

GAHC010035832020



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

Case No. : Cont.Case(Crl)(Suo Moto)/1/2020

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GUWAHATI, ASSAM

VERSUS

SRI PHAGULAL PRASAD
S/O LATE JANGILAL PRASAD, P.O. PANITOLA RAILWAY STATION, P.S.
TINSUKIA, DIST. TINSUKIA, PIN - 786183

For the petitioner : **Mr. T. J. Mahanta, Sr. Advocate (Amicus Curiae).**

Mr. A. Baruah, Advocate.
Mr. H.K. Das, SC, GHC.

For the Respondents: Mr. A. Bhattacharya, Adv.

BEFORE

THE HON'BLE MR. JUSTICE SUMAN SHYAM
THE HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

Date of hearing : 22/11/2021.

Date of judgement : 22/11/2021

JUDGEMENT AND ORDER (ORAL)

Suman Shyam, J

1. Heard Mr. T.J. Mahanta, learned senior counsel assisted by Mr. A. Baruah, learned

counsel who has appeared as Amicus Curiae on the request of this Court made vide order dated 29/10/2021. We have also heard Mr. A. Bhattacharya, learned Legal Aid Counsel representing the respondent/alleged contemnor. Mr. H. K. Das, learned Standing Counsel, Gauhati High Court is also present.

2. This suo-moto criminal contempt proceeding has been registered under Section 12 read with 15 of the Contempt of Courts Act, on the basis of the order dated 07/11/2019 passed by the learned Division Bench of this Court in connection with IA(C) 3557/2019, whereby, a direction was issued to the Registry to register a Criminal Contempt case and issue notice upon the respondent, viz. Phagulal Prasad on the charge of deliberately producing and relying upon forged documents before this Court.

3. Upon receipt of notice, the respondent has appeared through the Legal Aid Counsel Mr. A. Bhattacharya and filed his affidavit whereby, he has denied having any knowledge as regards the alleged forgery of the document and has stated that he had relied upon the document on a *bonafide* belief that it was a genuine document. The respondent's counsel has also questioned the maintainability of the Suo-Moto criminal contempt proceeding by urging that this matter does not come within the purview of Section 15 of the Contempt of Courts Act, 1971.

4. Before advertent to the submissions advanced by the learned counsel for the parties, we deem it appropriate to briefly recapitulate the factual matrix of this case. It appears from the materials available on record that the respondent herein was initially appointed as a honorary Assistant Teacher in the Panitola Hindi L.P. School. However, despite having worked for more than 10 (ten) years, his services was not regularized although the school was provincialised on 01/08/1977. Aggrieved thereby, the respondent had earlier

approached this Court by filing Civil Rule No. 932/1995, which was disposed of by the learned Single Judge by the order dated 19/09/1995 by issuing the following directions :-

“On hearing the learned counsel for the parties I dispose of this writ petition with a direction to the respondent no. 2 (The Director of Elementary Education, Kahilipara, Guwahati) to make an enquiry about the averments made in the petition and if the averments are found to be correct and if the petitioner had put in 10 years of service as honorary teacher, the respondent no. 2 shall give regular appointment to the petitioner. This shall be done within a period of three months from the date of receipt of this order. In the meantime the petitioner shall continue to work as honorary teacher in the school.

Accordingly the writ petition is disposed of.”

5. Despite the directions contained in the order dated 19/09/1995, no action was taken by the Department to regularize his services. Situated thus, the respondent had filed a Contempt Case being CoP(C) No, 260/1996, which was disposed of by the order dated 12/12/2005 by holding that the law as regards regularization of service of teachers in the L.P. Schools had changed inasmuch as there was no law presently in force which entitles a teacher to be regularized merely on rendering ten years of service.

6. It appears that by the order dated 29/10/2007 the service of the respondent was subsequently regularized and he had also received salary for the month of December, 2007. However, since then, he did not receive any salary. As such, the petitioner had once again approached this Court by filing WP(C) No. 516/2011, with a prayer to direct the authorities to pay his arrear salary and allowances. The aforesaid writ petition was disposed of by the judgement and order dated 15/12/2014 passed by the learned Single Judge by making the following directions :-

“Having regard to the above, the Director of Elementary Education, Assam is directed

to release the salary of the petitioner including the arrear salary with effect from the date of regularization i.e. 19/09/1995 within a period of 3 months from today. The Director of Elementary Education shall also ensure that petitioner receives his current salary.”

7. In the meantime, the concerned DEEO had lodged an FIR based on which Tinsukia P.S. Case No. 404/2009 was registered u/s. 468/471 IPC. It would be pertinent to note herein that the State Education Department had also filed a counter affidavit in WP(C) No. 516/2011, inter-alia, contending that the documents relied upon by the petitioner, viz. the order dated 29/10/2007 as proof of regularization of service was a forged document and, therefore, the claim for release of salary of the writ petitioner (respondent herein) was a suspicious one. Notwithstanding the aforesaid stand of the Department, by the order dated 15/12/2014, the learned Single Judge had allowed the prayer made in WP(C) 516/2011, in the manner indicated herein above.

