

(2018) 04 GAU CK 0044
In the Gauhati High Court
Case No : WA 165 of 2017

ABDUL WAHID

APPELLANT

Vs

THE STATE OF ASSAM and 4 ORS

RESPONDENT

Date of Decision : 03-04-2018

Acts Referred:

Assam College Employees (Provincialisation) Rules, 2010 — Rule 5(2)

Citation : (2018) 04 GAU CK 0044

Hon'ble Judges : AJIT SINGH C.J, MANOJIT BHUYAN

Bench : Division Bench

Final Decision : Dismissed

Judgement

Manojit Bhuyan, J

1. Heard Mr. K. Bhuyan, learned counsel for the appellant as well as Ms. R. Choudhury, learned counsel representing Respondent Nos.1 and 2. Also

heard Mr. R.C. Saikia, learned counsel representing Respondent No.5.

2. This intra-Court appeal is directed against the order dated 09.11.2016 passed in WP(C) 4974/2014. The present appellant was arrayed as

Respondent No.5 in the said writ petition.

3. An Advertisement was published on 13.06.2012 for filling up one vacant post of Assistant Professor (unreserved) in Political Science at Kharupetia

College. The Respondent No.5/writ petitioner Mrinal Pathak had responded to the said Advertisement. Mrinal Pathak was constrained to institute the

related writ petition challenging (i) the Resolution No.4 dated 06.02.2014 of the Governing Body of Kharupetia College whereby it was resolved to

adjust the appellant herein Abdul Wahid against the sanctioned post in Political Science, which fell vacant on the demise of one Rupjyoti Prasad Dutta

in the year 2011 and who had served as Lecturer in the said sanctioned post, as well as the further Resolution adopted for cancellation of the

Advertisement dated 13.06.2012, and (ii) the Notice dated 22.03.2014 for cancellation of the Advertisement dated 13.06.2012. Mrinal Pathak also

prayed for a direction to the State respondents to complete the selection process in terms of the Advertisement dated 13.06.2012.

4. The writ petition was allowed by taking into consideration the affidavit-in-opposition filed by the present appellant Abdul Wahid as well as the

additional affidavit filed by Mrinal Pathak. Be it stated that Abdul Wahid defended his case as being entitled to adjustment against the vacancy in

terms of the Government Office Memorandum dated 17.07.2004.

5. The learned Single Judge observed that Kharupetia College is a provincialised college in terms of the Assam College Employees (Provincialisation)

Act, 2005 and, therefore, governed under the said Act and the Rules framed thereunder. Referring to Rule 5(2) of the Rules i.e. the Assam College

Employees (Provincialisation) Rules, 2010, the learned Single Judge observed that appointment to the post of Lecturer/Assistant Professor is to be

made by direct recruitment from amongst candidates having the prescribed qualifications through open Advertisement published in two leading dailies,

at least in two consecutive issues. Under the statutory provisions the Governing Body is to conduct the selection process through a duly constituted

selection committee and make proposal to the Director of Higher Education on the basis of the recommendation of the selection committee,

whereafter order of appointment is to be issued by the said Director of Higher Education. This, we also find, is the only mode for appointment of

Lecturer/Assistant Professor, as statutorily ordained.

6. As referred to above, the case of the appellant Abdul Wahid for adjustment/regularization is on the basis of the aforesaid O.M. dated 17.07.2004. A

perusal of the said O.M., which is enclosed at Annexure-7, it is seen that the same was issued by the Government of Assam in the Education (Higher)

Department as a one-time measure for regularizing the services of more than 300 college teachers who were found to be serving in different degree

colleges under the deficit system of grants-in-aid since the year 1989 against non-sanctioned posts. By the said O.M., the procedure/modalities were

prescribed for adjustment of the services of the identified college teachers

working without sanctioned posts. The said Office Memorandum was purpose-specific and once the objective of the O.M. was achieved, another Office Memorandum dated 12.10.2004 was issued stipulating that no

College under the deficit grants-in-aid system should engage any person as a Lecturer where no sanctioned post exists for the purpose.

7. The learned Single Judge had duly taken note of the said O.M. dated 17.07.2004 as well as the Full Bench decision of this Court in *Mizanor*

Rahman vs. State of Assam, 2012 (1) GLT 520, wherein the rationale for the issuance of the said O.M. dated 17.07.2004 was considered. On our

own, we have also perused the Full Bench decision and find that the said O.M. dated 17.07.2004 was issued to address the problem of an identified

group of Lecturers as a one-time measure. In the said case it was noticed that way back in the year 1952, the Government of Assam had brought 52

colleges under the deficit grants-in-aid system. Thereafter, the State stopped sanctioning new posts of Lecturers in the colleges, as a result of which,

the Lecturers serving against non-sanctioned posts were unable to have their service regularized. This led to filing of writ petitions before this Court.

Pursuant to orders of this Court and since the Government was not in a position to sanction any new posts, a Cabinet Memorandum was prepared on

25.03.2004 to deal with the issue. In the exercise so initiated, the Directorate of Higher Education had prepared a list of 325 teachers working without

sanctioned posts. In the Cabinet Memorandum a list of about 322 vacant posts in different deficit colleges was prepared. The Cabinet approved the

same on 09.06.2004, whereafter the O.M. dated 17.07.2004 was issued for adjusting the service of about 300 college Lecturers working against non-

sanctioned posts. The Full Bench held that those Lecturers whose cases were not under consideration at the time when the Cabinet decision was

taken on 09.06.2004, they cannot claim the benefit of the O.M. dated 17.07.2004, in as much as, the procedure of regularization envisaged in the O.M.

dated 17.07.2004 was intended to take care of only about 300 identified college Lecturers and not those who were subsequently appointed after

17.07.2004.

8. In the instant case, although the appellant Abdul Wahid was appointed against a non-sanctioned post on 02.07.2004, i.e., prior to issuance of O.M.

dated 17.07.2004, he cannot claim the benefit flowing out of the said Office

Memorandum as the same was purpose-specific and was intended to address the problems/issues with regard to an identified group of college Lecturers. The appellant was not one among the group. As held by the Full Bench decision referred to above, the O.M. dated 17.07.2004 was not intended to be a perennial source for regularizing the services of Lecturers. In this respect, the appellant Abdul Wahid cannot claim and/or is not entitled to seek the shelter of the O.M. dated 17.07.2004 for adjustment/regularization of his service.

9. Over and above, when the aforesaid statutory Act and Rules clearly lays down the procedure while making appointment to the post of Lecturer/Assistant Professor, the concerned authorities are statutorily mandated to follow the procedure and are not permitted to seek refuge in a Government Office Memorandum to give any benefit of adjustment/regularization to a college Lecturer working against non-sanctioned post. In this respect also, the O.M. dated 17.07.2004 cannot come to the aid of the appellant although he was appointed against a non-sanctioned post at Kharupetia College prior to 17.07.2004.

10. We find no infirmity in the findings and decision of the learned Single Judge. The present appeal being devoid of merits, stands accordingly dismissed, however, without any order as to cost.

11. Before parting with the case and as stated at the Bar, we wish to place on record that subsequent to the direction of the learned Single Judge to proceed with the selection process in terms of the earlier Advertisement dated 13.06.2012, interview was conducted on 03.05.2017 and Select List was published on 19.05.2017. Whereas, the appellant Abdul Wahid did not participate in the selection process, the Respondent No.5 Mrinal Pathak participated but figured at Sl. No.2 in the Merit List. It is informed that one Md. Nurul Hassan has been selected and placed at Sl. No.1 in the Merit/Select List dated 19.05.2017, which selection is not under challenge as on date.