

(2005) 07 GAU CK 0021**Gauhati High Court****Case No:** WP (C) No. 9795 of 2003

Sankha Nath Pegu

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision: July 21, 2005**Citation:** (2006) 2 GLR 764**Hon'ble Judges:** Biplob Kumar Sharma, J**Bench:** Single Bench**Advocate:** B. Chetri, for the Appellant; V.M. Thomas, for the Respondent**Final Decision:** Dismissed**Judgement**

B.K. Sharma, J.

This writ application has been filed claiming regularisation of the services of the petitioner as Assistant Teacher in Sumania L.P. School and for release of arrear salary from May 1992 up to date.

2. As per the averments made in the writ petition, the petitioner was appointed as Assistant Teacher in Sumania L.P. School by an order of appointment dated 14.12.1989 and he joined the school on 21.12.1989. According to the petitioner, he was so appointed pursuant to advertisement issued by the respondents and the selection conducted, by them pursuant thereto. According to the petitioner he was duly selected by the Selection Board and the select list was duly approved by the Advisory Board of the district in question, i.e., Dhemaji District. However, no document have been placed in respect of advertisement, selection, call letters, purported approval of the Advisory Board and, the select list.

3. Further averment made in the writ petition is that the petitioner, eversince his joining the school on 21.12.1989 has been rendering his services in the school. In this connection, the petitioner has annexed Annexure-C certificate dated 2.3.2002 purportedly issued by the Head Master of the school. The petitioner has also placed reliance on Annexure-D letter dated 25.3.2002 issued by the Deputy Inspector of

Schools, Dhemaji to the Director of Elementary Education, Assam intimating about working of the petitioner in the school and release of salary for 29 months. In the said communication, it was, also intimated, that the appointment of the petitioner in December 1989 was against a non-existent post. The writ petition was filed in the year 2003 pertaining to the grievance relating non-payment of salary, cause of action for which, if any, had arisen a decade ago.

4. Three affidavits have been filed. One by the Under Secretary to the Government of Assam in the Education Department. The second affidavit has been filed by the then Deputy Inspector of Schools, Sri Dimbeswar Gogoi, who had purportedly issued the order of appointment in favour of the petitioner on 14.12.1989. Third affidavit have been filed by the Head Master of the school, Shri Pateswar Doley, who purportedly issued the aforementioned certificate certifying that the petitioner has been serving in the school eversince his appointment.

5. In the affidavit filed by the Under Secretary, it is the stand of the respondents that the petitioner was appointed illegally against a nonexistent post. In the affidavit, the respondents have also questioned the veracity of the statements made by the petitioner that he was duly selected by the Selection Board. Their further stand in the affidavit is that in the normal course an L.P. School teacher is appointed on stipendiary basis on fixed stipend and not in the scale of pay. In the instant case, the petitioner was appointed in the time scale of pay.

6. Referring to the Annexure-D communication dated 25.3.2003 issued by the Deputy Inspector of School, Dhemaji to the Director of Elementary Education, Assam about which a mention has been made above, the respondents have stated in their affidavit that as per the said communication also, it is clearly established that the petitioner was appointed against a non-existent post. It is the stand of the respondents that if the petitioner was illegally appointed against a nonexistent post, the petitioner is not entitled to any benefit of such services.

7. During the course of hearing, since a doubt had arisen as to the legality, and validity of the very appointment of the petitioner, this Court issued a direction, to the then Deputy Inspector of Schools, Dhemaji, Shri Dimbeswar Gogoi to verify the order of appointment and to file his personal affidavit. He has filed his affidavit on 28.4.2005 denying issuance of any order of appointment in favour of the petitioner. He has categorically stated that the signature appearing in the order of appointment is not his signature. Shri Gogoi, as per his affidavit was serving as Deputy Inspector of Schools, Dhemaji during the period from 29.5.1989 to 22.2.1990. The order of appointment was issued on 14.12.1989 and, thus, necessarily it was Shri Gogoi, who was competent to issue the order of appointment. However, upon verification of the signature appearing in the order of appointment, he has, denied his signature. He has also stated in his affidavit that there is no order No. in the order of appointment and the memo No. and date of the order of appointment have been over written without any initial. He has also stated that in

the normal course, such appointment order and for that matter any order of the Government bears initial of the dealing assistant which is missing in the instant order of appointment.

8. learned Counsel for the petitioner was asked to produce the original of the order of appointment, a copy of which was annexed to the writ petition as Annexure-A. He has since produced the original of the order of appointment and it appears in tune with the statement made by then Deputy Inspector of Schools, Shri Dimbeswar Gogoi, the order No. column in the order of appointment does not bear any number and similarly the memo Nos. and date appearing in the order of appointment have been overwritten without any initial. In any case, since the very authority which had purportedly issued the order of appointment has denied his signature appearing in the order of appointment, same primarily loses its force.

