

**(2010) 03 GAU CK 0015**

**Gauhati High Court**

**Case No:** Writ Petition (C) No. 825 of 2007

Rupali Boro

APPELLANT

Vs

State of Assam and Others

RESPONDENT

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**Date of Decision:** March 9, 2010

**Citation:** (2010) 6 GLR 8

**Hon'ble Judges:** Amitava Roy, J

**Bench:** Single Bench

**Advocate:** A.S. Choudhury, I.H. Saikia, R. Ali and M.H. Ahmed, for the Appellant; A. Deka and M. Gogoi Medhi, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

Amitava Roy, J.

The show cause notice dated 8.9.2006 as well as the order dated 22.12.2006, terminating the Petitioner's service as Assistant Teacher of a Lower Primary School of the State comprise the subject-matter of challenge in the instant proceeding.

2. I have heard Mr. A.S. Choudhury, senior advocate assisted by Mr. I.H. Saikia, advocate for the Petitioner and Mr. A. Deka and Ms. M. Gogoi Medhi, learned Standing Counsel, Education Department, Assam.

3. In brief, the Petitioner's recorded case is that the Deputy Inspector of Schools, Nalbari with the prior approval of the Sub-Divisional Elementary Education Advisory Board, Nalbari by his order dated 30.5.1995 appointed her as a stipendiary teacher on ad hoc basis for a period of three years and posted her at No. 2 Ghoga Tribal LP School on a monthly stipend of Rs. 900. After her such appointment against a post sanctioned by the Director of Elementary Education, Assam, vide Memo No. EPD/P/21/92/147-A, dated 12.1.1993, she was by order dated 18.8.1995 of the Block Elementary Education Officer, Barkhetri transferred and posted her in the same capacity at Chungabari LP School. It was, thereafter, that her initial term of ad hoc appointment was extended until further orders by the order dated 7.9.1995 of the

Deputy Inspector of Schools, Nalbari as dissolved by the Advisory Board for Elementary Education, Nalbari vide its Memo No. 2, dated 6.8.1995. In terms of the order 7.9.1995, the Petitioner was to initially receive a stipend of Rs. 900 per month to be deputed to undergo Junior Basic Training course. The letter also mentioned that she would receive regular scale of pay and allowances as per the relevant rules on her successful completion of the said training.

4. According to her, she was, thereafter, sent for the said training, which she successfully completed in the year 2001. Subsequent thereto, she was transferred and posted at Dirua Tribal LP School by order dated 29.5.2002 of the Block Elementary Education Officer, Barkhetri and had been rendering their services thereat till the same were terminated by the order impugned. Meanwhile, she along with other similarly situated persons were allowed to draw time scale of pay of Rs. 330-660 per month together with other allowances by the order dated 4.12.2002 of the Director of the Elementary Education, Assam on her successful completion of the aforementioned training course. Her services were also confirmed by the order dated 24.8.2004 of Deputy Inspector of Schools, Nalbari. It was, thereafter that in course of the scrutiny of the reported anomalies in the appointment of teachers in the district of Nalbari in the year 1999 that the impugned show cause notice dated 8.9.2006 issued by the Director of Elementary Education, Assam was served on her requiring her to explain as to why her appointment would not be cancelled as it was not preceded by any selection under the Assam Elementary Education (Provincialisation) Rules, 1977 ("the Rules"). According to the Petitioner, on enquiries being made by her she was made to understand that the exercise undertaken to unearth the irregular and illegal appointments made in the year 1999 was not relatable to her. The Petitioner has stated that being led to belief as above, she did not file any reply. The impugned order followed thereafter terminating her services on the purported ground that she had not been selected under the Rules and that consequently she was not entitled to continue in her post. Being aggrieved, the Petitioner on 18.1.2007 submitted a representation before the Director, Elementary Education, Assam reiterating the facts pertaining to her appointments as alluded hereinabove emphasizing in particular that she had been denied an opportunity of hearing to represent against the action proposed.

