



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : WP(C)/5443/2013

HIRENDRA NATH SINGHA
S/O- LT. HIRENDRA NATH SINGHA, VILL.- KAZIGAON, P.S.- GAURIPUR,
DIST.- KOKRAJHAR, ASSAM.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE SECY. TO THE GOVT. OF ASSAM, PANCHAYAT AND RURAL
DEVELOPMENT, DISPUR, GHY- 6.

2:THE COMMISSIONER CUM DIRECTOR
PANCHAYAT AND RURAL DEVELOPMENT DEPTT.
ASSAM
PANJABARI
GHY- 37.

3:THE SECRETARY,
FINANCE DEPTT.
DISPUR
GHY- 6.

4:THE CHIEF EXECUTIVE OFFICER
DHUBRI ZILLA PARISHAD
DHUBRI

Advocate for the Petitioner : Mr. F. U. Borbhuuya

Advocate for the Respondents : Mr. P. Biswas, Standing Counsel, Panchayat & Rural Development Department, Mr. A. Chaliha, Standing counsel Finance Department

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

JUDGMENT & ORDER (Oral)

Date : 01-02-2024

Heard Mr. F. U. Borbhuuya, learned counsel for the petitioner. Also heard Mr. P. Biswas, learned counsel appearing for the respondents in the Panchayat and Rural Development Department and Mr. A. Chaliha, learned Standing counsel appearing on behalf of the Finance Department.

2. The petitioner by way of instituting the present proceedings, has presented a challenge to an order dated 29.05.2013, by which his prayer for regularization of his services as Gaon Panchayat Secretary came to be rejected by the Commissioner, Panchayat and Rural Development, Assam.

3. As projected in the writ petition, the petitioner was appointed as a Gaon Panchayat Secretary-cum-Accountant of Kazigaon Gaon Panchayat by the President of the said Panchayat on 07.03.1994 in terms of a resolution adopted in the meeting of the Panchayat held on 27.10.1993. The petitioner immediately on the said date joined his services in terms of the said engagement. The services of the petitioner not being regularized and there being a threat held out to him by the authorities for terminating his services, the petitioner approached this Court by way of instituting WP(C)No. 5369/2000. This Court vide order dated 22.09.2000, while issuing notice in the matter was pleased to direct that the services of the petitioner shall not be replaced by any other *ad hoc* employee. However, regular selection and appointment was permitted to be made. The said WP(C)No. 5369/2000 was taken up for final consideration and this Court vide order dated 21.12.2005 on considering the issues as arising in the matter, was pleased to dispose of the same requiring the Director of Panchayat and Rural

Development, Assam to take on record the grievance of the petitioner and pass orders with regard to his claim for regularization in accordance with such rules/norms as may be in force. It was further directed that the claim of the petitioner for being paid salaries w.e.f. April 1995 be also verified and if any amount is found due to the petitioner for the services rendered by him, the same be released. It is to be noted here that as per the contention of the petitioner, the Kazigaon Gaon Panchayat which earlier fell in the district of Dhubri was, thereafter, placed under the control of the Bodoland Territorial Area District (BTAD) and was being managed by the Bodoland Territorial Council w.e.f. 2003. The petitioner has also contended that he continued to serve against the said post, as Secretary-cum-Accountant, Kazigaon Gaon Panchayat till 2003. In pursuance to a direction passed by this Court vide order dated 21.12.2005, the petitioner submitted a representation dated 01.03.2011 before the Director of Panchayat and Rural Development. The Chief Executive Officer, Zilla Parishad, Dhubri, vide his report dated 04.08.2012 furnished to the Commissioner, Panchayat and Rural Development, Assam, the status with regard to the services rendered by the petitioner. The Commissioner, Panchayat and Rural Development, Assam, after taking into consideration the contentions made by the petitioner in his representation as well as the contents of report submitted by Chief Executive officer, Zilla Parishad, Dhubri, dated 04.8.2012, proceeded to consider the case of the petitioner and on such consideration being made, disposed of the representation of the petitioner vide order dated 29.05.2013, holding that the claim of the petitioner for regularization against the post of Gaon Panchayat Secretary cannot be recommended and his prayer was rejected. With regard to the claim of the petitioner for being released his arrear salary after April 1995, the Commissioner, Panchayat and Rural Development, Assam directed the CEO, Dhubri to verify the records and ensure that the wages/salary of the petitioner for the period of service rendered by him in the Panchayat is paid to him from the Panchayat fund as he was appointed by the Gaon Panchayat. It is this order which is under challenge in the present proceedings.

4. It is the contention of the petitioner that he after having joined the post on 07.03.1994 was discharging his duties as Secretary-cum-Accountant, Secretary, Kazigaon Gaon Panchayat till the year 2003 i.e. till the said Gaon Panchayat fell within the BTAD area. The petitioner having served w.e.f. the year 1994, he had raised the grievance with regard to non-consideration of his case for regularization of his services and accordingly, the proceedings in WP(C)No. 5369/2000 came to be instituted before this Court. Although the writ petition being WP(C)No.5369/2000, was disposed of on 21.12.2005, it is seen that the petitioner had approached the Director of Panchayat and Rural Development, Assam, only on 01.03.2011 and thereafter, again vide the representation dated 19.05.2012. It is the subsequent representation dated 19.05.2012 that was considered by the authorities and which was disposed of vide the said order dated 29.05.2013. The petitioner in the representations as made in the year 2011 and 2012, had prayed that two vacant posts of Secretary having arisen in (i). Kushnimar Jordanga Gaon Panchayat and (2). Thakuranbari Gaon Panchayat both under Mankchar Anchalik Panchayat under Dhubri Zilla Parishad w.e.f. 01.06.2010 on account of retirement of the incumbents holding the said post, his case be considered against anyone of the said posts for regularization of his services. It is this prayer that was rejected vide the order dated 29.05.2013.

