

GAHC010259142017



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

Case No. : WP(C)/1968/2017

RUHUL AMIN SIDDIQUE @ RAHUL AMIN SIDDIQUE @ RAHUL AMIN
SIDDIQUE
S/O. ABU BAKKAR SIDDIQUE, R/O. NO. 1 JHARGAON, P.O. PANIPUKHRI,
P.S. KALAIGAON, DIST. UDALGURI BTAD, ASSAM.

VERSUS

THE STATE OF ASSAM and 4 ORS.
REP. BY THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM,
EDUCATION SECONDARY DEPTT., DISPUR, GUWAHATI-6.

2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM

KAHILIPARA
GUWAHATI-19.

3:THE BODOLAND TERRITORIAL COUNCIL

KOKRAJHAR
REPRESENTED BY THE PRINCIPAL SECRETARY
BTC
P.O.
P.S. and DIST. KOKRAJHAR
ASSAM.

4:THE DIRECTOR OF EDUCATION

BODOLAND TERRITORIAL COUNCIL
P.O.
P.S. and DIST. KOKRAJHAR
ASSAM.

5:THE INSPECTOR OF SCHOOLS

UDALGURI DISTRICT CIRCLE
P.O.
P.S. and DIST. UDALGURI BTAD
ASSAM

Advocate for the Petitioner : MR.I H SAIKIA

Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

Date : 06.02.2024

Heard Mr. I. H. Saikia, learned counsel for the petitioner. Also heard Ms. D. Muchahary, learned counsel for the respondents.

2. This writ petition is filed by the petitioner, who has approached this Court for the following reliefs:-

“Under the above facts and circumstances, it is, therefore, prayed that your Lordships would graciously be pleased to admit this petition, call for the records and issue a Rule calling upon the respondents to show cause as to why a writ in the nature of Mandamus, Certiorari and/or any other appropriate writ, order or direction of like nature should not be issued-

i) By setting aside and quashing the impugned order dtd. 15-12-2014 issued by the Director of Education, BTC (Respondent No.4) under Memo No. DE/BTC/WP(C) 3328/2012/257-A, thereby rejecting the prayer of the petitioner for his arrear salaries and seniority (Annexure14 to the writ petition);

ii) By directing the respondent authorities to count the service period of the petitioner w.e.f. 31-3-2001, i.e. from the date of his first appointment issued by the Director of Education, Bodoland Autonomous Council upto 3-3-2010 and to regularise that period of service for the purpose of seniority and other service

benefits;

iii) Or alternatively, by directing the respondent authorities to count the service period of the petitioner at least w.e.f. 19-7-2001, i.e., from the date of his second modified appointment order passed by the Inspector of Schools, Darrang District Circle upto 3-3-2010 and to regularise that period of service for the purpose of seniority and other service benefits;

iv) To grant any other relief/reliefs as your Lordships may deem fit and proper;

And after perusal of the record, Cause or causes being shown and upon hearing the parties, your Lordships may be pleased to make the Rule absolute and/or to pass such further or other order/orders as your Lordships may deem fit and proper under the facts and circumstances of the case, so as to give full and complete relief to the petitioner.

-AND-

Pending disposal of the Rule, your Lordships may be pleased to pass an interim order for providing arrear salary to the petitioner w.e.f. 3-3-2001 or alternatively w.e.f. 19-7-2001 upto 3-3-2010 and further be pleased to pass an interim order for counting the service period of the petitioner w.e.f. 31-3-2001 or alternatively w.e.f. 19-7-2001, towards seniority, for the ends of justice”.

3. The facts necessary to adjudicate this matter are that the petitioner was initially appointed as an Arabic Teacher and was posted at Barnagar High School, in the district of Darrang by an order dated 31.03.2001, issued by the Director of Education, BAC.

4. It is the case of the petitioner that when he went to join in the said post in the said school it was found that another person, namely, Samsud Tabrize, had already joined in the said post and was working in the said school. Consequently, he could not join and/or was not allowed to join by the school authorities. Being thus situated he had approached this court by filing WP(C)/3360/2001. This court on 14.05.2001, while issuing Rule, in the interim

directed the Director of Education, Bodoland Autonomous Council, Kokrajhar and Director of Secondary Education, Assam, Kahilipara to give or afford any place of posting to the writ petitioner in any school under them as an Arabic Teacher on the basis of the related appointment order dated 31.03.2001, without disturbing the place of posting of the said person, namely, Samsud Tabrize, who was arrayed as respondent No.7 in the said writ petition. Pursuant to the interim order passed by this court, an order dated 19.07.2001 was passed by the department, modifying the earlier appointment order, whereby the petitioner was appointed as Assistant Teacher (Arabic) in Tangla Higher Secondary School, Tangla in a fixed pay of Rs.2500/- with effect from the date of his joining. In terms of the order dated 19.07.2001 when the petitioner proceeded to join in his place of posting, he was not allowed to join by the people from the locality. Meanwhile, WP(C)/3360/2001 filed by the petitioner came to be disposed of by order dated 30.11.2005, confirming the interim order earlier granted and making it absolute. Thereafter, since the petitioner was not permitted to join in Tangla Higher Secondary School in terms of order dated 19.07.2001, he approached this court by way of another writ petition, being WP(C)/4787/2007.

