GAHC010085832018

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

Case No. : WP(C)/5032/2018

BASANTA BARMAN
S/O- LATE GOPI RAM BARMAN, P.O- KHARUA, P.S- BARAMA, DIST- BAKSA(BTAD), ASSAM, PIN- 781346

VERSUS

THE STATE OF ASSAM AND 7 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM, SECONDARY EDUCATION DEPTT, DISPUR, GHY- 6

2:THE CHIEF SECRETARY
FINANCE DEPTT
GHY- 6

3:THE DIRECTOR SECONDARY EDUCATION
ASSAM
KAHILIPARA
GHY- 19

4:THE DIRECTOR OF EDUCATION
BTC
KOKRAJHAR
ASSAM

5:THE INSPECTOR OF SCHOOLS
BTC
MUSHALPUR
BAKSA
ASSAM

6:THE PRINCIPAL
BARAMA H S SCHOOL

BARAMA
P.O AND DIST- BAKSA
BTAD
ASSAM

7:THE PRINCIPAL
BARAMA H S SCHOOL
BARAMA
P.O AND DIST- BAKSA
BTAD
ASSAM

8:THE TREASURY OFFICER
KOKRAJHAR
P.O AND DIST- KOKRAJHAR
ASSA

Advocate for the Petitioner : MR B ISLAM

Advocate for the Respondent : SC, FINANCE

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

ORDER

Date : 15-12-2020

Heard Mr. B. Islam, learned counsel for the petitioner. Also heard Mr. P. Nayak, learned counsel for the authorities under the BTC and Mr. S.M.T. Chistie, learned counsel for the Secondary Education Department of the Govt. of Assam.

2. The petitioner was appointed as a subject teacher in the subject Logic and Philosophy in the Barma Higher Secondary School on an honorary basis as per the governing body resolution No.6 dated 03.03.2000, and which was communicated by the principal of the Higher Secondary School by the communication dated 12.07.2000. Since then, the petitioner has been rendering his service as a subject teacher in the subject Logic and Philosophy.

3. Various processes were initiated for giving regular appointment to the petitioner from time to time, as has been brought on record as per the annexure annexed to the writ petition, but none of the processes had resulted in an order favouring the writ petitioner.

Ultimately the process culminated in the order dated 05.10.2016 of the Director of Secondary

Education, Assam which is extracted below:

"*Perused the order passed by the Assam Information Commission, Panjabari, Guwahati-37 vide office Memo No.SIC/BGS.01/2016/53-A dtd. 30.05.2016. The Hon'ble Commissioner observed that Sri Basanta Barman is a working Honorary Subject Teacher of Logic and Philosophy at Barama Higher Secondary School., District-Baksa sicne the year 2000 but could not produce any copy of appointment letters issued by the authority Basanta Barman is not appointed by the Government in the vacant sanctioned post by advertising proper process of selection claim for release of salary does not arise.*

As per rule, after provincialisation of a Institution no Honorary teacher can be appointed by the Managing Committee of the School or by the Head of the Institution. Accordingly, Hon'ble commission disposed the matter of Sri Basanta Barman regarding release of payment.

Hence the Principal of Barama Higher Secondary School, District-Baksa is hereby directed to terminate Sri Basanta Barman honorary Subject Teacher and release him from service immediately."

4. A reading of the order dated 05.10.2016 of the Director of Secondary Education, Assam shows that the order is based on an another order passed by the Assam Information Commission, Panjabari vide *office* Memo No.SIC/BGS.01/2016/53-A dtd. 30.05.2016.

5. The order also records that the Assam Information Commission had observed that the petitioner is working as an honorary subject teacher of Logic and Philosophy in the Barma Higher Secondary School since 2000, but he could not produce any copy of the appointment letter issued by the authority.

6. A further determining fact was arrived at in the order of the Director that the petitioner was not appointed by the government in a vacant sanctioned post after advertisement and selection and therefore, there cannot be any reason to pay a regular salary.

