

GAHC010004482013



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

Case No. : WP(C)/985/2013

SANTANU ADHIKARI
S/OLT. RUPA ADHIKARI S/O LT. RUPA ADHIKARI VILL- SIRAJULI P.O.
SIRAJULI DIST. SONITPUR, ASSAM PIN- 784117

VERSUS

THE STATE OF ASSAM AND 2 ORS
THROUGH THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,
PANCHAYAT AND RURAL DEVELOPMENT DISPUR, GUWAHATI-781006.

2:THE COMMISSIONER
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
ASSAM PANJABARI JURIPAR GUWAHATI- 781037 DIST. KAMRUP M
ASSAM.

3:SONITPUR ZILLA PARISHAD TEZPUR
DIST. SONITPUR ASSAM PIN-784001
THROUGH THE CHIEF EXECUTIVE OFFICER

Advocate for the Petitioner : MSA B PHUKAN
Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 02.04.2024

Heard Mr. P. J. Phukan, learned counsel for the petitioner. Also heard Mr. K. Konwar, learned Additional Advocate General, Assam, appearing on behalf of all the respondents.

2. The petitioner by way of instituting the present writ petition, has presented a challenge to an order, dated 07.11.2022, by which the claim of the petitioner for provincialization of his services as Secretary, Mazroumari Gaon Panchayat, came to be rejected. The petitioner has further prayed for a direction upon the respondent authorities for provincialization of his services as Secretary, Mazroumari Gaon Panchayat with effect from the year 2001 along with all consequential benefits.

3. As projected in the writ petition; the petitioner was initially appointed as the Secretary, Mazroumari Gaon Panchayat, vide an order, dated 09.04.1994. The petitioner continued in his services in such capacity. However, on account of serious injuries suffered by the petitioner in an accident; the petitioner was not in a position to discharge his duties and was advised by the attending Doctor to take rest. The petitioner, accordingly, submitted a certificate, dated 29.03.2000, issued by the Department of Orthopaedics, GMCH, Guwahati, certifying that the petitioner was suffering from 45% handicap. It was contended by the petitioner that during the period of his such absence; the respondent authorities had adopted a policy decision for provincialization of similarly situated Secretaries of the Gaon Panchayats working in various Gaon Panchayats across the State. Accordingly, vide an order, dated 23.11.2006; the newly provincialized Gaon Panchayats Secretaries were re-deployed to the Gaon Panchayats as mentioned against their names against the said order.

4. The petitioner on recovering from the injuries as sustained by him; had approached the respondent authorities praying for consideration of his case for provincialization of his service maintaining parity with that of the other Gaon

Panchayats Secretaries whose services were so provincialized. The petitioner not having received a response; had approached this Court by way of instituting a writ petition being WP(c)612/2009 and this Court vide order, dated 08.11.2011; proceeded to dispose of the said writ petition requiring the Director, P&RD, Assam, to take on record, the representations as submitted by the petitioner and noticed in the said order and on consideration of the same; to dispose of the said representations. The petitioner, accordingly, vide his representation, dated 26.08.2011, proceeded to furnish the copy of the order passed by this Court before the Director, P&RD, Assam. The said representation of the petitioner on consideration was disposed of vide an order, dated 07.11.2012, by the Commissioner, P&RD, Assam, rejecting the claim of the petitioner made in his representations. Being aggrieved; the present proceedings has been instituted by the petitioner.

5. Mr. Phukan, learned counsel for the petitioner, has submitted that the petitioner on account of the injuries sustained by him in the accident as occasioning during his service tenure as the Secretary, Mazroumari Gaon Panchayat, was not in a position to attend to his duties. The petitioner was, thereafter, rendered physically disabled and such disability having occasioned during the service tenure of the petitioner; the respondent authorities were required to take due notice of the same and provide an avenue of employment to the petitioner.

6. Mr. Phukan, learned counsel for the petitioner, has further submitted that the respondent authorities without considering the services as rendered by the petitioner as Secretary, Mazroumari Gaon Panchayat and also not appreciating

the fact that the petitioner had on account of the accident and the injuries so sustained by him, was not in a position to discharge his duties; proceeded to reject his claim for provincialization of his services as Secretary, Mazroumari Gaon Panchayat, vide order, dated 07.11.2012.