5. The submission of the learned standing counsel, BTC before the Court in the said matter was recorded to the effect that the Inspector of School, Darrang District was already directed to allow the petitioner to join in Tangla Higher Secondary School as an Arabic Teacher. However, in spite of orders passed by the department he was not allowed to join in Tangla Higher Secondary School, Tangla.

6. Upon recording such submissions made by the learned standing counsel, BTC, the said writ petition was closed directing the Inspector of School to allow

the petitioner to join in Tangla Higher Secondary School, Tangla as an Arabic Teacher and the petitioner was permitted to submit his joining report in the said school. The petitioner was thereafter permitted to join as Assistant Teacher (Arabic) by the order passed by the Secretary, BTC dated 28.11.2008. At present the petitioner was rendering his service as Assistant Teacher in Tangla Higher Secondary School, Tangla. The petitioner thereafter preferred a representation before the BTC dated 06.02.2012 praying for release of arrear salary with effect from 31.03.2001, from the date of his first appointment order. This representation not having been disposed of, the petitioner approached this Court again by filing WP(C)/3328/2012, which was disposed of by an order dated 27.03.2014, whereby the respondents, namely, the Director of Education and Inspector of Schools were directed to verify the claim of the petitioner as to whether he had actually submitted his joining report to the Headmaster of Barnagar High School, in the district of Darrang on 02.04.2001 and on such verification if the claims are found to be true, the *inter se* seniority should be fixed by counting the seniority with effect from 02.04.2001. The entire exercise was directed to be carried out within a period of 3 (three) months.

7. Pursuant to these orders passed, the Director of Education, BTC by the impugned order dated 15.12.2014 rejected the claim of the petitioner. In the impugned order it was held that there is no record as to whether the petitioner had rendered his duty from 02.04.2001 and record to the effect was neither submitted by the Headmaster, Barnagar High School nor was the joining report of petitioner stated to have been submitted on 04.03.2010, which was accepted by the Headmaster, Tangla Higher Secondary School. Accordingly, the claim the petitioner was rejected by the BTC authorities.

8. The learned counsels for the respondents have filed their affidavit,

whereby the respondent/ BTC have filed their affidavit, wherein paragraph 6 and 7 of the affidavit there is an averment that the petitioner could not join in Tangla Higher Secondary School because of public obstruction. And subsequently, he joined on 04.02.2010 and since then he has been rendering his services continuously. A similar stand has been reflected in the affidavit filed by the respondent No.2, Director of Secondary Education, Kahilipara.

9. Having heard the learned counsels for the parties and upon careful perusal of the pleadings on record, as well as the orders passed by C-Ordinate Benches, it is seen that although the petitioner was initially appointed as an Arabic teacher by order dated 31.03.2001 and posted in Barnagar High School, in the district of Darrang, from the order dated 14.05.2001 passed in W.P(C).3360/2001, it is evident that the petitioner could not join in the said school as some other person was already appointed and therefore, a direction was issued to the respondents to provide alternative appointment to the petitioner. In pursuance to this order, the Inspector of Schools issued a fresh appointment order dated 19.07.2001, whereby the petitioner was appointed as Assistant Teacher in Tangla Higher Secondary School, Tangla. The interim order passed by this court directing the respondents to issue alternative orders, came to be made absolute and the writ petition was disposed of. These orders have attained finality as no review or appeal has been filed by the Department of School Education.

10. Pursuant to the orders issued by the Court, the petitioner was permitted to join as Assistant Teacher, Tangla Higher Secondary School. However, because of public opposition the petitioner could not join at Tangla Higher Secondary School. It is the case projected by the petitioner that in spite of best efforts on his part, he was not allowed to join by the local people in Tangla Higher

Secondary School pursuant to the orders passed by Director of Education, BTC. Under such circumstances, the writ petitioner filed another writ petition being WP(C).3328/2012, whereby order dated 27.03.2014, the respondents were directed to verify the claim of the petitioner as to whether he had actually submitted a joining report to the Headmaster of Barnagar High School, Darrang on 02.04.2001 and if on verification it is found to be correct, *inter se* seniority of all Assistant Teachers of Tangla Higher Secondary School shall be fixed by counting the seniority of the petitioner with effect from 02.04.2001 and the said action was directed to be carried out within a period of 3 (three) months.

