
(2022) 02 GAU CK 0049

In the Gauhati High Court

Case No : Contempt Case (Civil) No. 466 Of 2021

Abdul Aziz Ahmed

APPELLANT

Vs

Preetam Saikia And 2 Ors

RESPONDENT

Date of Decision : 22-02-2022

Acts Referred:

Assam Secondary Education (Provincialisation) Services Rules, 2003 — Rule 13, 13(2)

Citation : (2022) 02 GAU CK 0049

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : H R A Choudhury, B Chakravarty

Final Decision : Disposed Of

Judgement

1. Heard Mr. HRA Choudhury, learned senior counsel for the petitioner, Mr. R Mazumdar, learned counsel for the respondents contemnors No. 1 and 2 being the Commissioner and Secretary to the Government of Assam in the Secondary Education Department and the Director of Secondary Education, Assam as well as Mr. SN Sarma, learned senior counsel for the respondent contemnor No. 3 Abdul Latif, who is the President-cum-Chairman of the School Selection Committee of Abbas Ali Choudhury Memorial Higher Secondary School.

2. This contempt petition is instituted for a wilful and deliberate violation of the order of this Court dated 09.11.2021 in WP(C)/3208/2021.

3. WP(C)/3208/2021 was instituted by Abdul Aziz Ahmed on the allegation that in a selection process for the post of Principal of Abbas Ali Choudhury Memorial Higher Secondary School, Barpeta as per the re-advertisement dated 4.03.1990, one of the applicant namely Rafik Ahmed was given 18 marks out of 30 in the criteria experience. On the other hand, no mark was given to the petitioner Abdul Aziz Ahmed for the criteria experience as graduate teacher and experience as in-charge Principal.

4. On the other hand, Rafik Ahmed had instituted WP(C)/7535/2019 on the

grievance that although he was the number one selected candidate as per the selection of the School Selection Committee, such recommendation as the candidate number one had not been accepted by State Selection Board.

5. Against the issue as regards whether the petitioner Abdul Aziz Ahmed was entitled to certain marks for the criteria experience, there was also an order by the Director of the Secondary Education, Assam dated 07.06.2019 that Abdul Aziz Ahmed was entitled to the marks towards the experience as graduate teacher and as In-Charge Principal. But without taking note of the order of the Director dated 07.06.2019, the School Selection Committee had not sent the correct list of panel of candidates and instead sent a list of three candidates namely Rafik Ahmed, Dheren Chandra Ghosh and Lal Mahmud. Accordingly, an opinion was formed in the order dated 09.11.2021 in WP(C)/3208/2021 that the decision of the State Selection Board to appoint Rafik Ahmed as the regular Principal of the school concerned would be vitiated. Accordingly, a direction was issued that the School Selection Committee shall send a panel of three names by incorporating the marks in respect of the petitioner Abdul Aziz Ahmed by taking note of the order of the Director dated 07.06.2019.

6. We have taken note that in the order dated 09.11.2021 the order of the Director is recorded to be 10.09.2019 whereas the correct date ought to be 07.06.2019.

7. Against the order dated 09.11.2021 in WP(C)/3208/2021, writ appeals were instituted by Rafik Ahmed being WA/350/2021 and by the School Selection Committee of Abbas Ali Choudhury Memorial Higher Secondary School being WA/340/2021 wherein by the order dated 10.01.2022, it was held that no anomaly can be found in the order dated 09.11.2021 in WP(C)/3208/2021. But however, the writ appellate order also provided that the School Selection Committee will look into the contention of Rafik Ahmed that the petitioner Abdul Aziz Ahmed was not qualified as he had not done his Post Graduation as per law.

8. In the aforesaid circumstances, this contempt petition which is instituted for a willful and deliberate violation of the order dated 09.11.2021 in WP(C)/3208/2021 would also have to be read to be a contempt petition for non-compliance of the order dated 10.01.2022 in WA/340/2021 and WA/350/2021. It being so, we also have to take note that in the order of the Division Bench dated 10.01.2022, there is also a provision that while considering the matter, the School Selection Committee shall look the contention of the writ appellants therein namely Rafiq Ahmed and the School Selection Committee of Abbas Ali Choudhury Memorial Higher Secondary School that the petitioner Abdul Aziz Ahmed was not qualified as he had not done his Post Graduation as per law.

9. In the contempt petition an order dated 21.01.2022 was passed requiring the School Selection Committee to do the needful of preparing the panel list and produce it before the Court on the next returnable date.

10. In the circumstances, the panel list prepared by the School Selection

Committee is placed before the Court. We have been also told that the panel list and the records of the School Selection Committee had already been transmitted to the Director of Secondary Education, Assam for it to be placed before the State Selection Board.

11. Upon going through the panel list prepared and the materials produced, it is taken note that the School Selection Committee had prepared a panel list comprising of Rafik Ahmed, Dheren Chandra Ghosh and Lal Mahmud. In respect of the petitioner in the Statement of Evaluation, none of the columns for which the evaluation was required to have been made had been filled up. There is only a note that the candidature of Abdul Aziz Ahmed had been rejected without giving any reason.

