

GAHC010114822015



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

Case No. : WP(C)/1754/2015

XXX XXX XXX

VERSUS

IN RE - THE GOVERNMENT OF ASSAM and 3 ANR.
REP. BY THE CHIEF SECY., DISPUR, ASSAM

2:THE SECY. HOME and POLITICAL DEPTT.
GOVT. OF ASSAM
DISPUR
ASSAM

3:THE UNION OF INDIA
REPRESENTED BY I.THE MINISTRY OF HOME AFFAIRS. II. THE MINISTRY
OF EXTERNAL AFFAIRS

4:THE ACCOUNTANT GENERAL
ASSAM

Advocate for the Petitioner : MR. S S DEY (AMICUS CURIAE)

Advocate for the Respondent : MR. S C KEYAL (A.S.G.I)

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

ORDER

31.08.2021

Heard Mr. H. K. Das and Mr. A. Das, learned Amicus Curiae appearing in
this case. Also heard Mr. D. Saikia, learned Advocate General, Assam assisted

by Mr. S. C. Keyal, learned Standing Counsel, FT, and Mr. R. K. Deb Choudhury, learned Assistant Solicitor General of India, appearing for the Union of India .

Mr. R. A. Tapadar, learned Registrar (Judicial), Gauhati High Court, is also present in person.

In the last order dated 29.07.2021 three issues were raised by the learned Amicus Curiae viz., (1) non-payment of salary of the Members of the F.T., (2) failure to designate them as Head of Tribunals upon assignment of regular duties, and (3) lack of adequate infrastructure in the F.Ts.

On 19.08.2021, this matter was posted on a special request made by the learned Amicus Curiae on the ground that the terms in office of all the Members of the Foreigners Tribunals have expired on 23.05.2021 but till date no order of extension of their terms in office has been issued, as a result of which, their continuance in office have become untenable thereby raising a question mark on the validity of the opinions rendered by these Tribunals.

Today, when the matter is called up, Mr. Saikia has produced a copy of the communication dated 27.08.2021 received from the Under Secretary to the Government of India, Ministry of Home Affairs, addressed to the Chief Secretary to the Government of Assam, Dispur, whereby, the approval of the Central Govt. for extending the term of the Members of the Foreigners Tribunals for a period of two years with effect from 23.05.2021 has been communicated. Mr. Saikia submits that upon receipt of the necessary approval from the Central Government, the Government of Assam, in the Department of Home Affairs, will now initiate necessary follow up action so as to extend the services of all such members of Foreigners Tribunals, as indicated in the communication dated 27.08.2021. In view of the above, the aforesaid issue no longer survives for

consideration by this Court.

In so far as the non-payment of salary and allowances of the Members is concerned, Mr. Saikia has informed that all the Members have received their salary till the month of June, 2021 and in view of the budgetary provisions recently made by the Government of Assam, they would now receive their current salaries on regular basis. The learned Amicus Curiae has also expressed satisfaction on such submission made by the learned Advocate General, Assam.

Coming to the question of infrastructure, Mr. Saikia submits that instructions have already been issued to the concerned Deputy Commissioners to put in place adequate and sufficient infrastructure so as to enable the Foreigners Tribunals to function properly and therefore, one month's further time be granted to present a report on the action taken by the Deputy Commissioners. Considering the ground on which the prayer is made, this Court finds the request reasonable. Therefore, 30 days time is granted to the State to present a consolidated report indicating the action taken by the respective Deputy Commissioners for upgrading the infrastructure in all the Foreigners Tribunals in Assam.

There is another issue which was identified in the order dated 29.07.2021 which is pertaining to a mechanism to deal with complaints received against the members of the Foreigners Tribunals. Modality for dealing with such complaints have been prepared by the State Government in the department of Home in consultation with the Registry of this Court whereupon, certain guidelines for dealing with such complaints have been prepared and placed before this Court which are as follows :-

“(a) The complaint containing allegations against any Member of Foreigners Tribunal in the State of Assam shall not be entertained unless it is accompanied by duly sworn affidavit with verifying materials to substantiate the allegations made therein. However, in case the complaint is not supported by an affidavit, the applicant may be requested to submit the duly sworn affidavit within 2 (two) weeks; otherwise the complaint shall be dropped.

(b) If an action on such complaint is initiated, cognizance of the complaint would be taken only after satisfaction of the competent authority, designated by the Hon'ble Monitoring Judge.

(c) Complaints received either by the Registry or by the Home & Political (B) Department, which meet the aforesaid criteria, will be examined and discussed in the meetings of the Committee and, thereafter, the same shall be registered and placed before the Monitoring Judge at regular intervals.

(d) Upon receipt of the complaints against any Member of the Foreigners Tribunal and after ascertainment of authenticity of the complaint, the Committee will call for a report from the concerned District Judge of the District where the Tribunal is located, who shall make a detailed enquiry into the allegations made against the concerned Member and, thereafter, submit the report to this Committee within a period of one month.

(e) After receipt of such enquiry report, the Committee shall examine the same and upon satisfaction of the severity of the complaint, the Committee shall place the matter before the Monitoring Judge for

necessary direction."

The guidelines appear to be reasonable and has received the approval of all the stakeholders. In view of the above, the guidelines be accepted and acted upon.

In so far as the complaints are concerned, the same be considered by a three Member Committee consisting of (1) the Secretary to the Government of Assam, Home & Political(B) Department, Dispur, (2) The Legal Remembrancer – cum- Secretary Judicial to the Government of Assam, Dispur and (3) the Registrar (Judicial), Gauhati High Court, Guwahati. The seniormost in office amongst the three officials, at any given time, shall be the Chairman of the three Member Committee. Upon receipt of complaint against any member of the F.T., the same be placed before the three Member Committee. The Committee would consider the complaints and dispose of the same after making such enquiry, as may be necessary and permissible under the law and by following the principles of natural justice as well as the guidelines noted herein before.

The Government of Assam, Home & Political (B) Department, may take necessary steps for notifying the constitution of the three Member Committee as well as the guidelines and procedures to be followed for entertaining and deciding complaints received against the Members of the F.Ts.

Registry to list the matter again on 30.09.2021.

JUDGE

Comparing Assistant