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REPORTABLE



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

Case No. : WP(C)/1231/2023

MAHESH CHANDRA KALITA
S/O- SRI KESHAB CHANDRA KALITA, R/O- VILL- PACHARIA, P.O.
PACHARIA, HAJO REVENUE CIRCLE, L.A.C.- JALUKBARI, DIST.- KAMRUP
(RURAL) ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE PRINCIPAL SECRETARY, TO THE GOVT. OF ASSAM,
EDUCATION DEPTT., DISPUR, GUWAHATI- 781006

2:THE SPECIAL COMMISSIONER
GOVT. OF ASSAM
ELEMENTARY EDUCATION DEPTT.
DISPUR
GHY-06

3:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM AT KAHILIPARA
GUWAHATI- 781019

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER
KAMRUP (METRO)
GUWAHATI

5:THE HEAD MASTER
ANANDA RAM SENIOR BASIC SCHOOL RAJA DUWAR
NORTH GUWAHATI
GUWAHATI- 78103

Advocate for the Petitioner : MS. B CHOUDHURY



Advocate for the Respondent : SC, ELEM. EDU

**BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA**

JUDGMENT & ORDER (ORAL)

Date : 07-12-2023

Heard Ms. B. Choudhury, learned counsel for the petitioner. Also heard Mr. R. Mazumdar, learned counsel for the respondents in the Department of School Education, Government of Assam.

2. The writ petitioner Mahesh Chandra Kalita is the son of an earlier Chowkidar of Ananda Ram Senior Basic School at North Guwahati and upon the superannuation of his father, he was appointed by the Managing Committee of the school against the post of Chowkidar. At the outset it is taken note that Ananda Ram Senior Basic School at North Guwahati is a provincialised school and under the prevailing law, the Managing Committee of the school is not empowered to make any appointment without following the due procedure of law as may be prescribed for such appointment. But however, as the post of Chowkidar was vacant on the superannuation of the earlier incumbent the Managing Committee deemed it appropriate to appoint the petitioner and the petitioner claims that he is continuing to serve in the post of Chowkidar till date.

3. It is stated that in the meantime certain regular selection for appointment to the vacant post of Chowkidar was also made but the petitioner could not participate in such procedure *inasmuch* as he was not duly qualified and in the meantime certain other persons who had participated in the selection process were appointed on the post of Chowkidar but inspite such other persons having



been appointed to the vacant post of Chowkidar, the services of the petitioner were continued to have been extracted by the school authorities and the petitioner regularly entrusted his duty as Chowkidar.

4. In the aforesaid circumstance this writ petition is instituted seeking for a direction to absorb the petitioner against any available Grade-IV post/Chowkidar which may be lying vacant at the disposal of the respondents or in the alternative, directing the respondents to compensate the petitioner by releasing the financial benefit to which he would otherwise have been entitled for his continuous service from 01.08.2008 to 08.11.2021 when the writ petition was filed.

5. We have considered the first prayer of the petitioner for a direction to absorb him against any available vacant Grade-IV post or the post of Chowkidar. The said prayer of the petitioner cannot be accepted for two reasons firstly for filling up any vacant post in a provincialised school, the due procedure of law has to be followed and secondly, we have taken note of the submission of Mr. R. Mazumdar, learned counsel for the School Education Department that the petitioner otherwise is not duly qualified for being appointed either as a Grade-IV employee or as a Chowkidar. Regarding the second prayer, seeking for a compensation for the services which the petitioner had rendered and which had in the meantime been extracted and utilized by the respondent authorities, we have been told that for the services of the petitioner that he had rendered as a Chowkidar from 01.08.2008 till date, he had not been paid anything.

6. The respondents rely upon the factual background that it is the petitioner who had approached the School Managing Committee for being appointed and therefore, the School Managing Committee had obliged the request of the petitioner.

7. We are not deciding the matter from the point of view of any contributory negligence so that by invoking the said principle the liability to pay for the services extracted can be refused because there is an equal contribution from the part of the petitioner in approaching the Managing Committee to appoint him. The principle upon which the claim of the petitioner for compensation would have to be decided is whether the respondents, in the circumstances narrated above, would be entitled to extract free services from a citizen, make him work as per the requirement, obliged the employee to work and thereafter, refuse any payment by saying that under the law the person could not have been appointed for the required post.

8. As regards the part of the submission that the person could not have been appointed in the post, we are in agreement with the respondents *inasmuch* as it being a post in a provincialised school, no appointment can be made without following the due procedure of law and therefore, we have already rejected the claim of the petitioner for being regularly appointed against any vacant post. But merely because a person cannot be regularly appointed against a vacant post or because the person is not qualified for such post, cannot be a reason under the law that the respondents will continue to extract the services of the petitioner for their benefits and take advantage of the situation.

9. Article 23 of the Constitution of India inter-alia provides that any form of forced labour are prohibited and any contravention of the same shall be an offence punishable in accordance with law. An act of the authorities of Ananda Ram Senior Basic School in allowing the petitioner to work as a Chowkidar from 01.08.2008, knowing it very well that he would never be regularly appointed and nor he is duly qualified to be appointed and extract the services of the petitioner would have to be construed to be a form of forced labour which under

Article 23 of the Constitution is strictly prohibited in the country by providing it to be a fundamental right under Part-III of the Constitution.