12. But, however, in a forwarding written by the President of the School Selection Committee namely Abdul Latif addressed to the Director of Secondary Education, Assam in paragraph 1 thereof, it is stated that the petitioner Abdul Aziz Ahmed had done his Post Graduation in the same year i.e. 2015 and also completed his B.Ed. degree in the same year i.e. 2015. The B.Ed. Degree had been done with the permission of the Department of Secondary Education, Assam whereas the Post Graduation degree was not done with the permission of the Department of Secondary Education, Assam.

13. The manner in which the School Selection Committee had examined the candidature of the petitioner Abdul Aziz Ahmed in the view of the Court would be dereliction of the duty entrusted upon the School Selection Committee under Rule 13 (2) of the Assam Secondary Education (Provincialisation) Services Rules, 2003 (in short, the Rules of 2003).

14. Rule 13(2) of the Rules of 2003 provides that on receipt of the applications from the eligible candidates the School Selection Committee constituted for the purpose after scrutiny of the applications, shall hold an interview and prepare a panel of names of three candidates on the basis of qualities such as leadership skills, administrative ability, integrity and commanding personality.

15. Upon perusal of the materials on record, no material is available to indicate that the petitioner had done his Post Graduation degree without the permission of the Department of Secondary Education, Assam. Further, in the order of Division Bench dated 10.01.2022 in WA/40/2021 and WA/350/2021, it was provided that the School Selection Committee shall also look into the contention of the writ appellants namely Rafik Ahmed and the School Selection Committee itself that the petitioner was not qualified as he had not done his Post Graduation as per law.

16. The writ appellate order has to be read that if any such contention is there, the School Selection Committee will look into it and forward the same to the State Selection Board for taking its decision as otherwise the order has to be read that the School Selection Committee who had raised the contention on the validity of the Post Graduation degree of the petitioner would also be the

authority to decide upon the said contention meaning thereby that the second principle of natural justice *nemo iudex in causa sua* would be violated.

17. We have to read the order of the Court in a context that the order is in compliance of all the legal principles and it cannot be construed that the order of the Court would require the authority to violate the basic principles of law.

18. From such point of view, the requirement of the Division Bench can be understood that if there is any such contention, it would be taken note of by the School Selection Committee and forward it to the State Selection Board for its decision. Accordingly, if a Post Graduate degree had been obtained by a serving teacher without the permission of the Department, the same *prima facie* may be an irregular practice but the same itself cannot render a power to any authority to declare the degree which had been obtained by the petitioner to be an invalid degree.

19. The authorities in the Secondary Education Department, Government of Assam whose procedural requirement may have been violated by obtaining the degree without the permission would be the appropriate authority to take a decision on the acceptability of such degree or in doing so there was a misconduct on the part of such teacher who obtained the degree by not following the required procedure of obtaining permission. In either view of the matter, a third party to the dispute, it be the School Selection Committee cannot form a final opinion on its own on the legality and acceptability of such degree.

20. We take note that WP(C)/3208/2021 was given a final consideration by taking note that the petitioner Abdul Aziz Ahmed would retire from service on 28.02.2022 and therefore, there was an urgency to the extent that the decision on the selection be taken at least before the person concerned retires.

21. Taking the matter into consideration in its entirety and as the records of the School Selection Committee had already been transmitted to the Director of Secondary Education, Assam, the Director may do the needful to place the same before the State Selection Board at the earliest to take a final decision on selection to the post of Principal of Abbas Ali Choudhury Memorial Higher Secondary School. In doing so, the materials transmitted by the School Selection Committee shall be construed to be the materials to be taken on consideration for arriving at a decision and the view expressed by the School Selection Committee of rejecting the candidature of the petitioner Abdul Aziz Ahmed for the reason that he had completed his Post Graduate qualification without the permission of the appropriate authority be not taken into consideration and the State Selection Board shall come to an independent conclusion of its own on the said issue as per law.

22. Considering the urgency of the matter that the petitioner would retire from service on 28.02.2022 and today is 22.02.2022, the entire matter be placed before the State Selection Board on 23.02.2022. The State Selection Committee may take its decision on the same day itself and if the order that may be passed

would be in favour of the petitioner, the Director, Secondary Education, Assam to ensure that the consequential orders thereof be issued on or before 25.02.2022, so that the petitioner, if selected, can enjoy the benefits of the aforesaid at least before his retirement. On the other hand, if the Selection Committee arrives that it is not the writ petitioner who is to be selected, it may act upon it as per its own convenience as regards the consequential action.

23. We have also taken note of the provisions of Rule 13 of the Rules of 2010 that it is the prerogative of the School Selection Committee to prepare a panel of three candidates based upon the qualities such as leadership skills, administrative ability, integrity and commanding personality and it is not the prerogative of the School Selection Committee to select the appropriate candidate. Under the Rule 13, it is the State Selection Board which would make the selection for the post of Principal. From such point of view the provisions of this order would also be consistent with the provisions of Rule 13 which requires a State Selection Board to take a decision as indicated above.

24. Although we are prima facie of the view that the respondents contemn Abdul Latif had not acted in a manner as required by the orders of the Court, we prefer to not to further continue with this contempt petition and is of the view that the consequential orders passed as indicated above would meet the ends of justice.

25. Contempt petition stands closed in the above terms.