
(2007) 09 GAU CK 0031

Gauhati High Court

Case No: Writ Petition (Civil) No. 8498 of 2001

Sukanta Sarkar Petitioner

APPELLANT

Vs

State of Assam and Ors.

RESPONDENT

Date of Decision: Sept. 12, 2007

Citation: (2008) 1 GLR 264

Hon'ble Judges: B.K.Sharma, J

Bench: Single Bench

Advocate: K.C.Sharma, B.C.Deka, R.K.Malakar, A.Deka, Advocates appearing for Parties

Judgement

1. Heard Mr. R.K. Malakar, learned counsel for the petitioner as well as Mr. A. Deka, learned Standing Counsel, Education Department.
2. By means of this writ petition, the petitioner has challenged the Annexures "L", "M" and "N" orders dated 29.11.2001, 22.11.2001 and 1.11.2001 by which his ad hoc service as Lower Division Assistant in Kalain Higher Secondary School in the district of Cachar has been dispensed with.
3. Shortly stated, the facts leading to the filing of the instant writ petition are that the petitioner was first appointed, by Annexure "A" order dated 22.12.1993 as Lower Division Assistant in the particular school. Such appointment was for 3 months. There is no dispute that the appointment was not preceded by any advertisement and selection, as per the recruitment rules. The appointment of the petitioner was further extended by order dated 2.4.1994 for a period of 4 months with effect from 27.3.1994. Thereafter, the term of appointment was once again extended for a period of 4 months with effect from 27.7.1994 by order dated 29.8.1994 (Annexure "D" to the writ petition). The appointment of the petitioner was further extended by Annexure "E" and "F" orders dated 11.1.1995 and 4.7.1995 respectively limiting the duration to 3 and 6 months respectively.
4. By Annexure "G" order dated 19.9.1995, the appointment of the petitioner was extended until further orders with effect from 27.8.1995 or till the post was filled up

by regular process, whichever was earlier. Be it stated here that in the earlier extension orders limiting the duration for few months were also with the condition that such extension was for the limited period or till such time, the post was filled up through regular process of selection, whichever was earlier.

5. When the petitioner was not paid his salary from 1.6.1996, he approached this court by filing the writ petition being W.P.(C) No. 2598/2000. The writ petition was disposed of by order dated 24.5.2000 providing that the Director of Secondary Education, Assam would enquire into the matter and in case, it was found that the petitioner had been working from 1.6.1996, appropriate orders for payment of salary would be passed.

6. When the aforesaid order passed by this Court was not complied with, the petitioner filed Contempt Case (C) No. 613/2000 on which notice was issued. Thereafter, by Annexure"L" order dated 29.11.2001, the petitioner was released from service. While releasing the petitioner from service, he was also directed to refund the amount of Rs. 10,000 which he had taken from the building fund of the school. This order was issued pursuant to Annexure"M" order dated 22.11.2001 passed by the Inspector of Schools, Cachar District Circle, Silchar, which was again on the basis of the order passed by the Director of Secondary Education, Assam. On 1.11.2001.

7. Annexure"N" is the aforesaid order dated 1.11.2001. The order was passed towards compliance of the aforesaid order of this court passed on 24.5.2000 in WP(C) No. 2598/2000. As per the order, the petitioner received his salary up to May 1996 and thereafter, no salary could be paid as there was no retention of the post being held by the petitioner. The order reveals that as per the direction of this court, the matter was examined and it was found that since the post was not retained beyond June 1996, the continuation of the petitioner in service was against the nonexistent post. In the order, it was indicated the proposal would be made to the Government for regularization towards payment of salary for the period he had worked.

8. Placing reliance on Annexure4 letter dated 29.6.1996, it is the case of the petitioner that as indicated in the impugned order dated 1.11.2001 that the post was not continued and/or retained beyond June, 1996, is not correct. In that letter, the post mentioned therein was retained for a further period of one year with effect from 1.3.1994 to 28.2.1995. Thus, this letter is of no help to the case of the petitioner as regards the contention that the post is still in existence.

9. According to the petitioner, since he had continued in service and the post had not been filled up by regular process of selection, he could not have been released from his service. The prayer made is for setting aside and quashing of the impugned release order and for issuance of the direction for payment of salary to him during the period in which he was in service.

10. The Director of Secondary Education, Assam has filed the affidavit in opposition denying the contentions raised in the writ petition. In Para 7 of the affidavit, it has been stated that the post in which the petitioner was appointed was in the excess category post and as such, the retention of the post was not allowed with effect from 1.6.1996. In para 8 of the affidavit, it has been stated that a large number of posts was allotted in excess of the required strength and, hence, the Government stopped renewal of retention of such posts with effect from 1.6.1996 and consequently, the petitioner could not be paid his salary. As regards the plea of the petitioner that some other similarly situated persons have been favoured with, the retention of post for payment of salary, it has been stated in para 17 of the affidavit that the two posts mentioned in para 18 of the writ petition were retained by the Government but the post being held by the petitioner was not retained by the Government.

