

HON'BLE MR JUSTICE AMITAVA ROY

Being aggrieved by the termination of her service vide order dated 4.4.2008 passed by the Deputy Inspector of Schools, North Lakhimpur, the petitioner is before this Court seeking judicial intervention for redress.

2. I have heard Mr P Talukdar, learned counsel for the petitioner and Mr SK Das, learned Standing Counsel, Education Department for the official respondents.

3. In brief, the pleaded case of the petitioner is that, though following a selection process which had been initiated by advertisement dated 20.6.1986, she was empanelled in the select list dated 9.1.1987 drawn up by the concerned Advisory Board, she was not appointed pursuant thereto. Instead, persons below her in the list were accommodated. Being aggrieved, she approached this Court with Civil Rule No.1076/1991 which was disposed of on 27.2.1991 holding that the determination made by Civil Rule No.2160/1990 dated 10.1.1991 would apply to her case. It was thereafter that the petitioner was appointed as an Assistant Teacher in Tool Adarsh LP School, North Lakhimpur at a consolidated pay of Rs.900/- per month. Thereby, she was required to complete the Teachers Training/Basic Training within a period of 5 years therefrom, with a rider, that her appointment would be cancelled if she failed to do so. With reference to the order dated 8.7.1998 of the Deputy Inspector of Schools, North Lakhimpur, the petitioner has asserted that out of 215 posts of stipendary teachers sanctioned by the government vide letter No.EPG/567/91/105 dated 16.11.1991, her name appeared at Sl No.9 in the break up of 75 of such posts to accommodate teachers appointed during the year 1993-1994. She claims to have duly completed the training course whereafter she was sanctioned the regular time scale of pay of Rs.1185/- 2395/-with effect from 12.1.1995. Her post amongst others was also retained thereafter for the period 1.3.2002 to 28.2.2003. As in spite of her continuous rendering of service, an amount of Rs. 34,730/- and Rs.19,368/- remained in arrears for the period 1.9.2003 to 28.8.2004 and 1.1.1996 to 31.7.1998 respectively, she moved the Assam Human Rights Commission and the Information Commissioner for redress. A spate of official exchanges followed and eventually the Deputy Secretary to the Govt. of Assam, Education(E) Department vide his letter dated 19.3.2008 required the Director of Elementary Education, Assam to terminate her services after issuing a show cause notice to her. According to the said authority, the petitioner had been appointed against a deputation vacancy on which Smti Golapi Mili had lien and that therefore, her induction was irregular. The Director of Elementary Education, Assam, in turn, by his communication dated 27.3.2008 directed the Deputy Inspector of Schools, North Lakhimpur to take the follow up steps. The impugned order followed thereafter.

4. The Deputy Inspector of Schools, North Lakhimpur in his affidavit has stated that though the petitioner was selected by the Sub Divisional Level Advisory Board, North Lakhimpur in the year 1987, the select list had not been approved by the Director of Elementary Education, Assam. Further, she was appointed when the validity of the select list had expired. The deponent has conceded that the actual records of appointment, resolution of the Advisory Board etc. were not traceable as the same had not been maintained properly. The answering respondent has asserted that the petitioner's appointment by the then Deputy Inspector of Schools, Sri TN Hazarika had been against the non-existent post vide order No.5910-6100 dated 19.3.1993. He, however, admitted that the petitioner had successfully completed the Junior Basic Training Course in the year 1985. Referring to the posts sanctioned during the year 1991-1992 in the district involved, the answering respondent has averred that one of such post had been allotted to Ujani Hatiamora LP School where Smti Golapi Mili had been working as the Second Founder Teacher since 1985 and that her service was accordingly regularized by

y the Deputy Inspector of Schools vide order dated 30.12.1996 against the same. In spite of the above, the petitioner was illegally accommodated against that post by incorporating her name at Sl No.9 of the document portraying the break up of 75 posts of Assistant Teachers during 1993-1994. This was in absence of any permission for diversion of post as effected. According to the answering respondent, the purported regularization of the service of the petitioner had been without approval of the government. It was in these circumstances that the impugned order was passed. The answering respondent however, has admitted that he had omitted to issue any show cause to the petitioner and has assigned oversight to be the reason therefor.

