

GAHC010149542023



2024:GAU-AS:8857

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

Case No. : WP(C)/3949/2023

GIYAS ALI

S/O LATE SUNBAP ALI, R/O B.V.P.C. NAMRUP, QUARTER NO. 107/II/C, P.O.-
PARBATPUR, P.S.-NAMRUP, DIST- DIBRUGARH, ASSAM, PIN-786623

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, ELEMENTARY EDUCATION DEPARTMENT

2:AXOM SARBA SIKSHA ABHIJAN MISSION
KAHILIPARA
GUWAHATI-781019
ASSAM
REPRESENTED BY ITS MISSION DIRECTOR

3:THE MISSION DIRECTOR
SAMAGRA SIKSHA
ASSAM
AXOM SARBA SIKSHA ABHIJAN MISSION
KAHILIPARA
GUWAHATI-781084
ASSAM

4:THE INSPECTOR OF SCHOOLS/ DEEO
DIBRUGARH
THE DISTRICT MISSION CO-ORDINATOR
SAMAGRA SIKSHA
AXOM SARBA SIKSHA ABHIJAN MISSION
DIBRUGAR

Advocate for the Petitioner : MR. P J SAIKIA, SR. ADV, MS M NIROLA,MR. R S MISHRA

Advocate for the Respondent : SC, ELEM. EDU, SC, A S S A

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

Date of hearing : 24.06.2024

Date of Judgment: 06.09.2024

Judgment & order(CAV)

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Heard Mr. P. J. Saikia, learned Senior counsel, assisted by Mr. R. S. Mishra, learned counsel, appearing on behalf of the petitioner. Also heard Mr. Devajit Saikia, learned Advocate General, Assam, assisted by Mr. S. Borah, learned standing counsel, SSA, appearing on behalf of all the respondents.

2. The petitioner by way of instituting the present proceeding, has presented a challenge to an order, 19.06.2023, issued by the Mission Director, Axom Sarba Siksha Abhiyan Mission, Guwahati, releasing him from his contractual service on account of lapse of his contract agreement on 30.11.2022.

3. The facts, in brief, requisite for adjudication of the issues arising in the present proceeding, is noticed as under:

In pursuance of an Advertisement published in the year 2002 by the authorities of the Axom Sarba Siksha Abhiyan Mission; the petitioner had applied for recruitment against one of the posts of Finance & Accounts Officer so advertised. The petitioner on conclusion of the selection process, came to be selected and vide order, dated 28.09.2002, he was appointed as a Finance & Accounts Officer and posted at Sarba Siksha Abhiyan, Dibrugarh.

It is to be noted that the said appointment of the petitioner was so

effected on contractual basis.

On his appointment being so effected; the petitioner executed an agreement with the authorities of the Axom Sarba Siksha Abhiyan Mission. The said agreement as contended in the writ petition, was for a period of 1(one) year.

It is contended that the said agreement was renewed at regular intervals and accordingly, the petitioner continued to discharge his duties as the Finance & Accounts Officer with Sarba Siksha Abhiyan, Dibrugarh. The last of such agreement between the petitioner and the authorities of the Axom Sarba Siksha Abhiyan Mission, was so executed on 01.02.2022, and the period of his service as extended vide the said agreement was w.e.f. 01.01.2022 to 30.11.2022.

It is further contended in the writ petition that the petitioner on receipt of the information from the Cashier that excess payment has been debited from the Bank Account of the Sarba Siksha Abhiyan, Dibrugarh; he proceeded to bring the matter to the notice of the respondent No. 4 i.e. Inspector of Schools/District Elementary Education Officer(DEEO), Dibrugarh, and the matter was, thereafter, brought to the notice of the Deputy Commissioner, Dibrugarh. The inquiry as made by the petitioner revealed that the amounts so debited, were debited from the State Bank of India Account of the Sarba Siksha Abhiyan, Dibrugarh, and transferred to the Bank Accounts maintained by one Ms. Dhanti Gogoi Saikia, who was serving as an Accountant under the respondent No. 4, herein.

The respondent No. 4 lodged an FIR on 04.05.2023, before the Officer in-charge, Dibrugarh Police Station, setting-out therein, the unauthorized debits so made from the Bank Account of the Sarba Siksha Abhiyan, Dibrugarh. On receipt of the said information; Dibrugarh P.S. Case No. 255/2023, under Sections 406/409 of the IPC, came to be so registered. In course of the investigation of the said case, said Ms. Dhanti Gogoi Saikia came to be arrested on 05.05.2023 in connection with the said police case. Thereafter, the petitioner, herein, was also detained for questioning by the police in connection with the aforesaid police case and subsequently, released. Thereafter, on 10.05.2023, the petitioner was also placed under arrest in connection with Dibrugarh P.S. Case No. 255/2023, under Sections 406/409 of IPC. The petitioner, herein, was enlarged on bail by the learned Chief Judicial Magistrate, Dibrugarh, vide order, dated 12.05.2023.