5. Through her additional pleadings, the Petitioner sought to assert that her appointment was preceded by due selection and the approval of the Sub-Divisional Elementary Education Advisory Board, Nalbari. While reiterating that she had not submitted her explanation to the show cause notice being dissuaded from doing so by the concerned departmental authorities and that persons similarly situated are still continuing in service, she has pleaded that having regard to the sequence of events culminating in her confirmation, the impugned action, per se, is unsustainable in law. She has also brought on record documents and intra official correspondences highlighting the Cabinet, decision dated 24.2.2005 of the Government, deciding on principle to regularise 2,776 teachers detected to have

been appointed in excess of posts by the one man Enquiry Committee headed by Sri S. Monohoran, IAS and subsequently by the Task Force/District Level Screening Committee and Departmental Screening Committee entrusted with the responsibility to that effect. She has also sought to rely on the letter dated 21.8.2009 of the Deputy Inspector of Schools, Nalbari in response to her representation with the Government against the termination of her services, wherein, she has been stated to be selected by the Sub-Divisional Advisory Board vide its resolution No. 1, dated 27.3.1995.

6. The Director of Elementary Education, Assam in his affidavit has averred that the Government of Assam in the Education (Elementary) Department in order to enquire into the reported irregular and illegal appointments as well as consequential unauthorized drawal of salary in the Nalbari district had constituted a committee vide its notification 26.6.2006. This was necessitated by the inputs received about excess irregular appointments said to have been made by the then District Elementary Education Officer and the Deputy Inspector of Schools, Nalbari ignoring the procedure prescribed by the Rules and the number of sanctioned posts available therefore, *inter alia*, representing that several such incumbents had been transferred from the schools located in the areas presently included within the territorial limits of Bodoland Territorial Council (erstwhile Bodoland Autonomous Council) of the undivided Nalbari District. According to the answering Respondent, the enquiry brought to the fore 436 illegal appointments with the following break up:

In its report dated 10.8.2006, the Committee *inter alia* hinted at the falsification of records, criminal conspiracy, forgery indulged in by the various officials of the Department as referred to therein to cause misappropriation of the Government's funds. Accordingly, the Secretary to the Government of Assam, Education (Elementary) Department vide his order dated 23.8.2006 forwarded a copy of the enquiry report to the Director of Elementary Education, Assam instructing him to terminate the services of all such teachers, who had secured their appointments by illegal means. The show-cause notice dated 8.9.2006 and the impugned order of termination followed thereafter. The affidavit reveals the actions taken against the erring departmental officers, which include registration of criminal cases against them and suspension from service.

7. Mr. Choudhury has persuasively argued that the Petitioner having been duly inducted in service and eventually confirmed thereat in view of her blemish free performance over the years, her appointment by no means could be branded as illegal and, therefore, the impugned action is, *per se*, invalid. Referring to the enquiry report of the Committee aforementioned produced in course of the arguments by the learned Standing Counsel, Education Department, Assam, the learned senior counsel has contended that as it is apparent therefrom that it (Committee) did not express its final opinion with regard to the selection or other

wise of the Petitioner and others of the Barkhetri block in the then Nalbari district, the adverse presumption against her by the departmental authorities is wholly unfounded, thus vitiating the impugned action. According to Mr. Choudhury, the fact that the Petitioner had been sent to undergo the basic training course, which she completed successfully and that thereafter she was accorded a regular scale of pay, unmistakably demonstrate the validity of her appointment and, therefore, the impugned action being wholly presumptuous, is liable to be set aside in the interest of justice. The learned senior counsel without prejudice to the above, has also argued that even assuming that the Petitioner's initial appointment was not in accordance with the Rules, in view of the policy decision of the Government to regularise the illegal teachers, the impugned action vis-a-vis the Petitioner was uncalled for. The learned senior counsel has also urged unfairness in action against the impugned decision, contending that the Petitioner had not been afforded any opportunity to represent against the same. An endeavour has also been made by Mr. Choudhury to rely on the decision of this Court rendered on 5.6.2007 in a batch of writ petitions, the lead case being WP(C) Nos. 579/2007 (Sri Bikash Pratim Bhattacharja and Ors. v. State of Assam and Ors.) to buttress his arguments.

8. In reply, the learned Standing Counsel Education Department has maintained that it being evident from the orders relating to the Petitioner's initial recruitment that the same was not consequent upon any selection envisaged by the Rules, her entry in the service is clearly illegal and, therefore, her continuance therein is impermissible. Referring to the official records pertaining to the issue, he has urged that it would be apparent therefrom that there is no semblance of proof of any selection preceding her appointment and that she having failed to satisfactorily reply to the show cause notice, the impugned action in the facts and circumstances of the case ought to be sustained.

