

The order dated 14/5/2007 of the District Mission Co-ordinator of the Axom Sarba Siksha Abhijan Mission, Nagaon, (hereafter referred to as the Mission) releasing the petitioner from the post of Cluster Resource Center Co-ordinator, (hereafter referred to as the CRCC), Choudhury Samar Ali Cluster under Lanka Block hitherto held on deputation. By order dated 8/6/2007, this Court had stayed the operation of the impugned order. The petitioner, therefore, continues in the above post as on date.

I have heard Mr. J Roy, learned Counsel for the petitioner, Mr. S. Sharma, learned Standing Counsel for the Mission and Mr. R. Chakraborty, learned Counsel for the respondent No. 5.

The abridged version of the petitioner's case is that while serving as a teacher in the State service, he was by order dated 20/8/2003 of the Director, Elementary Education, Assam, Kahilipara, placed at the disposal of the Mission for a period of 12 months for engagement as CRCC under the Lanka Block in the District of Nagaon, Assam. He accordingly joined in the said capacity at Choudhury Samar Ali Cluster and had been rendering his services since thereafter. Though the initial term of twelve months was not formally extended, the petitioner continued to serve on deputation till the month of April, 2007 drawing a monthly pay of Rs. 8,220/-. The impugned order dated 14/5/2007 passed by the District Mission Coordinator of the Mission was thereafter served on him releasing him from the post of CRCC. The order disclosed that the same had been issued pursuant to that of the Deputy Commissioner, Nagaon dated 11/5/2007. He was thereby directed to handover charge of the office to the Block Elementary Officer and BMC (SSA) Lanka and join his original post forthwith. The petitioner has questioned the validity of this decision alleging it to be impelled by extraneous considerations and in violation of the principles of natural justice he not having been offered any prior opportunity of representing against the same.

The Assistant Director of the Mission, Guwahati, in the affidavit sworn by him on behalf of the respondent No. 3 while affirming that no order of extension of the petitioner's term had been issued, asserted that the jurisdictional Deputy Commissioner noticing his unsatisfactory performance instructed the District Mission Coordinator to release him from the post of CRCC in public interest. Accordingly the impugned order was passed. The deponent asserted that the petitioner being a deputationist had no right to continue in the post and that too after the expiry of the period of deputation that remained un-extended.

The respondent No. 5, President of the Managing Committee of the Majong Pathar Jalaliya Lower Primary School, Assam, has pleaded in his counter that the petitioner was released in view of a public complaint dated 27/1/2007 against him and submitted before the Education Minister of the State through the President of the Nagaon Zila Parishad. The answering respondent charged the petitioner with serious financial irregularities and corrupt practice thereby defiling the academic environment of the Lanka Block and generating an alarming impact on the school going children. He also referred to several complaints submitted by the members of the public against the petitioner and maintained that the impugned order had been passed having in mind the interest of the children and the educational ambience. The deponent also alleged the petitioner's involvement in a criminal case leading to his arrest in GR Case No. 893/2007 under section 341/323/34 IPC.

In his reply, the petitioner while reiterating and reaffirming the averments made in the writ petition has inter alia questioned the authority of the respondent No. 3 i.e. the District Mission Coordinator of the Mission in passing the impugned order, he having been placed on deputation by the Director of Elementary Education, Assam, an officer superior to him (respondent No. 3) in rank. He dismissed his involvement in the aforementioned criminal case as a yield of a retaliatory measure of one Shri Abdul Noor so as to pressurize him to withdraw GR Case No. 891/2004 registered on the writ petitioner's complaint against him. He reiterated his cavil against denial of a reasonable opportunity of hear

ing more particularly as the impugned decision obviously had been taken acting on complaints against him. He repudiated the impugned order to be politically motivated as well.

Mr. Roy has persuasively urged that the impugned order being on the face of the records unfair and in violation of the principles of natural justice is liable to be adjudged null and void. The petitioner not having been afforded any opportunity whatsoever to represent against the complaints acted upon ex-parte, the impugned decision per se is ineffectual and nonest in law, he argued. The learned Counsel, referring to the order dated 19/9/2007 passed by the learned Judicial Magistrate, First Class, Hojai in GR Case No. 893/2004 submitted that the petitioner thereby had been acquitted of the charges involved therein. Mr. Roy, on instructions, submitted that the impugned order was prompted by political considerations.

Mr. Sharma in reply has contended that the petitioner being on deputation, his original term in the meantime having expired, his claim to continue as CRCC in Choudhury Samar Ali Cluster, Lanka Block, is unfounded in law. He, however, admitted that under the extant guidelines, the term of deputation is extendable to a period of five years, which in the case of the petitioner on the date of the impugned order had not expired. He was fair enough to submit as well that no notice or opportunity had been issued and/or accorded to the petitioner before the decision to release him had been taken. Mr. Sharma produced the relevant records.