It is the contention of the petitioner, in the writ petition, that after being enlarged on bail, he continued to discharge his duties and vide a communication, dated 20.05.2023; the respondent No. 4 had required the petitioner, herein, to submit a clarification with regard to the missing of a RIDF File. The petitioner vide his communication, dated 22.05.2023, responded to the said communication, dated 20.05.2023, and therein; with regard to the RIDF File, he had contended that the same was never kept in his possession and only, as and when the same File was put-up before him; he had endorsed, therein, his comments.

It is to be noted that after submission of the said clarification by the petitioner, herein; a Show Cause Notice, dated 31.05.2023, came to be issued to him and therein, with regard to the unauthorized debits as made from the Bank Account of the Sarba Siksha Abhiyan, Dibrugarh; it was held that the

petitioner had written 7 nos. of fund release orders.

It was alleged in the said Show Cause Notice that the said release orders for funds, as issued by the petitioner, herein, were not so issued under the joint signatures of the Finance & Accounts Officer and the District Mission Coordinator, Sarba Siksha Abhiyan, Dibrugarh, which was a mandatory requirement. It was further alleged in the said Show Cause Notice, dated 31.05.2023, that the petitioner had deliberately and fraudulently inserted the personal Bank Account of said Ms. Dhanti Gogoi Saikia, Accountant of District Mission Office, Dibrugarh, with a ulterior motive to misappropriate Sarba Siksha Abhiyan funds and accordingly, on account of the purported misconduct committed by the petitioner; an amount of Rs. 14,12,307/- was fraudulently transferred to the personal Bank Account of Ms. Dhanti Gogoi Saikia. The said Show Cause Notice, dated 31.05.2023, was responded to by the petitioner vide his reply, dated 03.06.2023, and therein, he had denied the allegations so levelled against him. The petitioner had further proceeded to contend that his signatures as contained in the release orders involved, were all forged.

Posed thus; the order, dated 03.06.2023, came to be issued by the Mission Director, Axom Sarba Siksha Abhiyan Mission, Guwahati, requiring the District Mission Coordinator, Sarba Siksha Abhiyan, Dibrugarh, to not allow the petitioner, herein, to process any official file(s) and accounts related matters of Sarba Siksha Abhiyan, Dibrugarh, until further order. Subsequently, vide an order, dated 19.06.2023; the petitioner, herein, was released from his contractual service in the Axom Sarba Siksha Abhiyan Mission, on the ground of lapse of his contract agreement on 30.11.2022.

4. Being aggrieved by the issuance of the said order, dated 19.06.2023, the

petitioner, herein, has instituted the present proceeding on 04.07.2023.

5. Mr. P.J. Saikia, learned Senior counsel appearing on behalf of the petitioner, has submitted that the impugned order, dated 19.06.2023, although contends to have been so issued on the ground of lapse of the contract agreement of the petitioner, herein, but, the same is contended to have been so issued basing on the allegations so levelled against the petitioner.

6. Mr. Saikia, learned Senior counsel, has further submitted that the respondent authorities had not carried-out any inquiry in pursuance of the Show Cause Notice, dated 31.05.2023, so issued to the petitioner, herein; more particularly, in view of the stand taken by the petitioner in his reply, to ascertain the veracity of such allegations so levelled against him. The learned Senior counsel has submitted the Axom Sarba Siksha Abhiyan Mission(rechristened as Samagra Siksha Abhiyan) is a continuing scheme and the same has not been concluded and accordingly; the respondent authorities could not have denied to the petitioner, an extension of his contractual service which is co-terminus with the scheme itself.

7. Mr. Saikia, learned Senior counsel, by referring to the order, dated 14.08.2015, has submitted that Axom Sarba Siksha Abhiyan Mission authorities had notified that the spirit of the Rules and Procedures as prescribed under the Assam Services (Discipline & Appeal) Rules, 1964, would be followed by the authorities of the Axom Sarba Siksha Abhiyan Mission as and when an inquiry or departmental proceeding is required to be conducted in respect of any employee, contractual or otherwise, employed under the Axom Sarba Siksha Abhiyan Mission.

