

WA 55/2015

BEFORE

HON'BLE MR.JUSTICE K.SREEDHAR RAO,THE CHIEF JUSTICE (ACTING)

HON'BLE MR.JUSTICE P.K.SAIKIA

1. This appeal is directed against the judgment dated 01.12.2014, passed in WP(C) No.5904/2014 dismissing the petition filed by appellant (hereinafter referred to as the 'petitioner') seeking the following reliefs amongst others:-

A writ in the nature of Mandamus directing the authorities to release the salaries of the petitioner since May, 1994, for rendering continuous service as M.E. School teacher up to 7.2.2006 and from 8.2.2006 (the date of regularization of her service in L.P.School) till date and thereafter on regular basis .

2. We have heard Dr. P.K.Goswami, learned counsel appearing for the petitioner and Mr. R.Majumder, learned counsel appearing for the State respondents.

3. The facts, necessary for disposal of the present proceeding, in short, are that the petitioner herein, who has been working as Assistant Teacher in Kokila Binapani M.E.School, Bongaigaon, has filed WP(C) No.5904/2014 seeking payment of her salary since May, 1994.

4. According to her, she was appointed by competent authority as Assistant Teacher, Middle English in 1993 and was posted as such in due course. After being posted as Assistant Teacher in the M.E.School, she started discharging her job as above and was paid salary till April, 1994. However, her salary was stopped with effect from May, 1994 and same was done without assigning any reason .

5. In the meantime, the services of the petitioner along with others were checked and verified and the appointment of the petitioner was found to be legal and as such, her services was regularized in 2006. Thereafter, the petitioner was posted in 178 Moukhowa L.P.School with condition that she would be paid her salary from the date of her joining in the new post. Even after her joining in the new post in Moukhowa L.P.School, she was not given her salary for which she approached this Court by way of WP(C) No. 4916/2010 for the first time.

6. This Court by its order dated 15.9.2010 disposed of the said proceeding with a direction to the concerned authority to place the case of the petitioner before the relevant committee constituted as per earlier direction of this Court to examine the case of the petitioner along with other teachers who are similarly with the petitioner. Such order was communicated to the authority concerned but the authority did not comply with the direction, rendered by this Court in its order dated 15.9.2010.

7. Having left with no other option, the petitioner approached this Court once again by way of WP(C) No. 4407/2012 and same was also disposed of on 17.09.2012, directing the concerned Commissioner and Secretary to the Govt of Assam to place the case of the petitioner within 10 days before the Committee constituted for the purpose of verifying the appointments of teachers who had entered into the service allegedly illegally .

8. Once again the order dated 17.09.2012 in WP(C) No. 4407/2012 was communicated to the authority concerned. However, since nothing has been done in terms of the order dated 17.09.2012; the petitioner has approached this Court once again with the prayer aforementioned.

9. This Court on hearing the learned counsel for the parties was pleased to hold that the petitioner instead of filing the WP(C) No. 5904/2014 ought to have initiated contempt proceeding against the present respondents in time for violating the directions, rendered by this Court in the earlier round of litigations. Since it was not done, this Court cannot pass any relief as prayed for by the

e petitioner in the WP(C) No. 5904/2014. Relevant part of the judgment is reproduced below:-

Para 3. After hearing learned counsel for the petitioner and the learned Standing Counsel, I am of the view that the writ petition is not maintainable inasmuch as this Court cannot keep on issuing similar order time and again without any fresh cause of action. The principal reliefs claimed in both the cases are deemed to have been denied. Moreover, the petitioner did not seek the appropriate remedy by way of contempt proceeding against the respondent authorities for violation of the order of this court. Under the circumstances, the petitioner is deemed to have waived his right to approach this Court in so far as the instant cause of action of the relief so claimed is concerned. This writ petition is, therefore, not maintainable, and is, accordingly, dismissed, but by directing the parties to bear their respective costs.

10. Challenging such an order as unsustainable in law, the petitioner has preferred this Writ Appeal. The learned counsel for the petitioner contends that since the petitioner has been working as teacher since 1993, since her services had been verified, since on such verification, her initial appointment as well as her claim that she has been rendering service since 1993 was found to be genuine and correct, since she has been rendering service without any break since 1993 till date and since she was not paid her salary with effect from May, 1994, she is required to be paid her salary as per her entitlement, more so, when the state respondents repeatedly refused to carry out the directions passed by this court in various proceedings aforementioned requiring the State to consider the grievances of the appellant.

11. The learned Standing Counsel, Education Department, Mr. R.Majumder could show nothing to dispute the facts, so incorporated in the writ proceeding aforementioned.

12. On considering the submissions, advanced by learned counsel for the parties, we have found that since the petitioner has been discharging her duties since 1993 as Assistant Teacher in M.E School/ L.P. School and since she was not paid her salary since May, 1994 till date, and since the repeated directions, passed by this Court requiring the State respondents to consider the grievances of the petitioner herein were not responded to by the State respondents, the prayer of the petitioner seeking a direction to the State respondents requiring the latter to release her salary from May, 1994 till date needs to be accepted, of course with certain conditions.

13. However, it needs to be stated here that the order dated 30th January, 2006, issued by Director Elementary Education, Assam, vide Annexure 3 to the writ petition, reveals that the teachers including the petitioner herein, whose appointments/ services were so checked and verified, (list of which was enclosed with the letter dated 30.01.2006 at Annexure 3 to the memo of appeal) were to receive their salaries only from the date of their joining in the new posts after regularization of their services.

14. There is nothing on record to show that aforesaid order has ever been questioned by the petitioner in any forum whatsoever. Being so, in our opinion, the petitioner is entitled to her salary only from the date, so specified in the order dated 30.01.2006.

15. Consequently, the State respondents are directed to release the salary of the petitioner from the date, so specified in the order dated 30.01.2006 till date and same needs to be paid as early as possible but in no case beyond a period of 6 (six) months from the date of receipt of a certified copy of this order.

16. However, the State respondents, if so advised, may check the service credentials of the petitioner in terms of directions rendered in earlier round of

itigations.

17. With the above observations and directions, this writ appeal is disposed of. No cost.