

DULU DEVI

A

v.

STATE OF ASSAM AND OTHERS

(Civil Appeal No.8429 of 2015)

OCTOBER 09, 2015

B

**[M.Y. EQBAL AND C. NAGAPPAN, JJ.]**

*Service law: Regularisation of service of appellant-teacher – Claim for – Payment of salary stopped after 10 years of continuous service – On writ petition, High Court directing release of salary to her and thereafter she continued in service and crossed efficiency bar twice – After few years authorities stopped payment to appellant along with other 192 teachers on the ground that her name appeared in the list of terminated teachers – Writ petition by appellant seeking continuance in service – Held: Appellant was never terminated from service nor any such order was served upon her – Authorities without going through relevant records prepared list of 193 teachers and included the name of the appellant for terminating services – Mere passing of an order of termination would not be effective unless it is communicated to the employee concerned – In the background of the facts of this case, particularly, the continued service of the appellant for the last 25 years, the impugned order passed by the High Court not sustained in law – Appellant entitled to continue in service and to all arrears of salary in accordance with law.*

C

D

E

F

**Allowing the appeal, the Court**

G

**HELD:** Indisputably, the appellant has been continuously serving as a teacher since 1989 and pursuant to the order passed in the earlier writ petition the appellant was paid entire salary from the date when

H

A the salary was not paid. The High Court took notice of  
 the fact that while considering the regularization of  
 services of the appellant, she being the senior most  
 teacher of the school was allowed to cross the Efficiency  
 Bar two times, initially in the year 2003 and subsequently  
 B in the year 2005. The High Court in the impugned order  
 further noted that the letter of termination was neither  
 issued nor the services of the appellant were terminated.  
 Admittedly, some of the terminated teachers filed their  
 C writ petition challenging the termination, which was  
 interfered with by the High Court, but the Court observed  
 that the said benefit cannot be granted to the appellant  
 as she was not a party in the said writ petition. The High  
 Court, assuming that the services of the appellant were  
 D terminated, refused to grant relief and dismissed the writ  
 petition. The approach of the High Court is not in  
 accordance with law. The services of a teacher who has  
 been working for the last 25 years shall not be assumed  
 to have been terminated and deprived of from her  
 E legitimate claim. In the background of the facts of this  
 case, particularly, the continued service of the appellant  
 for the last 25 years, the impugned order passed by the  
 High Court cannot be sustained in law. [Paras 14, 15, 18]  
 [967-B-F; 968-F]

F  
*State of Punjab v. Amar Singh Harika* AIR 1966  
 SC 1313; *Union of India v. Dinanath Shantaram  
 Karekar* 1998 (3) SCR 933: (1998) 7 SCC 569 –  
 relied on.

G  
Case Law Reference

AIR 1966 SC 1313      relied on.      Para 16

1998 (3) SCR 933      relied on.      Para 17

H

CIVIL APPELLATE JURISDICTION: Civil Appeal No.

8429 of 2015.

A

From the Judgment and Order dated 06.04.2010 of the Gauhati High Court in Writ Petition (C) No. 2560 of 2007.

Manish Goswami (For Rameshwar Prasad Goyal), Adv.,  
for the Appellant.

B

Avijit Roy (For M/s. Corporate Law Group), Adv., for the Respondents.

The following judgment of the Court was delivered.

C

**M.Y. EQBAL, J.** 1. Leave granted.

2. The appellant has preferred this appeal by special leave against the impugned order dated 06.04.2010 passed by the Gauhati High Court in Writ Petition (Civil) No.2560 of 2007; filed by the appellant seeking a direction to the respondents to allow her to continue in service as Headmistress in-charge of the Dhemaji Rastrabhasha Hindi Lower Primary School; for regularisation of her service and for payment of regular salary to her for the service being rendered. The High Court dismissed the said writ petition.

D

E

3. The facts of the case which reveals from the list of dates furnished by the appellant and have not been disputed by the respondents, are as under.