10. If the respondents are fully aware that under the law the petitioner could never be regularly appointed inspite of any duration of service that he may render, it was an incumbent on the part of the authorities to politely inform the petitioner not to come to the school anymore and not to render any more service or in other words prohibit the petitioner from rendering the service. But having not done so which is also a responsibility on the part of the respondents under the law to have done, a submission on the part of the respondents that the petitioner knowingly had offered the services and such services were accepted, cannot be a reason not to compensate the petitioner for the services that had already been rendered.

10. By requiring the petitioner to be compensated we are not in any manner suggesting that the petitioner be paid a regular salary and allowance for the entire period for which the person had served but to pay an appropriate amount by evaluating the value of the labour that the petitioner had given to the respondent authorities and which labour the respondent authorities had accepted and utilized for their benefits. Any view to the contrary if taken, in our view, would violate the provisions of Article 23 of the Constitution of India whereby a forced labour of a particular form would be given a legal recognition.

11. From the above, we are of the view that a legal injury had been caused to the petitioner by the respondent authorities. Mr. R. Mazumdar, learned counsel for the School Education Department states that the entire act of allowing, requiring and extracting the services of the petitioner had been done under the aegis of the School Managing Committee and therefore, the other respondents in the School Education Department would not be responsible for the same.

12. We are at a slightly disagreement with Mr. R. Mazumdar, learned counsel for the School Education Department on one aspect that on record certain representations are available which were made by the petitioner from time to time to the Director of Elementary Education, Assam and certain other authorities in the School Education Department. If the School Managing Committee was illegally extracting the services of the petitioner which they ought not to have done under the law, the same definitely came to the notice of the other authorities in the School Education Department when the petitioner had made representations stating the state of affairs and seeking for the remedy of a regular appointment.

13. It was also incumbent upon the higher authorities in the School Education Department at that stage itself to forthwith take necessary action that the School Managing Committee does not further indulge in any such illegal act of extracting the labour from a person. But records do not reveal that any such steps had been taken. From such point of view, although we are partly in agreement with Mr. R. Mazumdar, learned counsel that it is the act of the School Managing Committee alone who had indulged in the illegal act but at the same time we are also partly of the view that it is the higher authorities in the School Education Department who could have also acted with due diligence when the matter come to their notice for the first time.

14. As regards the public law remedy available in the event of an legal injury being caused to a citizen, the Supreme Court in paragraphs 9, 11 and 12 of its judgment render in *Chairman, Railway Board and others Vs. Chandrima Das (Mrs) and others reported in (2002) 2 SCC 465* had clearly held that the public law remedies have also been extended to the realm of tort and the Court, on a number of occasions has awarded compensation to the petitioners who suffered

personal injuries due to any unacceptable act in the hands of the officials of the Government and it was further held that causing of injury itself amounted to a tortious act and which may be compensated by the Court.

15. In the instant case, the services of the petitioner as a Chowkidar in Ananda Ram Senior Basic School was extracted by the school authorities from 01.08.2008 till date knowing it very well that the petitioner will never be regularly appointed *inasmuch* as he is firstly not qualified and secondly was not subjected to a due procedure of law for such appointment. But inspite of such knowledge that he would never be regularly appointed, continued to allow the petitioner to serve as a Chowkidar and also continued to extract the service. The act of the school authorities in allowing the petitioner to continue to serve as a Chowkidar and to extract his services and at the same time knowing it very well that the petitioner neither had any legal right to be regularly appointed nor would ever be regularly appointed, clearly leads to a state where a legal injury had been caused to the petitioner by the act of the respondent authorities.

16. As a legal injury is clearly discernible in the foresaid circumstance, we are of the view that as per the propositions laid down by the Hon'ble Supreme Court in paragraph 9 of the Chandrima Das (supra) a public law remedy is also available in respect of the petitioner to be compensated for the legal injury that had been caused. But at the same time we cannot be oblivious that we are dealing the matter under the jurisdiction of Article 226 of the Constitution, where appropriate material before the Court may not be available to evaluate the exact value of the legal injury that had been caused to the petitioner.

17. Accordingly, in exercising the power under Article 226 of the Constitution, under the public law remedy, we direct the respondents to pay a compensation of Rs.1,00,000/- (Rupees One Lakh) to the petitioner. However, we clarify that

the determination is not the exact value of the legal injury that may have been caused. Accordingly, liberty also remains with the petitioner to approach the Civil Court for the exact compensation that the petitioner feels would be entitled to and which if instituted, shall be adjudicated by taking note of the existing directions to pay the amount of Rs.1,00,000/- (Rupees One Lakh).

18. We also take note of the submission of Mr. R. Mazumdar, learned counsel for the School Education Department that the entire act is on the part of the School Managing Committee in extracting the service of the petitioner in an illegal manner. We do not intend to comment on the said submission *inasmuch* as the exact relationship between the School Managing Committee and the School Education Department is itself not very clear even if the rules which brings the School Managing Committee into existence is appropriately perused. Accordingly, we direct the State respondents to pay the compensation as directed above. But however, the authorities in the School Education Department at their discretion may recover the amount from the School Managing Committee as per their discretion and also ensure that no further labour of any person is extracted by the School Managing Committee in a situation where the authorities are of the full knowledge that the incumbent does not have any legal right to be regularly appointed or that he can never be regularly appointed against such post. If the amount is recovered from the School Managing Committee, the authorities shall also ensure as to from what source the School Managing Committee would compensate the Government for the recovered amount.

19. The amount be paid within a period of two months from the date of receipt of certified copy of this order. The Director of School Education Department to do the needful that the order is circulated amongst the Secretary



to the Government of Assam in the Various Education Department.

Writ petition stands allowed in the above terms.

JUDGE

Comparing Assistant