

Smti Hiranya Bhuyan Vs State of Assam

Court: GAUHATI HIGH COURT

Date of Decision: July 21, 2016

Acts Referred: Constitution of India, 1950 - Article 226

Citation: (2016) 6 GauLJ 120 : (2016) 6 GauLR 141 : (2017) 1 GauLT 139

Hon'ble Judges: Ujjal Bhuyan, J.

Bench: Single Bench

Advocate: Mr. S. Borthakur and Mr. A. Gohain, Advocates, for the Petitioner; SC, EDU., Mr. N. Sarma and Mr. B. Gogoi, Advocates, for the Respondent

Final Decision: Allowed

Judgement

Mr. Ujjal Bhuyan, J. - Heard Mr. A Gohain, learned counsel for the petitioner and Mr. N. Sarma, learned counsel appearing for the Elementary

Education Department, Government of Assam. Also heard Mr. B. Gogoi, learned Standing Counsel, Finance Department.

2. Core grievance of the petitioner appears to be non-release of her salary since August 2007.

3. Facts of the case may be briefly noted.

4. Petitioner is Higher Secondary pass and at the relevant point of time, had the eligibility to be appointed as Assistant Teacher in Khagari Dihingia

Lower Primary School in the State of Assam. According to the petitioner, following selection and interview he was appointed as Assistant Teacher

in Khagari Dihingia Lower Primary School by the Deputy Inspector of Schools, Dhemaji, vide order dated 19.12.1989, pursuant to which, she

joined and continued to discharge her duties. Though petitioner rendered service since her joining she was not paid salary. Despite requests made

by the petitioner before the concerned authorities from time to time salary was not released. Petitioner then came to learn that an order dated

18.05.1992 was issued by the Deputy Inspector of Schools, Dhemaji, terminating the service of the petitioner along with other teachers.

5. Aggrieved, petitioner approached this Court by filing Civil Rule No. 518 of 1996. The said writ petition was allowed vide order dated

08.04.1996 by quashing the termination order and directing the respondents to consider regularisation of the service of the petitioner.

Departmental authorities were also directed to enquire as to whether petitioner was working since 1992 and if found working, to pay her the due

salary.

6. No appeal or review was filed by the State against the aforesaid order. In the meanwhile, petitioner continued to discharge her duties.

Subsequently, order dated 16.08.2000 was passed by the Deputy Inspector of Schools, Dhemaji, on the basis of order of Director of Elementary

Education, Assam regularising the service of the petitioner. Thereafter, confirmation order was passed by the Deputy Inspector of Schools on

30.02.2001.

7. Following the same, petitioner was regularly paid her salary and in the course of her service, she also crossed the efficiency bar, which is

mentioned in the order dated 11.01.2005, passed by the Deputy Inspector of Schools, Dhemaji, enabling her to draw higher salary.

8. It appears that Joint Secretary to the Government of Assam, Education (Elementary) Department, had issued instructions on 09.02.2007,

stating that some 355 terminated teachers were still working, out of which, 193 were drawing salary. Treating such drawal of salary as illegal and a

burden on the public exchequer, the Director was directed to stop the drawal of salary by the 193 terminated teachers and to treat them as if they

were never in service since their termination w.e.f. 18.05.1992. The said communication also mentioned about initiation of departmental

proceeding against the erring officials. This communication was forwarded to the departmental authorities of Dhemaji, who, thereafter, prepared a

list of teachers drawing salary after termination on 18.05.1992. In the said list of teachers under Deputy Inspector of Schools, Dhemaji (Urban

Area), name of the petitioner was shown at Serial No. 29, in respect of Khagari Dihingia LP School.

9. Petitioner was paid her regular monthly salary till July 2007 and since August 2007, her salary was stopped.

10. Aggrieved, present writ petition has been filed. This writ petition was filed in the year 2008 and is pending since then.

11. Respondent No. 2, i.e., Director of Elementary Education, Assam, has filed an affidavit. Stand taken in the affidavit is that though petitioner

was appointed as Assistant Teacher in the Khagari Dihingia LP School on the basis of order passed by the Deputy Inspector of Schools, Dhemaji,

on 19.12.1989, there is no mention in the appointment order that such appointment was pursuant to advertisement and selection as per the

provisions contained in the Assam Elementary Education (Provincialization) Rules, 1977, as amended from time to time. Petitioner has also not

mentioned about the date and particulars of the said advertisement or when the selection was held and the date of publication of the select list. It is

stated that as per the report of the District Elementary Education Officer (DEEO), who was also holding the charge of the Deputy Inspector of

Schools (In-charge), Dhemaji, petitioner was appointed in the month of December 1989 against a non-existent post. Service of the petitioner was

terminated in the year 1992 after receiving salary for 29 months. Her name was included in the list of 752 terminated teachers of Lakhimpur and