F

4. The appellant was first appointed as an Assistant Teacher in Assamese subject in the Dhemaji Hindi Lower Primary School in 1976. By order dated 19.12.1989 of the Deputy Inspector of Schools, Dhemaji, appellant was finally appointed as an Assistant Teacher as against the substantive vacancy in the said school. Even though the appellant was rendering continuous service as Assistant Teacher for more than 10 years, she was not paid her salary. Aggrieved by the

G

H

A same, she filed a writ petition being W.P.(C) No.833 of 1999. Thereafter, the respondents-Authority directed the Deputy Inspector of Schools, Dhemaji to enquire into non-payment of salary and furnish a report. On submission of such report, the  
B Additional Secretary, Education Department by order dated 03.05.2000, directed the Deputy Inspector of School, Dhemaji, to release the salary of the appellant for the period she rendered her services. Thereafter, by order dated 12.09.2000, the High Court disposed of the said writ petition with a direction  
C to the respondents to release the salary of the appellant not only from the current month but also for the period she actually rendered her services as a Teacher and to make an enquiry as to the appellant's entitlement for regularisation of her services and pass necessary orders. It is stated that the  
D respondents have not filed any appeal against the said order and, therefore, the findings and directions as aforestated has since attained finality.

E 5. In view of the directions given by the High Court vide its order dated 12.09.2000 passed in W.P.(C) No.833 of 1999, the appellant was paid all arrears of her salary and other allowances till August, 2007.

F 6. In the year 2005, the appellant had been given charge of the Head Mistress. On the date of crossing the "Efficiency Bar", she was also given the next increment by order dated 05.03.2005.

G 7. It is pertinent to note that in connection with another writ petition being W.P.(C) No.4468/2006, the Deputy Inspector of Schools, Dhemaji, submitted a report on 03.11.2006 enclosing therewith a list of 193 teachers who had been appointed in 1989 but were subsequently terminated, still drawing their salaries. In the said list of 193 candidates, the name of the  
H appellant was shown at Serial No.168. The Deputy Inspector of Schools, Dhemaji, vide his letter dated 09.11.2006, informed

the Director, Elementary Education, Assam, that the said report was prepared without going through the official records and relevant files and the same was not wholly correct. Consequently, the respondents-authority by order dated 09.02.2007, stopped the salary of 193 teachers including the appellant. Aggrieved by the same, the appellant filed the writ petition being W.P. No.2560 of 2007 which was dismissed by the High Court. In the said writ petition, it was categorically averred that the appellant had never been terminated from her service and no order of termination had ever been served upon her.

8. It is also evident from the report dated 25.02.2008 of the Deputy Inspector of School, Dhemaji that the appellant was never terminated from her services and her name was not included in the list of 752 teachers who were terminated in the year 1992 as per letter dated 12.05.1992 of the Director, Elementary Education, Assam. Thereafter, the appellant also filed a Miscellaneous Case No.2049 of 2008 inter alia praying that the respondents be directed to release her salary till the disposal of the pending writ petition. Learned counsel appearing for the respondents-authority on instruction, informed the High Court that the appellant was still continuing in her service. Accordingly, the High Court vide its order dated 02.02.2009 directed the respondents to pay the salary to the appellant. Thereafter, the Director of Elementary Education, Assam, vide his letter dated 11.02.2010 directed the District Elementary Education Officer, Dhemaji, to submit a clear report as to whether the name of the appellant was enlisted in the lists of terminated teachers. In response thereof, the District Elementary Education Officer, Dhemaji, submitted a report that the name of the appellant appeared in the list of 193 teachers which was sent on 03.11.2006 to the Director, Elementary Education, Assam and the said report was prepared without going through the relevant records and files.

A

B

C

D

E

F

G

H

A 9. We have heard learned counsel appearing for the parties and perused the record.