7. Mr. Phukan, learned counsel, has also submitted that the reasons as assigned in the order, dated 07.11.2012, for rejecting the case of the petitioner, herein, are not germane for consideration of the issue as raised by the petitioner in his representations. The learned counsel for the petitioner has further submitted that the order, dated 17.06.2011, as referred to in the order, dated 07.11.2012, has got no connection with the provincialization of the services of Gaon Panchayats Secretaries and the said cancellation pertains to the promotion effected to the post of Gaon Panchayats Secretaries from the feeder cadres of the Road Collector/Road Moharer. Accordingly, the learned counsel has submitted that the respondents having not considered the representations of the petitioner in the manner it ought to have been so considered, the same requires to be interfered with further directions upon the respondent authorities to provincialize the services of the petitioner as the Secretary, Mazroumari Gaon Panchayat.

8. Mr. Konwar, learned Additional Advocate General, Assam, representing the respondents, has submitted that the petitioner was initially appointed as thea Secretary, Mazroumari Gaon Panchayat, on purely temporary basis on a monthly remuneration of Rs. 900/- p.m.. It was noticed during the service tenure of the petitioner that he was irregular in his services as Secretary, Mazroumari Gaon Panchayat, and remained absent from his duty from time to time. On account of

the absence of the petitioner from his services in the year 2000; the Secretary, Tezpur Mohkuma Parishad was asked to take-over the additional charge of the Secretary, Mazroumari Gaon Panchayat. in addition to his own duties.

9. Mr. Konwar, learned Additional Advocate General, Assam, on instructions; has submitted that the petitioner had submitted an application on 31.08.2000, seeking leave on medical ground on 01.09.2000 till recovery from his injuries.

10. It is further contended by the learned Additional Advocate General, Assam, that there is no record available to indicate that the petitioner had rejoined his services. It was further contended by Mr. Konwar, learned Additional Advocate General, Assam, by referring to a communication, dated 08.04.2009, as forwarded to the Registry of this Court by the Chief Executive Officer; Sonitpur Zilla Parishad, Tezpur, that the petitioner during the period, he was so engaged as a Secretary, Mazroumari Gaon Panchayat, had left his job after handing over the charge held by him to one Shri Pankaj Lodha, Secretary, Gaon Panchayat of Tezpur Mohkuma Parishad. It was also further contended that the petitioner who was engaged on a muster roll basis, had left his job on 18.01.2001, and was absent from his duty for more than 5 years without any intimation about his whereabouts. It was only after the process as initiated for provincialization of the services of the Gaon Panchayats Secretaries was concluded that the petitioner had started submitting representations in the matter. The petitioner had submitted his initial representation on 21.12.2006 whereas the re-deployment of the newly provincialized Gaon Panchayats Secretaries was effected vide an order, dated 23.11.2006.

11. Mr. Konwar, learned Additional Advocate General, Assam, as the petitioner was not in service and also given the nature of the appointment as made in his case; the records of the petitioner could not be placed before the authorities for provincialization of his appointment as the Secretary, Mazroumari Gaon Panchayat.

12. I have heard the learned counsels appearing for the parties and also perused the materials made available on record.

13. The pleadings as brought on record by the petitioner is vague with regard to the period from which he was not serving as a Secretary, Mazroumari Gaon Panchayat. The petitioner has also not brought on record, the period of his services as rendered by him in the said Gaon Panchayat as its Secretary even in the rejoinder affidavit that was filed by the petitioner to the affidavit-in-opposition filed by the respondents.

14. The respondents had in categorical terms brought on record before this Court that the petitioner was not in service w.e.f. 2001 and the said aspect of the matter was not disputed by the petitioner. The petitioner not being in his services at the relevant point of time, when the cases of similarly situated Secretaries of the Gaon Panchayats in the State, were taken up for provincialization of services; the non-consideration of the case of the petitioner, under such circumstances, cannot be said to be erroneous.

15. The materials as brought on record demonstrates that the petitioner had

handed-over the charge of the post of Secretary, Mazroumari Gaon Panchayat, in the year 2001, itself and thereafter, in the pleadings brought on record by the petitioner, there is nothing to indicate as to the date on which the petitioner had rejoined his services as the Secretary, Mazroumari Gaon Panchayat. The medical certificates as relied on by the petitioner while indicating that the petitioner had a disability of 45%; does not indicate that the petitioner was, for the said purpose, required to remain on rest. There is also no pleading available on record as to the date on which the petitioner had met with the accident as projected in the writ petition. Further, there is no material brought on record to demonstrate that the petitioner w.e.f. 2001 to 2006, was required to remain away from his duties on account of medical advice.