11. In the impugned order dated 15.12.2014 it is seen that from the enquiry made the joining report in respect of the petitioner in Barnagar High School was not made available to the Director of Education, BTC either through the Headmaster of the Barnagar High School or by the petitioner himself. However, the joining report of the petitioner dated 04.03.2010, which was accepted by the Headmaster, Tangla Higher Secondary School is available. Pursuant to the said joining report the petitioner has been working in the said school receiving regular scale of pay as well as his service benefits.

12. The issue which is raised in the present writ petition is the claim of service benefits and arrear salary of the petitioner with effect from 02.04.2001, which is claimed to be the date of joining of the petitioner in Barnagar High School, Darrang and it is the claim of the petitioner that his arrear salary and benefit of seniority has to be granted with effect from 31.03.2001. However, from the pleadings available and the submissions made by the learned counsel for the petitioner, it is evident that pursuant to the initial order dated 31.03.2001 petitioner although had approached the Barnagar High School, Darrang, he was not allowed to join as a person namely, Samsud Tabrize, was already as an

Arabic Teacher in the said school. Therefore, there can be no question of the school authorities to accept his joining letter in respect of the said post, which is already occupied by another teacher, No challenge was made to the appointment of the said teacher and in the writ petition, which was preferred by the petitioner being W.P.(C)/3360/2001 although the same was put to challenge by interim order dated 14.05.2001, a direction was issued to the respondent to provide him alternative appointments and which interim order came to be made absolute and the writ petition was disposed of. The alternative order directed to be made available to the petitioner was issued by the department by order dated 19.07.2001, whereby he was appointed as an Assistant Teacher in Tangla Higher Secondary School. The claim of the petitioner is that pursuant to the order date in 19.07.2001 when he had proceeded to join in his services in Tangla Higher Secondary School, Tangla, he was prevented by local people and he was not permitted to join and that subsequently, upon orders of this Court passed in WP(C)/ 4787/2007 dated 13.06.2008 directing the Inspector of School to allow the petitioner to join in Tangla Higher Secondary School as an Assistant Teacher, the petitioner could join in the said service by submitting his joining report on 04.03.2010. These facts are not disputed in the affidavits filed by the respective departments.

13. From a conjoint reading of the averments made in the affidavit as well as by the pleadings on record as well as by the statements pleaded in the writ petition supported by the corresponding enclosures, it is evident that notwithstanding the order of alternative appointment being issued on 19.07.2001, the petitioner came to join in his place of posting only on 04.03.2010 that too, pursuant to orders passed by this court dated 13.06.2008, passed in WP(C)/4787/2007. Whether the petitioner deliberately avoided from

joining in the said post or he was prevented from joining in the said post by the local public as claimed was not enquired into by the respondents. The affidavits make it very clear that they accept the contention of the writ petitioner that he was prevented from joining in Tangla Higher Secondary School, Tangla by the local people. If that be so, it cannot be said that the petitioner deliberately avoided or failed to join in his place of posting as Assistant Teacher in Tangla Higher Secondary School deliberately. It will have to be held that he was prevented from joining in his post pursuant to the Order of appointment by reasons beyond his control. That position as discussed above is not disputed as is reflected in their affidavits filed by the respective departments.

14. Under such circumstances, this court is of the considered view that the petitioner cannot be deprived of his service benefits for no fault which can be attributed to the petitioner. Accordingly, it is the view of the Court that the petitioner ought to be entitled to his service benefits from the date he has joined in his substantive post pursuant to his alternative appointment issued by the department by order dated 19.07.2001. It is held that the petitioner will be entitled for his service benefits with effect from 19.07.2001 till he was permitted to join on 04.03.2010 as Assistant Teacher in Tangla Higher Secondary School, Tangla. However, considering the fact that there is also no dispute that the petitioner did not render any service with effect from 19.07.2001 till 04.03.2010, he will not be entitled to any salary or arrear salary for that period of time. As the principle of "no work no pay". The service benefits as directed be conferred on the petitioner and seniority, if any, as may be available to the petitioner in terms of the service Rules is ordered to be accordingly by the appropriate authority as expeditiously as possible. The department will now proceed to pass necessary orders conferring the service benefits including seniority and

increments if any of the petitioner with effect from the date of his alternative appointment which is 19.07.2001 till his date of joining in the substantive post of Assistant Teacher in Tangla Higher Secondary School, Tangla on 04.03.2010. This exercise be completed within a period of 60 (sixty) days from the date of receipt of a certified copy of this order.

15. Writ petition is allowed to the extent indicated above and disposed of.

16. The financial benefits barring his arrear salary as payable under the provisions of law may also be released to the petitioner.

JUDGE

Comparing Assistant