The rival pleadings and the arguments in support thereof have received the due consideration of the Court. Admittedly the petitioner's initial term of deputation had not been extended on the expiry thereof. It is, however, not in dispute that he had continued in the said capacity thereafter till the impugned order was passed. The records produced reveal a number of complaints in writing against him before the Director of the Mission, the Deputy Commissioner, Nagaon, and the departmental Minister of the State by the members of the public as well as the territorial Panchayat institutions leveling charges of financial irregularities, negligence of duties and various other corrupt measures during the year preceding the impugned decision. The representationists urged upon the authorities concerned to withdraw the petitioner from his post as his activities had the potential of frustrating the objective of the project undertaken by the Mission and creating a cascading effect on the academic prospects of the students of the locality.

The records disclosed that on the representation dated 27/1/2007 submitted before the Minister of Education, Assam, by a sizeable section of the public and endorsed by the authorities of the concerned Panchayat institutions, the departmental Minister on 19/2/2007 directed the District Mission Coordinator to withdraw the petitioner from his post. The Additional Deputy Commissioner, Nagaon, therefore vide his official communication dated 11/5/2007 issued instructions in the same lines to the District Elementary Education Officer and District Mission Coordinator, Sarba Siksha Abhijan Mission, Nagaon, to act accordingly. The impugned order was thereafter passed.

In course of the arguments, Mr. Sharma has also produced the letter being No. DI(H)/5379 dated 17/4/2007 of the Deputy Inspector of Schools, Hojai, Nagaon, intimating the District Elementary Education Officer, Nagaon, that he had conducted a hearing on the public complaint laid against the petitioner and that it transpired therefrom that he had been trying to promote the SSA activities/programmes in his Cluster to the disapproval of some teachers who were irregular in their duties and involved in anti CRCC activities. The Deputy Inspector of Schools, Hojai, also alleged that these teachers have been seeking to remove the petitioner from the office of CRCC and that the imputations in the complaint were not substantiated.

Apart from the fact that this report of the Deputy Inspector of Schools, Hojai, is subsequent to the endorsement of the departmental Minister on 19/2/2007, it appears from the records prima facie that whereas the assessment of the Deputy Inspector of Schools, Hojai, is based on a hearing conducted by him, the decision of the departmental Minister to withdraw the petitioner is per s

e on the allegations contained in the complaint submitted for his consideration.

The letter dated 11/5/2007 of the Additional Deputy Commissioner, Nagaon, and the impugned order are demonstrative of the fact that the petitioner had been released consequent upon the directions issued by the aforementioned departmental head. The version of the Deputy Inspector of Schools, Hojai, Nagaon, when contrasted with the allegations in the public complaints demands a thread bare probe into the insinuations against the petitioner by affording all reasonable opportunities to the persons interested, as an essential pre-requisite for taking an appropriate decision on the issue.

In the face of the view expressed by the Deputy Inspector of Schools, Hojai, Nagaon, in his letter dated 17/4/2007 which was almost a month prior to the impugned decision, the respondent authorities before resorting thereto ought to have held an enquiry into the complaints by posting the petitioner

therewith and extending him all reasonable opportunities to negate the same. This admittedly not having been done, in the above conspectus of facts, the impugned order cannot be sustained in law. Not only the same has been passed on the directions of the departmental Minister, the authorities concerned seem to be unaware of the report of the Deputy Inspector of Schools, Hojai, Nagaon, forwarded by his letter dated 17/4/2007 to the effect that the imputations levelled in the public complaint probed by him were found unsustainable.

In the above view of the matter, the order dated 14/5/2007 of the District Mission Coordinator, SSA, Nagaon, is set aside. However, having regard to the overwhelming public complaints, nature of the charges brought against the petitioner, the persistent demand to withdraw him from the Office of the CRCC and the interest of the students of the locality, I am of the opinion that a thorough enquiry ought to be made so as enable the concerned respondent authority to take an appropriate decision in the matter. This Court, therefore, directs the Commissioner and Secretary to the Government of Assam, Education (E) Department, to cause immediate steps to be taken to hold a fact finding enquiry into the complaints lodged against the petitioner and depending on the outcome thereof take a decision as warranted. Needless to say, the petitioner and all other persons interested should be permitted to participate in the enquiry and be afforded all reasonable opportunities of placing the relevant facts and documents before the enquiring authority so as to enable him to arrive at a correct conclusion. As the academic interest of the institutions of the locality and the students thereof in particular is involved, the exercise as ordered should be completed within a period of two months from the date of receipt of certified copy of the order.

The petition stands allowed in the above terms. No costs.