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(2000) 2 GLT 326

Gauhati High Court

Case No: WP. (C) No. 3482 of 1999

Dawan Abdul Bareque	APPELLANT
Vs	
State of Assam and Others	RESPONDENT

Date of Decision: April 6, 2000

Acts Referred:
Constitution of India, 1950 â€" Article 311(2)

Citation: (2000) 2 GLT 326

Hon'ble Judges: H.K. Sema, J

Bench: Single Bench

Advocate: M.U. Mahmud and P.K. Talukdar, for the Appellant; D. Goswami and M. Sarania, for the Respondent

Judgement

H.K. Sema, J.
Heard Mr. M.U. Mahmud, learned Counsel for the Petitioner as well as Mr D. Goswami, learned Govt. Advocate. Mr.

M. Sarania appears on behalf of Respondent No. 3.

2. This petition was moved on 6.10.99 and while issuing a notice of motion returnable within a month, this Court declined to pass an interim order

and observed that an attempt should be made to dispose of the writ petition at the admission stage. This Court further observed that the pendency

of writ petition will not be a bar for the authorities to re-instate the Petitioner in the service. However, today Mr D. Goswami submits that he has

not received any instruction from the concerned authority. Considering the facts and circumstances that I will be reciting shortly, this petition is

disposed of at this stage with a short order.

3. This case illustrates a classic example as to how the authorities are exercising public power in utter regard to the rule of law and constitutional

mandate. The facts leading to the filing of the present writ petition is unpleasant and recited briefly. Petitioner was appointed as founder Head

Pandit in Oxiguri Binapani School with effect from 1.1.72 by an order dated 16th Sept. "72. In the interregnum, the Petitioner was sent for Board

Based Teachers" Training Programme in 1988 in aid of the Assam State Educational Research and Training Council for the period from 26.7.88

to 4.8.88 and he came out successfully. By an order dated 3.7.93 the service of the Petitioner as L.P. Teacher has also been confirmed with effect

from 1.1.88 pursuant to letter No. ETD-17/83/Part-76, dated 1.2.87 issued by the Secretary, Education, Government of Assam. By the aforesaid

order the Petitioner along with 22 Ors. had been confirmed in their respective services. The name of the Petitioner appear in serial No. 6 of the

order.

4. Then came the impugned order dated 25th March "99. The order is brief and quoted inextenso:

Govt. of Assam

Office of the Deputy Inspector of School,

Bijni

ORDER

Dewan Abdul Bareque (Ghost teacher) of Dakhin Makra L.P. of Borobazar Block, B.A.C. area under Bijni Sub-Division, is hereby discharged

from service with immediate effect.

He should hand over all office records and relevant documents relating to School to the next Sr. Asstt. Teacher of the School.

Sd/-

A. Nath,

Deputy Inspector of Schools,

Bijni.

5. A quick look at the impugned order as quoted above would clearly show that no inquiry whatsoever has been held, no opportunity has been

afforded yet after almost 27 years of meritorious service the Petitioner has been sought to be discharged by a cryptic order. That is a naked

invasion of the mandate of Article 311(2) of the Constitution. It is unthinkable that in a democratic country like ours governed by rule of law the

authority possessing public power would have abused the power in the manner it is sought to be done. It is trite that the public authority possessing

power to use for public good and not to abuse them.

6. In the result, the impugned order dated 25th March "99 is hereby quashed with costs which I quantified at Rs. 5,000/- (Rupees five thousand)

to be paid by the 4th Respondent Shri A. Nath, Deputy Inspector of Schools, Bijni within a month from today. Respondent No. 3 is further

directed to re-instate the Petitioner into his post forthwith with all his backwages. Director, Elementary Education, B.A.C., Kokrajhar, Assam shall

ensure that the costs is realised from the pay and allowances of the 4th Respondent and pay to the Petitioner. The Director shall send compliance

before this Court after expiry of one month.

With the aforesaid direction this petition is disposed of.