8. After a delay of more than 436 days, the State of Assam, through the concerned officials of the Elementary Education Department, had preferred a Review Petition being Review Petition No. 75/2017, seeking review of the order dated 15/12/2014. The review petition was, however, dismissed by the learned Single Judge by order dated 06/06/2018. Thereafter, the Education Department had preferred Writ Appeal against the order dated 15/12/2014 along with an application for condonation of delay in presenting the appeal, which was registered and numbered as IA(C) 3557/2019. It was in that Interlocutory Application that the order dated 07/11/2019 was passed by the learned Division Bench for registering the suo-moto contempt case against the respondent.

9. In the order dated 07/11/2019, a coordinate Bench of this Court had noticed that

there was an opinion of the Forensic Science Laboratory (FSL) dated 21/10/2019, which goes to show that the signatures in the documents, relied upon by the respondent, were forged. Having noticed as above, the Division Bench was of the *prima facie* view that fraudulent documents, more particularly, the order of regularization dated 29/10/2007 was deliberately and willfully relied upon by the respondent (writ petitioner therein) so as to obtain a favourable order from this Court. Based on such *prima-facie* findings and observation, the order dated 07/11/2019 was passed.

10. By referring to the materials available on record, Mr. Mahanta, learned senior counsel has argued that based on the FIR lodged by the District Elementary Education Officer (DEEO), Tinsukia, Tinsukia PS case No. 404/2009 was registered under Section 468/471 of the Indian Penal Code (IPC) so as to inquire into the documents relied upon by the respondent herein treating those to be forged. However, upon investigation carried out in the matter, the IO had submitted Final Report dated 31/08/2010, which was also accepted by the informant. Mr. Mahanta submits that at present there is no proceeding pending against the respondent pertaining to the aforesaid documents within the meaning of Section 195 read with 172 of the Cr.P.C. Under the circumstances, the presumption drawn by this Court in the order dated 07/11/2019, as regards forgery of the documents is without any basis. If that be so, submits Mr. Mahanta, the instant suo-moto proceeding would have no legs to stand on and, therefore, would be liable to be closed.

11. Supporting the aforesaid submissions, Mr. Bhattacharya, learned Legal Aid Counsel appearing for the respondent has also argued that there is nothing to conclude that his client had indulged in forgery of any document. As such, there is no ground for this Court to proceed against the respondent for Criminal Contempt of Court.

12. We have also heard Mr. H.K. Das, learned Standing Counsel, Gauhati High Court, who has fairly submitted that there is no proof at this stage that the documents in question, were forged by the respondent.

13. What would constitute Criminal Contempt within the meaning of Contempt of Courts Act, 1971, has been defined in Section 2(c) of the Act, which is reproduced herein below for ready reference :-

“(c) “criminal contempt” means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which—

(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of any court; or

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.”

14. It is no doubt correct that as per sub-sections (c) (ii) and (iii) of Section 2, if any person obstructs or interferes or tends to interfere in any manner with any judicial proceeding or causes prejudice to such proceeding, or obstructs or tends to obstruct administration of justice, the same would amount to acts coming within the purview of section 15 of the Act of 1971. In such an event, it would be open for the High Court to take cognizance for Criminal Contempt and take action either on its own motion or on the motion to be made by the person designated in Section 15 of the Act of 1971. However, whether a person is guilty of criminal contempt for contravening any of the clauses of Section 2(c) of the Act of 1971 would depend on facts and circumstances of each case.

15. In the present case, as noticed above, the Police Case registered on the basis of FIR lodged by the Department has ended in Final Report. There is no other material available on record to draw the conclusion that the respondent had forged any document or that he had deliberately relied upon forged documents. Under the circumstances, we find force in the submission of the Mr. Mahanta that there is no justification for this Court to proceed against the respondent for committing Criminal Contempt of this Court.

16. We are informed that the departmental authorities have moved the Court of learned Chief Judicial Magistrate, Tinsukia, with a prayer to recall the order accepting the Final Report and have also prayed for a direction for further investigation to be carried out in connection with Tinsukia PS case No. 404/2009. However, it is the admitted position of fact that no order has been passed by the learned Court below on the aforesaid application made by the departmental authorities. This Court cannot also speculate on the outcome of the aforesaid prayer of the departmental authority made before the learned CJM, Tinsukia. Therefore, mere pendency of the application, if any, before the learned CJM, Tinsukia, cannot be a ground to keep this proceeding pending before this Court.

17. For the reasons stated herein above, we do not find any justifiable ground to proceed in this matter any further. This suo-moto Contempt proceeding is, therefore, closed. We, however, make it clear that our order would not come in the way of the Departmental authorities in initiating any other appropriate action in the matter, in accordance with law, if so advised.

18. Before parting with the record, we wish to put our appreciation for the services rendered by Mr. T. J. Mahanta, learned Senior Counsel, who gracefully declined to accept any remuneration. Mr. Bhattacharya, learned Legal Aid Counsel has also declined any

remuneration for representing the interest of the respondent as a Legal Aid Counsel.

The matter stands closed accordingly.

JUDGE

JUDGE

Sukhamay

Comparing Assistant