16. The petitioner had started approaching the authorities, praying for provincialization of his services as the Secretary, Mazroumari Gaon Panchayat, only after the process as initiated in the matter for provincializing the services of Gaon Panchayat Secretaries, was concluded and orders issued by the competent authority. Another factor which is noticed by this Court is that with regard to the Mazroumari Gaon Panchayat; one Shri Gagan Mazumdar, was appointed as its Secretary on provincialization of his services and on re-deployment. The petitioner, herein, although had annexed as Annexure-C, the copy of the order, dated 26.11.2006, wherein the name of said Gagan Mazumdar figures as the Secretary, Mazroumari Gaon Panchayat; it is seen that the petitioner had not impleaded the said person as a party respondent in the present proceedings.

17. In the event, the case of the petitioner is now required to be directed to be considered; given the limited number of posts sanctioned for provincialization

of the Gaon Panchayats Secretaries engaged on muster roll basis in various Gaon Panchayats of the State; the same would require the interference by this Court with the provincialization made in respect of any one of such Gaon Panchayat Secretaries including said Gagan Mazumdar. In the absence of any person provincialized as Gaon Panchayat Secretary being impleaded as a party respondent in the present proceedings, this Court is not in a position to pass an order in favour of the petitioner which would have an adverse affect on any one of the persons provincialized as the Gaon Panchayat Secretary. Accordingly, the claim of the petitioner herein, for provincialization of his services as Secretary, Mazroumari Gaon Panchayat, cannot be acceded to.

18. This would now bring the Court to consider the order, dated 07.11.2012, by which the claim of the petitioner for provincialization of his services as Secretary, Mazroumari Gaon Panchayat, came to be rejected. The said order, dated 07.11.2012, notices the fact that the petitioner was on medical leave for a long period of time and accordingly, his name for provincialization of his services could not be submitted along with other Gaon Panchayats Secretaries. The said order, dated 07.11.2012, also refers to a Government order, dated 23.11.2006, by which, services of 101 Gaon Panchayats Secretaries were provincialized and it contends that the said provincialization was cancelled subsequently vide an order, dated 17.06.2011, in terms of the directions passed by this Court vide an order, dated 08.10.2012, in Writ Appeal No. 266/2012. A perusal of the said order dated 08.10.2012, passed by this Court, in Writ Appeal No. 266/2012, reflects that the issue as involved in the proceedings of the said case pertains to the promotion of Tax Collectors/Road Mohorers to the post of Gaon Panchayats Secretaries and the same has got no nexus with the issue as involved in the

present proceedings i.e. provincialization as effected in case of Gaon Panchayats Secretaries initially engaged on muster roll basis. Accordingly, the order, dated 07.11.2012, to the extent that it relies upon the order, dated 08.10.2012, passed by this Court in Writ Appeal No. 266/2012, cannot be sustained and accordingly, the said order, to the above extent; is interfered with.

19. However, in view of the materials brought on record and as discussed hereinabove; the petitioner not being in his services from 2001, at least, and there being no material brought on record to demonstrate that the petitioner had rejoined his services at any point of time between 2001 to 2006; the case of the petitioner now cannot be directed to be considered for provincialization of his services as Secretary, Mazroumari Gaon Panchayat. Further, the said prayer of the petitioner for provincialization of his services as Secretary, Mazroumari Gaon Panchayat, cannot be directed to be considered in-as-much as the petitioner has not challenged the provincialization as effected in case of similarly situated persons and given the limited number of posts as created by the Government; no adverse order can be passed by this Court interfering with the provincialization as made in respect of the Gaon Panchayats Secretaries in the year 2006, without affording an opportunity of hearing to them.

20. In view of the conclusions as reached hereinabove; this writ petition, subject to the findings passed by this Court, with regard to the order, dated 07.11.2012, does not merit acceptance and has to be held to be bereft of any merit.

21. In the above view of the matter; this writ petition is found to be devoid of any merit and the same accordingly stands dismissed. However, there shall be no order as to costs.

JUDGE

Comparing Assistant