Dhemaji districts. It is however acknowledged that this Court in Civil Rule No. 518 of 1996, had passed order dated 08.04.1996, quashing the

termination order of the petitioner and directing the District Elementary Education Officer (DEEO), Dhemaji, to make enquiry as to whether

petitioner was rendering service since her termination and if she was found to have rendered service, to pay her salary and allowances in

accordance with law. It is also admitted that the then District Elementary Education Officer, Dhemaji, on receipt of the aforesaid order of this

Court did not make any enquiry. It is also admitted that in response to letter dated 24.12.1998, sent by the Deputy Inspector of Schools, Dhemaji,

the then Director of Elementary Education, Assam, had issued letter dated 26.02.1999, requesting the Deputy Inspector of Schools, Dhemaji to

comply with the order passed by this Court in Civil Rule No. 518 of 1996. Accordingly, the then Deputy Inspector of Schools, Dhemaji, passed

order on 16.08.2000, regularising the service of the petitioner. Therefore, petitioner continued in service and she was paid salary regularly till July,

2007. It is further stated that name of the petitioner was included in the list of 193 teachers, whose services were terminated, but they continued in

service despite such termination and paid salary. However, it is stated that out of 193 teachers, the Government as well as the Directorate of

Elementary Education, Assam allowed 35 numbers of teachers to be paid their regular salary. Justification for allowing salary to those 35 teachers

was that they were parties to a contempt case, being Contempt Case No. 108 of 1988, before this Court. It is stated that following instructions

issued by the Government of Assam in the Education Department dated 09.02.2007, salary of the petitioner was stopped as it was found that the

name of the petitioner was included in the list of 752 terminated teachers. Therefore, writ petition should be dismissed.

12. In her reply affidavit, petitioner has asserted that she was appointed and her service was subsequently regularised against a regular vacant post

which had arisen following retirement of the incumbent.

13. Submissions made by learned counsel for the parties have received the due consideration of the Court.

14. From the submissions made and from the materials available on record, certain undisputed facts can be culled out, which are as under:-

14.1. Petitioner was appointed as Assistant Teacher in the Khagari Dihingia Lower Primary School in the district of Dhemaji by the Deputy

Inspector of Schools, Dhemaji on 19.12.1989. Following such appointment, petitioner joined the school. She was paid regular salary for 29

months. Thereafter, order dated 18.05.1992 was passed terminating the service of the petitioner. Petitioner was found to be one amongst 752

teachers, whose services were terminated in the districts of Lakhimpur and Dhemaji. Petitioner's termination was challenged by her before this

Court by filing Civil Rule No. 518 of 1996. The challenge was upheld and the termination order was set aside vide order dated 08.04.1996. After

quashing the termination order, two further directions were issued by the Court. The first direction was to consider the claim of regularisation of

service, if services of similar such teachers were regularized. Second direction was to hold enquiry to find out whether petitioner was working since

1992 till the date of the order and if it was found that she was working her due salary should be released. There was no direction by the Court to

examine the veracity of the appointment of the petitioner. The termination order of the petitioner dated 18.05.1992 having been set aside, the legal

implication of such quashment would be that such termination order stood erased from the record book as if it never existed. It is also admitted in

the affidavit of the Director that the Director had instructed the Deputy Inspector of Schools to comply with the order of this Court and in

compliance service of the petitioner was regularized, which was followed by service confirmation. In the meantime, an order was passed on

11.01.2005, declaring that petitioner had crossed the efficiency bar enabling her to draw higher salary. In the meantime, petitioner continued to be

paid her monthly salary which indicated acknowledgement by the authority about petitioner rendering service since 1992. While petitioner was

paid regular salary till July 2007, salary of the petitioner was stopped from August 2007 on the ground that petitioner was a terminated teacher and

despite her termination order dated 18.05.1992, she continued to draw salary. As per the stand of the Director, there were 193 such terminated

teachers and despite their termination, they continued to draw salary. But vide letter dated 12.05.1992 of the Directorate of Elementary Education,

Assam, out of the 193 terminated teachers, 35 teachers were granted salary as they were parties to a contempt petition, being Contempt Case

No. 108 of 1988.

15. Stand taken to justify withholding of salary of the petitioner since August 2007, does not appeal to the Court and is bereft of any reason. When

the termination order of the petitioner was set aside and quashed by this Court as already pointed out above, petitioner would be deemed to have

continued her service. The termination order being treated as having been erased from the record book, in such circumstances, inclusion of the

petitioner in the list of teachers, whose services were terminated on 18.05.1992, was wholly without justification. In fact, petitioner stood on a

better footing than those 35 teachers, who were granted salary on the ground that they were parties in a contempt case. As on date, there is no

order terminating the service of the petitioner, the one which was issued having already been set aside by this Court.