9. As regards the certificate furnished by the petitioner, certifying his continuous service in the school purportedly issued by the Head Master of the school, a direction was issued to the Head Master to file an affidavit clarifying the position. Such an affidavit has been filed by the Head Master of the school and he has categorically denied issuance of any such certificate to the petitioner. The petitioner has annexed Annexure-C certificate dated 2.3.2002 purportedly issued by Shri Pateswar Doley, the Head Master of the school. The same very Head . Master has filed affidavit on 7.6.2005 denying issuance of any such certificate. In the affidavit, he has also annexed a copy of his letter dated 5.4.2005 addressed to the Deputy Inspector of Schools, Dhemaji intimating as to now after joining of the school and serving for 17/18 months the petitioner had left the school. Thus, the Head Master had never issued the Annexure-C certificate and the petitioner is also not serving in the school and has worked for aforementioned period of 17/18 months only, which fact the petitioner deliberately withheld and filed the writ petition surreptitiously.

10. I have heard Mr. B. Chetri, learned Counsel for the petitioner and Mr. V.M. Thomas, learned Standing Counsel, Education Department. Mr. Chetri submits that the petitioner having been appointed way back in the year 1989 (14.12,1989) and he having served the school for all these years, he is entitled to receive the salary both arrear and current. He submits that from the very fact the petitioner was paid salary for 29 months would go to show that the petitioner was validly appointed and the stand now being taken by the respondents is not tenable in the eye of law.

11. Mr. Thomas, learned standing counsel, countering the above argument advanced by Mr. Chetri, submits that when the very appointment of the petitioner at its very inception was void ab initio, the petitioner is not entitled to equitable relief. He submits that on the basis of the documents annexed to the writ petition, the petitioner is not entitled to any relief, more particularly, in view of the definite stand of the then Deputy Inspector of Schools, Dhemaji and the Head Master of the school in their affidavit filed in this proceeding.

12. I have considered the submissions made by the learned Counsel for the parties and the materials available on record. The petitioner was purportedly appointed by the aforesaid order of appointment dated 14.12.1989. It is the case of the petitioner that he has been rendering services in the school for all these years. The question necessarily arises as to what prevented the petitioner from approaching this Court for all those years. The writ petition was filed only in 2003, i.e., after 14 years from the date of appointment. It is true that as per Annexure-D communication dated 25.3.2003 issued by the Deputy Inspector of Schools to the Director of Elementary Education, Assam, the petitioner was earlier paid salary for about 29 months. However, such payment of salary for 29 months about which the petitioner has made statements in the writ petition does not explain the delay on the part of the petitioner in approaching the Court for payment of salary barring the salary paid for 29 months.

13. I have perused the order of appointment dated 14.12.1989 and as has been stated by the then Deputy Inspector of Schools there is no order No. in the order of appointment and the over writing in respect of memo No. and date appearing in the order are without any initials and this necessarily gives rise to suspicion. The order of appointment is also without any initial of the dealing assistant. Thus, on the basis of all these anomalies, the order of appointment does not inspire the confidence of this Court. Moreover, the issuing authority itself has denied his signature in the order.

14. The petitioner has annexed English version of the certificate purportedly issued by the Head Master of the school certifying that the petitioner eversince his joining the school has been serving in the school. The certificate was issued on 2.3.2002. On being asked, Mr. Chetri, learned Counsel for the petitioner has produced a photocopy of the original which is in Assamese and was purportedly issued by Shri Pateswar Doley, the Head Master of the school on 2.3.2002. However, the same very Head Master in his affidavit filed on 7.6.2005 has categorically denied issuance of any such certificate to the petitioner. His stand in the affidavit supported by documentary evidence is that the petitioner after serving in the school for about 17/18 months left the school and thereafter never served in the school.

15. From the above, it appears that the petitioner was not validly appointed and that he has produced the Annexure-C certificate dated 2.3.2002 certifying his continuous service in the school which was never issued by the Head Master of the institution. Thus, there is also misrepresentation on the part of the petitioner.

16. Even in Annexure-D communication dated 25.3.2003 annexed to the writ petition and on which the petitioner has placed reliance, it has been clearly indicated that the petitioner was appointed illegally against a non-existent post. The Under Secretary has also categorically stated in his affidavit that the petitioner was appointed in the month of December 1989 against a non-existent post. If that be so, the very appointment of the petitioner does not lead to any right to the petitioner.

Any appointment will have to be made strictly in terms of the recruitment rules against existing vacancy. The petitioner was appointed against a non-existent post without any recruitment process.

17. It will be appropriate to refer to the averments made in the writ petition. In paragraph 2 of the writ petition, the petitioner has made emphatic statement about advertisement, selection conducted by Selection Board and approval of the select list by the Advisory Board, but has not annexed a single document in respect of such assertion made by him. It is also not understood as to why the prayer for regularisation of the services of the petitioner has been made, if the assertion made by the petitioner that he was appointed pursuant to a regular process of selection is to be accepted. I see no reason of such a prayer for regularisation of his service and, thus, this also leads to the irresistible conclusion that the very appointment of the petitioner was not valid and legal.

18. As has been held above, the very appointment of the petitioner was void ab initio. The petitioner has himself admitted by placing reliance on Annexure-D communication dated 25.3.2003 that he was appointed against a non-existent post. If that be so all other assertions are irrelevant. Apart from this, the petitioner has also made false statement in the writ petition about his continuous service in the school by annexing a certificate which had never been issued to the petitioner. Thus, the petitioner is not entitled to any relief from this Court.

19. In view of above, the writ petition merits dismissal, which I accordingly do.

20. Writ petition stands dismissed leaving the parties to bear their own costs.