7. The Director also takes note of that after provincialisation of an institute no honorary teacher can be appointed by the managing committee of the school or by the head of the institution. But what is intriguing is that the Director thereafter arrived at the conclusion that the Assam Information Commission had disposed of the claim of salary of the petitioner and therefore, the principal of the school was directed to terminate the service of the petitioner as an honorary subject teacher and release him from service immediately.

8. If we strictly follow the provision of law relating to appointment of honorary teacher, the Director would be right. But as already indicated what is intriguing is that the Director does not take a decision of his own but merely depicts the disposal of the matter by the Assam Information Commission regarding the payment of salary to the petitioner. Even if the Assam Information Commission had passed any such order, in our view it would be an order without jurisdiction inasmuch as, the Assam Information Commission exercises its jurisdiction under the Right to Information Act,

2005 which pertains merely to either provide or refuse to provide any information that a citizen may seek for.

9. The Assam Information Commission cannot have any jurisdiction to determine as to whether a teacher in a provincialised school, whether appointed on honorary basis or not, is entitled to receive any salary in the circumstance in which he may have been appointed.

10. From the said point of view, we are unable to sustain the order of the Director of Secondary Education dated 05.10.2016 and require the matter to be remanded back to the Director of Secondary Education for a fresh determination on the claim of the petitioner for payment of salary for the service he had rendered since the year 2000.

11. We also take note of the aspect that although the Director may be right in arriving at his conclusion that no honorary teacher can be appointed by the managing committee of a school or by the head of institution, but at the same time, the sequence of factors in the present case cannot go un-noticed.

12. If the petitioner was appointed as an honorary teacher by the managing committee in a provincialised school, which was otherwise not permissible, and the petitioner was insisting for salary to be received by him, it was always open at the first instance itself for the respondent authorities to pass necessary order requiring the petitioner not to continue as an honorary teacher in the school.

13. The communication dated 27.09.2000 from the in-charge Inspector of Schools addressed to the Director of Secondary Education shows that the petitioner had made an application for payment of salary as early as September, 2000 and thereafter, it was at a stage of processing the matter without any foreseeable end. In other words, the respondents were aware that the petitioner was appointed as an honorary teacher by the managing committee of the school which may be de hors the established procedure of law. But the very fact that the claim of the petitioner for salary was kept alive by the respondent authorities at various stages, ultimately culminating in the rejection by the order dated 05.10.2016, it can also understood that the respondents in a collective manner had let the petitioner to alter his position in a manner that he continued with the honorary service with the expectation of receiving the salary if he so continued and had foregone his other option of leaving the honorary service and look out for some other means of employment.

14. Had the petitioner been informed of the requirement to leave the service at an early stage of his career, the petitioner could have taken appropriate steps to leave the service and look out for other

source of employment, instead of altering his position and continuing with the honorary service. Any person who may be required to alter his position to his detriment by any act of the authorities, would invite the principle of promissory estoppel and along with it the principle of legitimate expectation would also follow. It is an established principle of law as laid down by the Supreme Court in *Monnet Ispat and Energy Ltd.–vs-Union of India and Ors., reported in (2012) 11 SCC 1* that the principle of legitimate expectation would hold good even if the act upon which the benefit of legitimate expectation is asked for would be de hors or contrary to any established principle of law including any statutory law. If the principle of legitimate expectation and promissory estoppel would be applicable in the case of the petitioner the conclusion arrived at by the Director that it is impermissible to appoint on honorary basis in a provincialised school by the managing committee, cannot be the only reason to reject the claim of the petitioner for salary. As we have already remand the matter back for appropriate decision, we also require the Director to take note of the aforesaid aspect of the matter that the principle of promissory estoppel and legitimate expectation would also be applicable in the claim of the petitioner.

15. The Director is directed to pass his order taking into consideration the aforesaid aspect. However we provide that the requirement of this order is peculiar to the facts and circumstance of the present case and the same be not cited as precedent in any other case unless the facts and circumstance can be shown to be same.

16. All other consequential orders pursuant to the order dated 05.10.2016 of the Director also stand set aside.

Writ petition allowed as indicated above.

JUDGE

Comparing Assistant