8. Mr. Saikia, learned Senior counsel, has submitted that given the stand taken by the petitioner in his reply, dated 03.06.2023, to the Show Cause Notice, dated 31.05.2023, categorically denying the allegations so levelled against him; the respondent authorities could not have proceeded to release the petitioner from his service by not extending his contractual service. The learned Senior counsel has further submitted that the impugned order, dated 19.06.2023, given the background facts involved, is actually stigmatic in nature and accordingly, the same would call for an interference from this Court.

9. Mr. Saikia, learned Senior counsel, by referring to the Service Regulation and Financial Regulation, 2003, of the Axom Sarba Siksha Abhiyan Mission, has contended that the regulation 8(a) thereof, mandates that after successful completion of a term of agreement or deputation; the Mission Director, Axom Sarba Siksha Abhiyan Mission, Guwahati, will follow the procedure prescribed therein, and arrange for continuation of the service of an employee concerned, on further engagement on contract basis in the Mission service. As regards the post of Finance & Accounts Officer; the said Regulation of 2003, mandates that the decision of continuation of a contractual employee on further engagement on contract, shall be so decided by the Mission Director of the Axom Sarba Siksha Abhiyan Mission.

10. Mr. Saikia, learned Senior counsel, has further submitted that there is nothing adverse against the petitioner with regard to the service being rendered by him as a Finance & Accounts Officer in the office of the Sarba Siksha Abhiyan, Dibrugarh, and the unauthorized debits made from the Bank Account of the Sarba Siksha Abhiyan, Dibrugarh, and the credit of the amounts to the personal account of said Ms. Dhanti Gogoi Saikia, were first

detected by the petitioner, herein, and it was he, who had brought the same to the notice of the Sarba Siksha Abhiyan authorities for taking appropriate action in the matter.

11. Mr. Saikia, has further submitted that in terms of the last agreement entered between the petitioner and the Sarba Siksha Abhiyan authorities; the tenure of the petitioner, herein, had come to an end on 30.11.2022, and he was, thereafter, permitted to continue in his service. The respondent authorities having permitted the petitioner to continue his service beyond the contractual term; the respondent authorities could not have subsequently, after a lapse of around 7 months from the date when the contract agreement of the petitioner came to an end, purportedly, on 30.11.2022; proceeded to release the petitioner from his service on account of non-renewal of the agreement in connection with his contractual service.

12. Mr. Saikia, learned Senior counsel, has also submitted that although in the agreement, in question, the tenure of engagement of the petitioner was mandated to lapse on 30.11.2022; the same, however, does not provide for the consequences on the lapse of such agreement. The learned Senior counsel has further submitted that as per the normal practice followed; the contractual employees working in the Axom Sarba Siksha Abhiyan Mission, were permitted to continue in their respective services even after the lapse of the period of such agreement and subsequently, the Sarba Siksha Abhiyan authorities proceeded to further extend the services of such employees with retrospective effect, by executing fresh agreements.

13. Mr. Saikia, learned Senior counsel, in this connection, has also relied upon a decision of this Court in the case of ***Sahidur Rahman v. State of***

Assam, reported in **(2017) 1 GLT 528**, in support of his contentions that the petitioner's service was not liable to be so terminated without following the procedures so mandated under the Assam Services (Discipline & Appeal) Rules, 1964.

14. In the above premises; Mr. Saikia, learned Senior counsel appearing on behalf of the petitioner, has submitted that the impugned order, dated 19.06.2023, would call for an interference from this Court with a further direction to the respondent authorities to reinstate the petitioner, herein, in service, along with all consequential benefits.

15. Per contra, Mr. D. Saikia, learned Advocate General, Assam, appearing on behalf of the State respondents, has submitted that it is not disputed that the contract agreement as entered into with the petitioner for his continuation as a Finance & Accounts Officer in Sarba Siksha Abhiyan, Dibrugarh, had lapsed on 30.11.2022, and thereafter, there is no material brought on record, to demonstrate that the same was renewed by the Sarba Siksha Abhiyan authorities.

16. Mr. Saikia, learned Advocate General, Assam, by referring to a Note, dated 16.06.2023, of the Sarba Siksha Abhiyan authorities, has submitted that the respondent authorities, on a consideration of the materials, which had brought on record serious allegations of financial irregularities and misappropriation of Sarba Siksha Abhiyan funds, against the petitioner, herein, and said Ms. Dhanti Gogoi Saikia for their undue personal gains; however, had without going through the truthfulness of the allegations levelled against both of them, proceeded to release them from the contractual services of Sarba Siksha Abhiyan on account of expiration of their tenure of such engagement.