5. Mr Talukdar has urged that the petitioner's appointment having been in compliance of the order dated 27.2.1991 passed by this Court in Civil Rule No.1076/1991, read in conjunction with the determination made by this Court in its order dated 10.1.1991 rendered in a batch of writ petitions including Civil Rule No.2160/1990, the belated plea of the respondents attributing illegality thereof is not tenable in law and is liable to be rejected. Without prejudice to the above, the learned counsel has argued that in any view of the matter, the impugned order having been passed without issuing any show cause notice to the petitioner, it is violative of the principles of natural justice and thus is non est in law. As the petitioner has been rendering her services, the respondents are obliged in law to release her service entitlements and therefore, this is a fit case to interfere with the impugned order. He prayed that an appropriate writ ought be issued to reinstate the petitioner in service and to disburse her the pay and allowances.

6. Mr Das in reply has argued that as is apparent on the face of the record that the petitioner's appointment had been in violation of the Assam Elementary Education (Provincialisation) Service Rules, 1977 (as amended), her claim is untenable in law and therefore, the impugned order is liable to be upheld. While admitting that a show cause notice ought to have been issued to the petitioner, the learned Standing Counsel has urged that in the facts and circumstances of the case, the same does not amount to any vitiating illegality in view of the overwhelming materials on record against the petitioner. As the petitioner failed to establish her case, her claim or service entitlements is unsustainable, he urged.

7. It is more than apparent from the letter dated 19.3.2008 of the Deputy Secretary to the Govt. of Assam, Elementary Education, Assam that a show cause was required to be issued to the petitioner before effecting the decision of terminating her services. The respondents have not either questioned or denied such requirement. The explanation of oversight is not only unacceptable, in the opinion of this Court is a serious reflection of want of devotion to duty and verges of lack of the integrity of the Respondent No.4. It is ordered that the concerned authorities of the department would amongst others take note of this fact and initiate appropriate disciplinary action against him, deterrent in nature.

8. Having regard to the sequence of events, set out hereinabove, this Court is of the view that it would be inexpedient on its part, to probe into the questions of facts referred to in the affidavit of the respondent No.4 bearing on the illegality or otherwise of the petitioner's appointment and her claim for service entitlements. This is more so, as the impugned order is liable to be interfered with for want of fairness in action. The Deputy Secretary to the Govt. of Assam, Education (E) Department having required a subordinate authority in his department to issue a show cause notice to the petitioner before terminating her services, it passes one's comprehension as to how the same could be disregarded or overlooked. Be that as it may, this omission on the part of the respondent authorities, per se has vitiated the impugned order which is hereby annulled. It is made clear that, this determination has been solely on

the ground that the impugned action is transgressive of the principles of natural justice and ought not to be construed to be a decision on merits in favour of the petitioner.

9. As the appointment of the petitioner relates to a public office of which transparency and non-arbitrariness are essential attributes, in the opinion of this Court, having regard to the stand taken by the respondents, it would be apt to refer the matter to the departmental authorities to make a thoroughbare enquiry into this aspect and arrive at an appropriate decision. As the petitioner's service is at a stake and so is her dues as claimed by her, it would be indispensably essential for the concerned authorities to afford a reasonable opportunity to her to participate in the process. Ordered accordingly.

10. The petition stands allowed as indicated hereinabove. The Secretary to the Govt. of Assam, Education(E) Department, Dispur would cause necessary steps to be taken to enquire into the matter and take an appropriate decision on it. It would be open for the said authority to delegate this function to any other departmental official as he would consider fit and proper. As the petitioner waits in expectation for the release of her service entitlements and reinstatement in service, the exercise as ordered should be completed within a period of Six(6) weeks from the date of receipt of the certified copy of this order. No costs.