

WP(C) 4224/2011
BEFORE
THE HON'BLE MR. JUSTICE B.K. SHARMA

JUDGEMENT AND ORDER (ORAL)

Heard Mr. P. Pathak, learned Sr. Counsel, Mr. I. Choudhury, Mr. D. Choudhury and Mr. H. Buragohain, learned counsels for the petitioners as well as Mr. P.N. Goswami, learned Standing Counsel, Education Department. Since the facts involved in all the cases and the issues raised are one and the same, they have been heard together and are being disposed of by this common judgment and order.

2. The petitioners who were serving as Subject Teacher (Zoology) in various Higher Secondary Schools are aggrieved by orders dated 7.6.2011/25.7.2011, by which their services as such have been terminated. Such a course of action was adopted pursuant to the judgment and order of this Court in PIL No. 14/2010/WP(C) No. 3178/2008 (Zulekha Wahida Ahmed Vs. State of Assam & Ors.)

3. In the said writ petition, the case of the petitioner was that although she was entitled to get appointment as Subject Teacher, but she was deprived of the same, but on the other hand the candidates below her had been appointed.

4. Having regard to the allegations made in the said writ petition, the writ petition was converted to a PIL and the Division Bench of this Court after monitoring the case, relevant report etc. from the SIT, finally decided the matter vide judgment and order dated 6.8.2010.

5. Basing on the SIT report, the Division Bench was of the opinion that some illegal appointments were made during the period 1995-2001. The proceeding was concerned with the selection that was conducted in 1995 pursuant to an advertisement issued in 1992 for 20 posts of Subject Teacher in Zoology. According to the SIT report, deserving candidates were not appointed and some undeserved candidates, whose merit positions were down below in the select list had been appointed. It was also alleged that the persons whose name did not figure in the select list had also been appointed.

6. Under the aforesaid circumstances, the Division Bench made the following observations:

10. In this case it has become quite apparent that undeserving candidates were appointed during 1995-2001 to the 20 posts of Zoology Subject Teachers in different provincialised Higher Secondary Schools in Assam. When such illegal appointments are found to have been made appropriate judicial order(s) for termination of such illegal appointment has to follow. In the present case however all such appointees are not before the Court i.e. Smti Manimala Kakoti, Smti. Banti Talukdar, Smt. Gitanjali Deka (from Group-A); Smti. Bijuli Chakraborty (from Group-B) and Smti Dipali Bora (from Group-C). All the relevant facts i.e. circumstances in which the 7 regularisation under Group-B and 3 regularisation under Group-C were made are not before the Court. Whether such regularisation was against the advertised posts is also not known with certainty. In such circumstances it may not be appropriate for the Court to pass any order for cancellation of the appointments. But considering the information gathered by the S.I.T, we deem it appropriate to direct the State to take into account the report of the S.I.T. and thereafter take appropriate steps to discontinue the services of such appointees who got undeserved appointments. Of course if any adverse action is to be taken against any appointee, they ought to be given an opportunity before termination orders are issued.

11. Since relevant Government records pertaining to appointment in public offices have gone missing and were consequently withheld from scrutiny of the Court, n

necessary steps be taken by the State to unearth the missing records. Departmental action be taken against the persons identified by the S.I.T. as responsible for the above. The State must also fix responsibility and proceed against the errant officials who may be found to be responsible for the appointments that may be eventually set aside by the State.

12. In so far as the relief claimed by the petitioner, considering that she is at merit position NO. 47 in the select list, she can claim appointment only as per her turn. If vacancies become available through termination of illegal appointees and if appointment is refused by those who are in higher merit position than the petitioner, only then the petitioner can be offered appointment. Accordingly if the petitioner's turn comes in order of merit she may then be appointed to the post of Subject Teacher of Zoology by virtue of her selection. However, considering the fact that the petitioner had largely conducted the present proceeding on her own and her painstaking efforts and perseverance have had same impact on attempts at cleansing public life the Court directs that the petitioner should be suitably compensated for the efforts by payment of cost of Rs. 25,000/- (Rupees twenty five thousands) only which will be paid to her by the State Government in the Education Department within 30 days from today.

7. Pursuant to the said judgment and order, the candidates whom the authority suspected to have been appointed illegally were issued with the individual show cause notices asking them to have their say in the matter. There is some dispute regarding actual service of notice on some of the candidates. Some of the candidates responded to the said show cause notice and some appeared in the office of the Director of Secondary Education and their statements were extracted.