17. Mr. Saikia, learned Advocate General, Assam, by referring to the Regulation of 2003, had submitted that the contractual employees can be permitted to continue in their services in the Axom Sarba Siksha Abhiyan Mission, by signing a fresh agreement. As regards the post of a Finance & Accounts Officer; Mr. Saikia, learned Advocate General, Assam, has contended that the said Regulation of 2003, mandates that the further engagement of an employee against the said post on contractual basis in Axom Sarba Siksha Abhiyan Mission, is so vested at the discretion of the Mission Director of the Axom Sarba Siksha Abhiyan Mission.

18. Mr. Saikia, learned Advocate General, Assam, has further contended that a Show Cause Notice, dated 31.05.2023, was issued to the petitioner and the reply, dated 03.06.2023, so submitted by the petitioner, herein, was also received thereon. Further, a joint verification was conducted in the matter and the report thereof, dated 25.05.2023, had implicated the petitioner of siphoning off the Sarba Siksha Abhiyan funds. Given the manner in which the petitioner was discharging his duties as Finance & Accounts Officer which was contended to be a very pivotal position in the functioning of the Sarba Siksha Abhiyan, Dibrugarh; the respondent authorities proceeded to decide not to renew the contract agreement of the petitioner, which had already lapsed on 30.11.2022, and accordingly, the truthfulness of the allegations levelled against the petitioner, was not gone into.

19. Mr. Saikia, learned Advocate General, Assam, has further submitted that the petitioner was not holding any civil post and accordingly, his service could not come under the ambit of Article 311 of the Constitution of India. Therefore, it was contended that the claim of the petitioner that he could have been so removed from the service of the Axom Sarba Siksha Abhiyan Mission

only after a due inquiry was carried-out in the matter; to be clearly unacceptable inasmuch as, by the time, the petitioner had instituted the present proceeding before this Court, his contract period had already lapsed.

20. I have heard the learned counsels appearing for the parties and also perused the materials available on record.

21. The facts as noticed hereinabove, is not disputed by either of the parties to the proceeding. It is not disputed that the last contract agreement entered into between the petitioner and the Sarba Siksha Abhiyan authorities, had come to an end on 30.11.2022, and thereafter, there is no renewal of such contractual engagement of the petitioner, herein, although he had continued in his service till the issuance of the impugned order, dated 19.06.2023.

22. It is also not disputed that basing on the allegations so coming on record against the petitioner; the Show Cause Notice, dated 31.05.2023, was so served upon him on 31.05.2023, and he had also responded to the said Show Cause Notice vide his reply, dated 03.06.2023. It is to be noted that basing on the allegations so forming the basis of the Show Cause Notice, dated 31.05.2023; a criminal proceeding in the form of Dibrugarh P.S. Case No. 255/2023, under Sections 406/409 of IPC, was instituted against the petitioner and the same is pending investigation as on date.

23. In view of the factual matrix arising in the present proceeding and more particularly, on the date, the present proceeding was instituted by the petitioner before this Court; there being no order renewing the contractual engagement of the petitioner, herein; this Court is required to examine as to

whether it would be permissible for this Court to direct the respondent authorities to re-engage the petitioner, herein, as Finance & Accounts Officer in the Axom Sarba Siksha Abhiyan Mission, in terms of his earlier contractual engagement.

24. The issue pertaining to the legal rights of a contractual appointee came up for consideration before the Hon'ble Supreme Court in the case of **GRIDCO Limited & anr. v. Sadananda Doloi & ors.** [reported in **(2011) 15 SCC 16**]. The Hon'ble Supreme Court upon noticing the earlier decisions on the issue, held as follows:

“38. A conspectus of the pronouncements of this Court and the development of law over the past few decades thus show that there has been a notable shift from the stated legal position settled in earlier decisions, that termination of a contractual employment in accordance with the terms of the contract was permissible and the employee could claim no protection against such termination even when one of the contracting parties happened to be the State. Remedy for a breach of a contractual condition was also by way of civil action for damages/compensation. With the development of law relating to judicial review of administrative actions, a writ court can now examine the validity of a termination order passed by public authority. It is no longer open to the authority passing the order to argue that its action being in the realm of contract is not open to judicial review.