11. It is in the aforesaid background, it is the stand of the respondents that since the post being held by the petitioner, has not been retained by the Government, there is no question of continuing the services of the petitioner and to pay him salary.

12. The petitioner has filed Misc. Case No. 417/2003 bringing on record some documents of which, Annexure "Q" is the letter dated nil of January, 1997 issued by the Inspector of Schools, Cachar District Circle, Silchar to the Director of Secondary Education, Assam on the subject of retention of temporary post of Lower Division Assistant created in 1991. In the letter, it was indicated that the post in question was retained up to 1996 and thereafter, no retention order had been received and as a consequence, the petitioner could not be paid his monthly salary. By the letter, a request was made for renewal of retention of the post for the period from 1.3.1996 to 28.2.1997 as the purpose for which the post was created, was still in existence.

13. The aforesaid letter is also of no help to the case of the petitioner. The said letter reveals that the post being held by the petitioner was retained only up to 1996. The request made by the Inspector of Schools, Cachar District Circle, Silchar to the Director of Secondary Education, Assam having not been acceded to by the Government, admittedly, the petitioner was continuing in his service against non-existent post. In the aforesaid order dated 24.5.2000 passed by this court in WP(C) No. 2598/2000, there was no direction as such for payment of salary to the petitioner with effect from 1.6.1996. What was provided was to enquire into the matter to find as to whether the petitioner was entitled to receive his salary from 1.6.1996 as was stated by the petitioner. Pursuant to the said order of this court, the Director of Secondary Education, Assam has passed the order dated 1.11.2001 indicating about non-retention of the post beyond June 1996.

14. The petitioner was not appointed pursuant to any advertisement and selection. He was appointed for a limited duration (few months) on each occasion during the period from 22.12.1993 to 19.9.1995. On each and every occasion, it was provided that the petitioner would continue in service for the specified period or till such time

the post was filled up through regular process of selection. Even in the order dated 19.9.1995 extending services of the petitioner until further orders, it was provided that the petitioner would continue in service till such time the post was filled up by regular process of selection.

15. Merely because the petitioner was appointed on ad hoc basis for limited durations, he cannot claim automatic regularization of his service. In each and every order of extension, it was clearly indicated that the post would be filled up through regular process of selection. Needless to say that in any public employment, equal opportunity will have to be given to all eligible candidates. Although the post was to be filled up through regular process of selection, but the same could not be done for the reason that the retention of the post ceased to exist from June 1996. Situated, thus, the respondents had no option than to release the petitioner from service by the impugned orders. The petitioner could not have been allowed to continue in service against nonexistent post so as to burden the State exchequer with payment of salary to the petitioner.

16. The letter on which the petitioner has placed reliance i.e. Annexure "Q" letter dated nil January 1997 is of no help to the case of the petitioner. In the letter, it was clearly indicated that the post held by the petitioner was not retained beyond June 1996. By the said letter, the only request made was for retention of the post. However, the Government did not consider it fit to retain the post. The reason for the same is available in the impugned order dated 1.11.2001 as well as in the counter affidavit filed by the respondents in which it has been clearly stated that the posts were sanctioned far in excess. Consequently, the Government decided not to grant any further retention beyond June 1996. Situated thus, there was no option left than to dispense with the services of the petitioner.

17. In view of the above, I do not find any infirmity in the impugned orders by which the petitioner has been released from his service. The question now arises as to whether the petitioner should get his salary for the period from June 1996 to 29.11.2001, i.e., till the Annexure "L" order by which he was released from his service. By Annexure "G" order dated 19.9.1995, the service of the petitioner was extended until further orders or till the post was filled up by regular process of selection. On the strength of the said order, the petitioner continued in his service till he was released by Annexure "L" order dated 29.11.2001. This aspect of the matter finds mention in the Annexure "N" impugned order dated 1.11.2001 in which the Director of Secondary Education, Assam indicated about the direction to submit proposal for the requirement of fund for payment of salary to the petitioner for the working period for onward submission to the Government for consideration.

18. Since the petitioner was never appraised of the fact of nonretention of the post beyond June 1996 and he was allowed to continue in service till he was released by order dated 29.11.2001, I am of the considered opinion that he will be entitled to receive salary from June 1996 till he was released from service by order dated

29.11.2001. The Annexure "L" release order dated 29.11.2001 itself will go to show that the petitioner was very much in service till the passing of the said order. If that be so, the petitioner cannot be deprived of his salary.

19. In view of the above, while not interfering with the impugned orders as contained in the Annexures "L", "M" and "N", it is hereby provided that the respondents shall release the salary of the petitioner for the period he served in the school from 1.6.1996 to 29.11.2001. The respondents shall also adjust the refundable amount due from the petitioner. Arrear salary in terms of this order shall be paid to him as expeditiously as possible, preferably within 6 (six) months from today. If the Government decides to grant extension/retention of the post in question and/or decide to fill up the same through regular process of selection, they will consider the case of the petitioner for relaxation of age bar, if any and if he is found to be otherwise eligible for the post, subject, however, to offering of candidature by the petitioner in response to advertisement, if any occasion for the same arises in future.

20. Writ petition is disposed of.