16. Reverting back to the order of this Court dated 08.04.1996, as already noticed above, the two directions of the Court was to consider

regularisation and to examine as to whether petitioner had rendered service post termination. There was no direction to conduct enquiry to

determine genuineness of the appointment of the petitioner or to examine validity of the appointment of the petitioner.

17. At this stage, attention of this Court has been drawn to a recent decision of the Apex Court in the case of Dulu Devi v. State of Assam,

reported in (2016) 1 SCC 622. That was also a case relating to regularisation of service and non-payment of salary of a teacher (Head Mistress)

in a Lower Primary School in the district of Dhemaji. In that case also, the appellant was appointed by the Deputy Inspector of Schools, Dhemaji

on 19.12.1989. She had approached the High Court complaining that she was not paid salary. Following the intervention of the Court, she was

paid salary till August, 2007. In the meanwhile, she had crossed the efficiency bar entitling her to receive higher salary. However, salary of the

appellant was withheld from August 2007 on the ground that her service was terminated in the year 1992. Writ petition filed by the said appellant

was dismissed by this Court where after matter went to the Apex Court, where her claim to salary was upheld. Relevant portion of the order in

Dulu Devi (supra) is extracted hereunder:-

13. Indisputably, the appellant has been continuously serving as a teacher since 1989 and pursuant to the order passed in the earlier writ petition

the appellant was paid entire salary since the date when the salary was not paid. The High Court took notice of the fact that while considering the

regularisation of services of the appellant, she being the senior most teacher of the school was allowed to cross the efficiency bar two times, initially

in the year 2003 and subsequently in the year 2005. The High Court in the impugned order further noted that the letter of termination was neither

issued nor were the services of the appellant terminated. Admittedly, some of the terminated teachers filed their writ petition challenging the

termination, which was interfered with by the High Court, but the Court observed that the said benefit cannot be granted to the appellant as she

was not a party in the said writ petition. The High Court, assuming that the services of the appellant were terminated, refused to grant relief and

dismissed the writ petition.

14. In our considered opinion, the approach of the High Court is not in accordance with law. The services of a teacher who has been working for

the last 25 years shall not be assumed to have been terminated and deprived of from her legitimate claim.

15. The Constitution Bench Judgment of this Court in the case of State of Punjab v. Amar Singh Harika, AIR 1966 SC 1313, considered this

aspect of the matter. Writing the judgment, His Lordship (Gajendragadkar, C.J.) held that mere passing of an order of dismissal or termination

would not be effective unless it is published and communicated to the officer concerned. If the appointing authority passes an order of dismissal,

but does not communicate it to the officer concerned, theoretically it is possible that unlike in the case on a judicial order pronounced in Court, the

authority may change its mind and decide to modify its order. The order of dismissal passed by the appropriate authority and kept with itself,

cannot be said to take effect unless the officer concerned knows about the said order and it is otherwise communicated to all the parties

concerned. If it is held that mere passing of order of dismissal has the effect of terminating the services of the officer concerned, various

complications may arise.

16. Similar view has been taken by this Court in the case of Union of India v. Dinanath Shantaram Karekar, (1998) 7 SCC 569, where this

Court observed:

9. Where the services are terminated, the status of the delinquent as a Government servant comes to an end and nothing further remains to be

done in the matter. But if the order is passed and merely kept in the file, it would not be treated to be an order terminating services nor shall the

said order be deemed to have been communicated.

17. In the background of the facts of this case, particularly, the continued service of the appellant for the last 25 years, the impugned order passed

by the High Court cannot be sustained in law.

18. For the aforesaid reason, this appeal is allowed and the impugned order is set aside. Consequently, the appellant shall be entitled to continue in

service and further entitled to all arrears of salary in accordance with law.

18. In that case, it was found that the termination order of the appellant was not served upon her and therefore, the Apex Court held that such

termination would have no legal consequence. Service of a teacher working for the last 25 years shall not be assumed to have been terminated and

deprived of her legitimate claim.

19. Viewed from the above perspective, case of the present petitioner stands on a better footing, inasmuch, as her termination order was set aside

by this Court, following which, her service was regularised and confirmed.

20. In such circumstances and upon thorough consideration of the matter, Court is of the unhesitant view that the relief claimed by the petitioner

cannot be denied to her.

21. Accordingly, writ petition is allowed, by directing that petitioner would be entitled to continue in her service and further entitled to her salary

including arrear salary in accordance with law. It is further made clear that the direction relating to payment of salary shall be complied with within a

period of 4 (four) months from the date of receipt of a certified copy of this order.

22. No costs.