908 by striking out the said Issue, as it has already been decided by the Tribunal.

10. On the other hand, learned counsel for the respondent has submitted that the Order dated 17.01.2023 is an interim order passed on the basis of an application i.e., application No. 89/2018 filed by the respondent during the pendency of the Education Case No. 02/2018 and it has not finally decided the Issue No. 3, as no evidence has yet been adduced by the parties in support of their case, and as the said order is an interim order, it is not binding on the Tribunal while finally deciding the issues, including the Issue No. 3, after conclusion of the proceedings.

11. Learned counsel for the respondent has submitted that the findings in the Order dated 17.01.2023 are only tentative in nature as it was passed on the basis of an application filed by the respondent during the interim stage and no

evidence was adduced in support of the Issue No. 3 by the respondent.

12. It is submitted by learned counsel for the respondent that the Education Tribunal could not have finally decided the Issue No. 3 on the basis of an interim application filed by the petitioner during the pendency of the Education Case No. 02/2018, therefore, the issue still remains to be finally decided after adducing of the evidence by both the parties and hence, he submits that the Education Tribunal was correct in passing the impugned order.

13. In support of his submissions, learned counsel for the respondent has cited a ruling of the Apex Court in the case of “***State of Assam Vs. Barak Upatyaka D.U. Karmachari Sanstha***” reported in **(2009) 5 SCC 694**, wherein it observed as follows:

“21. A precedent is a judicial decision containing a principle, which forms an authoritative element termed as ratio decidendi. An interim order which does not finally and conclusively decide an issue cannot be a precedent. Any reasons assigned in support of such non-final interim order containing prima facie findings, are only tentative. Any interim directions issued on the basis of such prima facie findings are temporary arrangements to preserve the status quo till the matter is finally decided, to ensure that the matter does not become either infructuous or a fait accompli before the final hearing.”

14. The learned counsel for the respondent has also submitted that under Order 14 Rule 5 (2) the Code of Civil Procedure, 1908, the Court may strike out any issue if it appears to be wrongly framed or introduced. He has submitted that the Issue No.3 which is the main issue to be decided in this case cannot be regarded to be wrongly framed, therefore, the provision of Order 14 Rule 5 (2) of the Code of Civil Procedure, 1908 is not applicable in this case.

15. I have considered the submissions made by learned counsel for both the sides and have gone through the materials available on record.

16. On perusing the impugned order dated 02.06.2023 passed by the Education Tribunal in Education Case No. 02/2018, it appears that though the conclusion arrived at by the Tribunal in dismissing the application dated 04.04.2023 filed by the present petitioner appears to be right. However, the reasoning given for such a conclusion does not appear to be correct. The Tribunal observed that as by order dated 17.01.2023 the prayer for granting subsistence allowance was rejected by it however, it has not decided the question of arrear subsistence allowance, hence, it rejected the petition filed by the petitioner on 04.04.2023.

17. In any view of the matter, it appears that the order dated 17.01.2023 was passed by the Tribunal on an application i.e. application number 89/2018 filed during the pendency of the Education Case No. 02/2018, wherein the respondent had prayed for the entire arrear allowance and whereas by order dated 17.01.2023 the Tribunal had observed that the respondent is not entitled to the subsistence allowance.

18. Though, it appears that the finding of the Tribunal in order dated 17.01.2023 may have some bearing on the outcome of the Issue No. 3, however, as the said order i.e., order dated 17.01.2023 has been passed at an interlocutory stage and same can only be regarded as an interim direction based on tentative reasons, this Court is of considered opinion that it would not operate as *res judicata* on the Tribunal while deciding Issue No. 3 finally after adducing of the evidence by both the parties.

19. Moreover, the Code of Civil Procedure, 1908 does not contemplate deciding of an issue before final hearing unless the said issue is a preliminary

issue and in the instant case the Issue No. 3 was not framed as a preliminary issue and by deciding Petition No. 89/2018 by the Tribunal by order dated 17.01.2023, it cannot be held that it had decided Issue No. 3 as a preliminary issue.

20. The provision relating to striking out of any issue is there in order 14 Rule 5 (2) of the Code of Civil Procedure, 1908 which may be exercised only if it appears to the Court that the said issue has been wrongly framed or introduced. However, in the instant case it is not so as the Issue No. 3 is one of the main issues to be decided by the Education Tribunal in the case.

21. For reasons mentioned herein above this court finds no merit in the revision petition filed by the present petitioner and hence, this revision petition is hereby dismissed.

22. No orders as to cost.

JUDGE

Comparing Assistant