39. A writ court is entitled to judicially review the action and determine whether there was any illegality, perversity, unreasonableness, unfairness or irrationality that would vitiate the action, no matter the action is in the realm of contract. Having said that we must add that judicial review cannot extend to the Court acting as an appellate authority sitting in judgment over the decision. The Court cannot sit in the armchair of the Administrator to decide whether a more reasonable decision or course of action could have been taken in the circumstances. So long as the action taken by the authority is not shown to be vitiated by the infirmities referred to above and so long as the action is not demonstrably in outrageous defiance of logic, the writ court would do well to respect the decision under challenge.”

25. The decision of the Hon'ble Supreme Court in the case of **U.P. State Textile Corporation Limited v. Suresh Kumar** [reported in **(2011) 15 SCC 180**] being relevant to the issue arising in the present proceeding, is being noticed. The Hon'ble Supreme Court, in the said case; considering the effect of

non-extension of the period of contractual engagement, held that the contractual engagement of the respondent, therein, having come to an end, no relief beyond that period, could have been granted. Accordingly, the directions passed in the matter by the High Court allowing the respondent(before Hon'ble Supreme Court) to continue in his services, came to be modified and the respondent was deemed to be in service till the currency of his contractual engagement. The relevant paragraphs of the decision of the Hon'ble Supreme Court in the case of **Suresh Kumar**(supra) is reproduced hereinbelow :

“4. The learned counsel for the appellant has raised primarily two arguments before us. He has contended that the reference to the unauthorised absence of the respondent could not in any manner be said to be stigmatic and that the finding to the contrary was unsustainable. Alternatively, he has contended that the respondent had joined the post on 7-9-1987 for a period of three years which would have come to an end on 6-9-1990 and as such the direction for reinstatement could not have been granted to him. It has been pleaded that as a consequence of the order of the Tribunal and of the High Court, the respondent has been put back into service.

5. The learned counsel for the respondent has however supported the judgments of the Tribunal and the High Court.

6. In the facts of the case we need not examine the effect of the order dated 26-4-1989 whereby the services of the respondent had been terminated as being stigmatic or not as we are of the opinion that in the light of the fact that appointment itself was for a fixed period of three years which would have come to an end on 6-9-1990, no relief beyond that period could have been given to the respondent by the Tribunal or the High Court. We accordingly feel that these orders need to be modified to the extent that the appellant shall be deemed to be in service up to 6-9-1990 and not thereafter.”

26. Applying the decisions of the Hon'ble Supreme Court, noticed hereinabove, to the facts as arising in the present proceeding, it being crystal clear that the contractual engagement of the petitioner had come to an end on 30.11.2022 and thereafter, admittedly, there being no order extending such contractual engagement of the petitioner; this Court in the guise of exercise of

the power of judicial review, would not substitute its decision, for the decision of the executive authority on the ground that the decision of this Court is more reasonable. This Court cannot extend the period of the contractual engagement of the petitioner, herein, after the same had come an end.

27. If the period of contractual engagement of the petitioner was in currency, and a termination of the engagement had occasioned, it would have been open to this Court by exercising its power of judicial review, to examine the legality, or, otherwise of such termination, but, in the facts involved in the present case; that is no longer permissible in view of the expiry of the period of the contractual engagement of the petitioner on 30.11.2022, which was, thereafter, not extended.

28. If any breach has occasioned with regard to the discontinuation of the services of the petitioner, it would only give rise to a cause of action for damages/compensation, for which, the remedy available is institution of a Civil Suit and not a writ petition.

29. In view of the conclusions as drawn hereinabove, the prayer of the petitioner for a direction towards continuation of his contractual engagement, cannot be accepted.

30. At this stage, the decision of this Court in the case of **Sahidur Rahman**(supra), relied upon by the learned Senior counsel for the petitioner is to be examined. On an examination of the said decision, it is seen that therein, this Court had interfered with the termination of the contractual service of the petitioner, therein, on the ground of non-compliance of the

provisions of Article 311(2) of the Constitution of India, inasmuch as, such termination had so occasioned during the currency of the contractual engagement of the petitioner, therein. However, in the present case, it is seen that the petitioner was released from his services after completion of the term of his contractual service and thereafter, the present proceedings, were so initiated. Accordingly, the decision of this Court in the case of **Sahidur Rahman**(supra), would not advance the case of the petitioner, herein.

31. In view thereof; the impugned order, dated 19.06.2023, would not call for any interference from this Court.

32. In view of the conclusion drawn hereinabove; the writ petition is held to be devoid of any merit and accordingly, the same stands dismissed. However, there shall be no order as to costs.

JUDGE

Comparing Assistant