5. In view of the said position, the order dated 29.05.2013 is required to be examined by this Court. The Commissioner, Panchayat & Rural Development, Assam, for the purpose of rejecting the prayer of the petitioner for regularization as Gaon Panchayat Secretary had reasoned that the petitioner was appointed as the Secretary of the Kazigaon Gaon Panchayat by its President and thereafter, the Secretary of Mahkuma Parishad Dhubri had appointed one *Shri Prasenjit Sen* to Kazigaon Gaon Panchayat as its Secretary vide order dated 08.10.1993. It was held that under the provisions of Section 30(4) of *the Assam Panchayat Act, 1994*, the Gaon Panchayat is not vested with any power to make appointments or engage any person against any post in the Gaon Panchayat. The petitioner not having been appointed by, the

Secretary, Mahkuma Parishad Dhubri, his case could not be recommended for regularization along with that of other persons appointed as Secretary in various Gaon Panchayats of the State. It is to be noted that the Chief Executive Officer, Zilla Parishad Dhubri, vide his report dated 04.08.2012 had clearly brought on record that one *Shri Prosenjit Sen* was appointed by the Secretary of the Mahkuma Parishad Dhubri. The said report of the CEO, Zilla Parishad, Dubhri has been annexed by the petitioner as Annexure-6 to the writ petition. However, in spite of the fact that he was in the know how, that the authorities had appointed one *Shri Prasenjit Sen* as the Secretary in Kazigaon Gaon Panchayat, the petitioner, in the present proceedings had not dealt with the said matter nor had presented a challenge to the appointment so made in respect of *Prasenjit Sen*. In absence of a challenge to appointment made in respect of said *Shri Prasenjit Sen*, the claim of the petitioner for his continuance as the Secretary of Kazigaon Gaon Panchayat cannot be considered.

6. The petitioner has not disputed the stand of the respondent authorities as contained in the report dated 04.08.2012 or in the order dated 29.05.2013. The only claim of the petitioner is that his case should be considered against the two posts of Gaon Panchayat Secretary, lying vacant in the above noted Gaon Panchayats w.e.f. 01.06.2010. It is to be noted that the said two vacancies having arisen after the exercise of the Government for regularizing the services of incumbents holding post of Gaon Panchayat Secretaries by sanctioning such post to the Gaon Panchayats, the vacancies so arising subsequent to such regularization process cannot be again filled up by way of regularization of services of a person who had at one point of time been engaged against a post of Gaon Panchayat Secretary. The said vacant post now stated to be available in the above noted Gaon Panchayats would have to be filled up in the manner as provided in the Rules/instructions as holding the field.

7. It is to be noted that the writ petition being WP(C)No. 5369/2000 was disposed of by this Court vide order dated 21.12.2005, the petitioner had approached the

respondent authorities only in the year 2011 and 2012 by way of filing representations. There is no explanation brought on record as to why the petitioner has not approached the respondent authorities immediately after the passing of the said order dated 21.12.2005 by this Court. The delay so occasioning in the matter demonstrates the causal approach adopted in the matter by the petitioner and in the meanwhile the process of regularization of the services of persons working as Gaon Panchayat Secretary having been undertaken by the Government, the claim of the petitioner has to be held to be a stale one.

8. The materials brought on record reflects that the petitioner had continued till 30.06.2000 and thereafter, there is no material other than the statement of the petitioner of having continued in such capacity till 2003 as Secretary-cum-Accountant of Kazigaon Gaon Panchayat. The petitioner not being an existing employee of any Gaon Panchayat after either 2000 and/or 2003, his case cannot be directed to be considered for regularization as Secretary and that too in the year 2013, when the petitioner had approached this Court by way of instituting the present proceedings.

9. In view of the said conclusions reached by this Court, the order dated 29.05.2013 does not call for any interference and the same is upheld. However, it is to be noted that this Court vide order dated 21.12.2005 had noted the claim of the petitioner that he was not paid his salaries w.e.f. April 1995 and accordingly, direction was issued to the respondent authorities to verify the said fact and to release to him his salaries for the period of services that may have been rendered by him. The Commissioner, Panchayat and Rural Development, Assam, while rejecting claim of the petitioner for regularization of his services as Gaon Panchayat Secretary vide order dated 29.05.2013 had also required the Chief Executive Officer, Dhubri, to verify the records and ensure that the wages/salaries of the petitioner for the period of the services he had rendered in the Panchayat be paid to him from Panchayat funds.

10. In view of the above position, it is hereby provided that the petitioner shall

submit a representation before the Commissioner, Panchayat and Rural Development, Assam and therein, provide complete particulars of the period of services rendered by him as Gaon Panchayat Secretary along with supporting materials. The Commissioner, Panchayat and Rural Development, Assam, on receipt of such representation from the petitioner shall verify the particulars as provided by the petitioner and in the event it is found that the petitioner had worked either for the full period as claimed by him in his representation or for a particular period, determined on verification, and that his wages/salaries for such period(s) have not been released to the petitioner, the Commissioner, Panchayat and Rural Development, Assam shall direct the authorities of the concerned Gaon Panchayat to forthwith release the wages/salaries of the petitioner from Panchayat funds.

11. With the above observations and directions, the writ petition stands disposed of.

JUDGE

Comparing Assistant