10. Learned counsel appearing for the appellant submits that the appellant had never been terminated from her service and that no order of termination had ever been served upon her. He further submits that without going through the relevant records and files, the respondents-Authority prepared a list of 193 teachers and included the name of the appellant for terminating their services. Indisputably, the appellant has been paid salary by the respondents-Authority for at least 25 years without serving any termination letter upon her.

11. Learned counsel appearing for the respondents contends that appointment of the appellant is itself illegal on the ground that she was under age at the time of her appointment. He further contends that as the appellant was appointed in a non-existent post, she did not get her salary till July, 2000.

12. Learned counsel appearing for the respondents submits that the respondents-Authority terminated the services of illegally appointed teachers including the appellant but they were continuing in service and drawing their salary till July, 2007. However, their salary was stopped with effect from August, 2007. Thus, the appellant's salary was also stopped as she was appointed illegally and her service was terminated in 1992. He further submits that the High Court has rightly held that if the service of the appellant stood terminated in the year 1992 then she has no legal right to claim salary, regularisation and promotion of service as the relevant materials were not produced before it when the earlier order was passed by the High Court directing the respondents to release salary and allowances to the appellant and also to make enquiry with regard to the claim of the appellant for regularisation.

13. We bestow our anxious consideration to the rival submissions made by learned counsel appearing for the parties and find substance in the submission made by learned counsel appearing for the appellant.

14. Indisputably, the appellant has been continuously serving as a teacher since 1989 and pursuant to the order passed in the earlier writ petition the appellant was paid entire salary since the date when the salary was not paid. The High Court took notice of the fact that while considering the regularization of services of the appellant, she being the senior most teacher of the school was allowed to cross the Efficiency Bar two times, initially in the year 2003 and subsequently in the year 2005. The High Court in the impugned order further noted that the letter of termination was neither issued nor the services of the appellant were terminated. Admittedly, some of the terminated teachers filed their writ petition challenging the termination, which was interfered with by the High Court, but the Court observed that the said benefit cannot be granted to the appellant as she was not a party in the said writ petition. The High Court, assuming that the services of the appellant were terminated, refused to grant relief and dismissed the writ petition.

15. In our considered opinion, the approach of the High Court is not in accordance with law. The services of a teacher who has been working for the last 25 years shall not be assumed to have been terminated and deprived of from her legitimate claim.

16. The Constitution Bench Judgment of this Court in the case of **State of Punjab vs. Amar Singh Harika**, AIR 1966 SC page 1313, considered this aspect of the matter. Writing the judgment, His Lordship (Gajendragadkar, C.J.) held that mere passing of an order of dismissal or termination would not be effective unless it is published and communicated to

A the officer concerned. If the appointing authority passes an  
order of dismissal, but does not communicate it to the officer  
concerned, theoretically it is possible that unlike in the case  
on a judicial order pronounced in Court, the authority may  
change its mind and decide to modify its order. The order of  
B dismissal passed by the appropriate authority and kept with  
itself, cannot be said to take effect unless the officer concerned  
knows about the said order and it is otherwise communicated  
to all the parties concerned. If it is held that mere passing of  
C order of dismissal has the effect of terminating the services of  
the officer concerned, various complications may arise.

17. Similar view has been taken by this Court in the case  
of ***Union of India vs. Dinanath Shantaram Karekar***, (1998)  
7 SCC 569, where this Court observed:

D

“9. Where the services are terminated, the status of the  
delinquent as a government servant comes to an end  
and nothing further remains to be done in the matter. But  
if the order is passed and merely kept in the file, it would  
E not be treated to be an order terminating services nor  
shall the said order be deemed to have been  
communicated.”

E

18. In the background of the facts of this case, particularly,  
F the continued service of the appellant for the last 25 years, the  
impugned order passed by the High Court cannot be sustained  
in law.

F

19. For the aforesaid reason, this appeal is allowed and  
G the impugned order is set aside. Consequently, the appellant  
shall be entitled to continue in service and further entitled to all  
arrears of salary in accordance with law.

G

H