8. After observing the aforesaid formalities, the services of the petitioners have been terminated by the impugned orders dated 7.6.2011/25.7.2011. It will be pertinent to mention here that in all the show cause notices, same kind of allegations had been made and even in the impugned orders of termination, the same ground has been stated for such course of action.

9. It is in the above context, the learned counsels for the petitioners have submitted that there was no objective assessment of the matter and that everything was done mechanically only to comply with the directions of this Court in the aforesaid judgment and order.

10. Mr. I. Choudhury, learned counsel involved in WP(C) No. 3954/2011 has placed reliance on the decision reported in (2001) 10 SCC 11 (Shiv Kumar Tiwari (Dead) by Lrs Vs. Jagat Narain Rai & Ors.) in which the Apex Court has held that judgment or decree or order of court or any other authority binds only the parties thereto. In that case, the appellant was a temporary appointee to the lone sanctioned post of Mathematics Teacher in a private inter college. On receipt of the impending expiry of term of his appointment, he filed a suit against the college and the management without impleading the departmental authorities and the respondent who was by then appointed in that post. The Trial Court declared the appellant to be a permanent lecturer of the said college. Pursuant to the said judgment, the controlling authority issued direction for termination of the service of the respondent. It was held that such a judgment could not have been invoked towards passing the order by the DDE to the detriment of the respondents right.

11. Referring to the aforesaid judgment, Mr. I. Choudhury, learned counsel for the petitioner in WP(C) No. 3954/2011 has submitted that the aforesaid judgment of the Division Bench in which the petitioners were not party, cannot bind them. He submits that had an opportunity of being heard been provided to the petitioners, they would have made their position clear and the Division Bench would not have passed the direction as contained in the aforesaid judgment and order.

12. I have verified the records produced by Mr. P.N. Goswami, learned Standing Counsel, Education Department and on perusal of the same, what I find is that there is absolutely no deliberation towards issuance of the show cause notices and the impugned orders of termination. Needless to say that irrespective of the directions contained in the aforesaid judgment and order, it was incumbent on the part of the authorities issuing show cause notices to the teachers, whose appointments were in doubt to give the facts and datas in details in each individual case. In the instant case, the show cause notices are identically worded and had been issued in reference to the aforesaid judgment and order of this Court. Responding to the said notices, the petitioners justified their appointments with the specific plea that the selection in respect of which the impugned judgment and order was passed had nothing to do with the case of the petitioners. It was their case that initially they were appointed on adhoc basis and having regard to their continuity in service, the authority deemed it appropriate to appoint them on regular basis. It will be pertinent to mention here that the petitioners by now have rendered about 20 years of service.

13. On perusal of the file that has been produced by Mr. Goswami, learned Standing Counsel, Education Department what is found is that the show cause notices were issued without furnishing any particulars in respect of each one of the petitioners. It was a mechanical exercise pursuant to the aforesaid judgment and order. Thereafter on receipt of show cause reply, certain notes were put up and eventually a note was prepared for termination of the services of 15 Subject Teachers leaving aside 5 candidates. On that basis the services of 15 teachers were terminated without there being any deliberation and justification for termination.

14. As regards remaining 5 Subject Teachers, the file has revealed that their services were terminated on the basis of telephonic instruction furnished by the departmental Commissioner & Secretary. Thus, it was an empty formality to issue show cause notice extracting reply thereof from the petitioners and thereafter to terminate their services.

15. Some of the petitioners are confirmed teachers. The competent authority has confirmed their services. In that view of the matter, it was argued by the learned counsels for the petitioners that service of such confirmed employees could not have been terminated defying the mandate of Article 311 of the Constitution of India and/or the provisions of Assam Services (Discipline & Appeal) Rules, which are applicable in the instant case.

16. It was never the intention of the Division Bench of this Court that the services of the appointees be dispensed with by a mechanical exercise. The intention was to provide reasonable opportunity of being heard after issuance of show cause notice etc.. Although show cause notice was issued, but the same did not contain relevant particulars as to how the services of the appointees were illegal. The petitioners submitted their replies thereto giving details of their appointments. However, as noted above, without dealing with the said particulars, their services were terminated by a stroke of pen and even to the extent of acting on telephonic instruction of Commissioner & Secretary.

17. In view of the above, I have no hesitation to set aside and quash the termination orders dated 7.6.2011/25.7.2011. Consequently, the continuity of service of the petitioner shall be maintained and they will be entitled to all consequential benefits.

18. All the writ petitions are allowed without any order as to costs.