9. I have duly considered the pleadings of the parties and the arguments advanced. Noticeably, the writ Petitioner in her writ petition at the first instance did not, in clear terms claim to have been selected by the Sub-Divisional Elementary Education Advisory Board, Nalbari prior to her appointment by order dated 30.5.1995 of the Deputy Inspector of Schools, Nalbari. It, however, passes one's comprehension as to why, if she had, in fact been selected under the Rules, her initial appointment was on ad hoc basis for a period of three years. The order dated 7.9.1995 of the Deputy Inspector of Schools, Nalbari distinctly records a resolution of the Advisory Board for Elementary Education, Nalbari dated 6.8.1995 extending the term of the Petitioner's initial ad hoc appointment. In other words, even if the orders dated 30.5.1995 and 7.9.1995 are taken on their face value, the Petitioner continued on ad hoc basis till she completed the junior basic training course and was granted a regular scale of pay to be confirmed thereafter in service. All these, however, cannot in law sum up to substitute a selection prescribed by the Rules as a condition precedent for valid appointment in the service.

10. The report dated 10.8.2006 submitted by the Committee constituted for the purpose of enquiring into irregular, illegal and excess appointment vis-a-vis the District of Nalbari in clear items identifies the Petitioner to be one of the 60 LP Schools teachers, who had been transferred from the Bodoland Territorial Administrative District area. She had been shown to be serving at No. 2 Ghoga Tribal LP School disclosing her date of joining thereat to be 6.12.1999. The report indicates the date of her appointment "not shown". It has been mentioned further that for the non-receipt of the select list(s) (stated to be seized by DC Nalbari for enquiry), it could not be ascertained as to whether the appointment of these teachers were made on the basis of selection conducted by the Sub-Divisional Level Advisory Board, Nalbari.

11. The records pertaining to the process initiated by the impugned show cause notice dated 8.9.2006 contains an explanation dated 20.9.2006 submitted by the Petitioner, enclosing therewith copies of her appointment orders referred to hereinabove, her basic training course pass certificate and orders of grant of regular scale of pay and confirmation in service. The impugned order of termination of her services is based on the ground of want of her selection under the Rules as indicated in the impugned show cause notice. The plea of unfairness raised on behalf of the Petitioner, therefore, is not convincing. Opportunity of personal hearing in all circumstances cannot be claimed as a matter of right. The extracts of the records furnished by the Deputy Commissioner, Nalbari vide his letter dated 31.12.2008, however, do not throw much light on the issue.

12. In Sri Bikash Pratim Bhattacharya (supra), this Court interfered with the termination of the services of only those Petitioners, who claimed to have been selected in a process initiated by an advertisement issued by the then Bodoland Autonomous Council on the ground that the State Government in that factual backdrop, having regard to the provisions of the Bodoland Autonomous Council Act, 1993, lacked in authority to do so. Their claim of selection had remained unrefuted by the Respondents. Vis-a-vis the other Petitioners, the impugned action of termination of their services was sustained. In the case in hand, pleadings on record do not unassailably evidence selection of the Petitioner even by the then Bodoland Autonomous Council authority so as to save her appointment by the analogy of reasonings recorded in the, said decision.

13. On a totality of the considerations as above and in absence of any unimpeachable evidence in support of the Petitioner's selection prior to her initial appointment, the impugned action is unassailable in law and on facts. Though, the Deputy Inspector of Schools, Nalbari in his letter dated 21.8.2009 (Annexure 14 to the additional affidavit filed by the Petitioner) stated that she had been selected by the Sub-Divisional Advisory Board, Nalbari, vide its resolution No. 1, dated 27.3.1995, there is no reference thereof in the order dated 30.05.1995 appointing her on ad hoc basis. The statement, per se, therefore, cannot clinch the issue in her favour,

more so as the said authority in the same letter had also underlined that she is amongst the 436 illegal teachers identified. The petition, therefore, lacks in substance and is dismissed. It is made clear that this determination has been made strictly on the basis of the materials available before this Court and applying the touchstone of the mandate of the Rules. Any action by the State Respondents vis-a-vis the Petitioners in terms of the State policy, as referred to hereinabove, would be within their discretion and domain, if considered expedient and apposite in the facts and circumstances of the case. The petition stands dismissed in the above terms. No costs.