
(2004) 06 GAU CK 0030**Gauhati High Court****Case No:** Civil Rule No. 5045 of 1997

Jubair Ahmed Barbhuiya

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision: June 21, 2004

Citation: (2005) 1 GLR 140

Hon'ble Judges: Biplab Kumar Sharma, J

Bench: Single Bench

Advocate: A. Begum, for the Appellant; H. Sarma, for the Respondent

Final Decision: Allowed

Judgement

B.K. Sharma, J.

This writ petition has been filed assailing the legality and validity of the order dated 7.10.1997 by which the earlier order dated 3.9.1996 by which the services of the petitioner as Assistant teacher in the M.E. School in question was regularised has been cancelled. The petitioner was initially appointed by order dated 30.1.1996 as Assistant Teacher in the M.E. School in question. His such appointment was for a period of 3 months. By another order dated 16.5.1996 his service was extended for a further period of 3 months. By yet another order dated 7.8.1996, his such services were further extended for a period of 3 months. Eventually, his service was regularised by order dated 3.9.1996. Within about one year of such order of regularisation dated 3.9.1996 the impugned order dated 7.10.1997 was issued. Admittedly, the course of action was taken without putting the petitioner to any kind of notice and giving him opportunity of being heard.

2. I have heard Ms A. Begum, learned counsel for the petitioner and Mr. Y.S. Mannan, learned Standing counsel Education Department. Although the petitioner has made a statement in the writ petition contending that he had applied for the post of Assistant Teacher pursuant to advertisement and he appeared in the selection conducted, nothing has been stated in the writ petition that when such advertisement was issued and the purported selection was held.

3. It is not understood as to why the petitioner was appointed on adhoc basis for a period of 3 months, if he was a regularly selected candidate. It is also not known as to under what circumstances the order dated 3.9.1996 was issued regularising the services of the petitioner after he had rendered about 9 months service. Mr. YS Mannan, learned Standing counsel Education Department submits that such regularisation was made on the basis of purported Resolution No. 4 dated 29.1.1996 even prior to the order dated 30.1.1996 by which the petitioner was-appointed. According to him, such a situation and the manner and method, in which the services of the petitioner was regularised is improper. He submits that on such fact situation, the impugned order dated 9.10.1997 was issued cancelling the order of regularisation dated 3.9.1996.

4. On the other hand, Ms. A. Begum, learned counsel appearing for the petitioner, reiterated the stand in the writ petition and submitted that on the face of it the impugned order is not sustainable having been issued in gross violation of the principles of natural justice.

5. I have considered the submissions made by the learned counsel for the parties and have gone through the materials available on record. No affidavit in opposition has been filed. It is not known as to under what circumstances the impugned order dated 7.10.1997 was issued. It is an admitted position that before issuance of the impugned order dated 7.10.1997 the petitioner was not put to any kind of notice and was not given any opportunity to have his say in the matter. After the order of regularisation dated 3.9.1996, the petitioner became a regular teacher of the School in question. If the authorities of the Education Department wanted to cancel the same the minimum requirement of the principles of natural justice demanded issuance of show cause notice to him. It was admittedly not done in the instant case. On this score alone, the impugned order dated 7.10.1997 is not sustainable.

6. In view of the above, the impugned order dated 7.10.1997 stands set aside and quashed. However, it is made clear that no decision is arrived at by this order on merit of the case. It will be open for the respondents to deal with the case of the petitioner, having regard to the attending circumstances giving him all reasonable opportunities of being heard and following the procedure established by law.

7. Subject to the above observation, the writ petition stands allowed. No order as to costs.