

(1995) 07 GAU CK 0022

In the Gauhati High Court

Case No : Civil Rule No's. 344 of 1992 and 1529 of 1993

All Assam Higher Secondary Teachers and Employees"
Association and Another

APPELLANT

Vs

The State of Assam and Others
 The State of Assam
and Others Vs State os Assam and Another

RESPONDENT

Date of Decision : 07-07-1995

Acts Referred:

Assam Education Department Selection Rules, 1981 — Rule 7(2)
Assam Higher Secondary Education Act, 1984 — Section 24
Assam Secondary Education (Provincialisation) Act, 1977 — Section 3(3), 4
Assam Secondary Education (Provincialised) Service (Amendment) Rules, 1991 — Rule 2, 2(1), 3
Assam Secondary Education (Provincialised) Service Rules, 1982 — Rule 1(1), 1(2), 3, 4(4), 5
Constitution of India, 1950 — Article 309

Citation : (1995) 3 GLR 89

Hon'ble Judges : D.N. Baruah, J

Bench : Single Bench

Advocate : S.N. Medhi, R. Chakraborty, M. Das and A. Choudhury, in C.R. 344 of 1992, S. Medhi, R. Baruah and S. Das, in C.R. No. 1529 of 1993, for the Appellant; A.S. Bhattacharjee, Addl. A.G. and D.P. Chaliha, Sr. G.A., for the Respondent

Judgement

D.N. Baruah, J.—Both the Civil Rules involve similar questions of law and fact, therefore, I propose to dispose of both the Civil Rules by a common judgment.

2. In both the Civil Rules the Petitioners have challenged Rules 3, 5, 8 and 9 of Assam Secondary Education (Provincialised) Service Rules, 1982, as amended by the Assam Secondary Education (Provincialised) Service (Amendment) Rules, 1991.

3. The facts of the case in both the Civil Rules may be stated as follows:

The Assam Secondary Education (Provincialised) Service Rules, 1982 was made

and published on 27.5.82. On 18.12.82, the Commissioner and Secretary, Education Department discussed about the Rules and the discussion was recorded. Thereafter, it was further discussed on 8.3.83. A set of Rules has been framed. These rules of 1982 were challenged before this Court by the Petitioner Association (of Civil Rule No. 344/92) in Civil Rule No. 496 of 1984. A Division Bench of this Court by order dated 29.10.90 disposed of the above Civil Rule No. 496/84 allowing the Government of Assam to publish a new set of Rules. At the time of hearing of the aforesaid Civil Rule, learned Advocate General of the State of Assam submitted on 2.4.90 that a new set of rules had been framed but those were yet to be published. This Court directed the State Government to publish new set Of Rules and the Government was directed not to make any promotion under the old Rules from the date of the order. By notification dated 30.12.91 certain amendments were sought to be made in the Assam Secondary Education (Provincialised) Service Rules, 1982 (for short, 1982 Rules) and, accordingly, the said set of Rules was called "The Assam Secondary Education (Provincialised) Service (Amendment) Rules, 1991" (for short, 1991 Rules). By Annexure-VI notification dated 30.12.91 published on 3.2.92 in the Assam Gazatte, Extraordinary, the aforesaid Rules were made in purported exercise of the powers conferred under proviso to Article 309 of the Constitution of India though the original Rules were made in exercise of the powers conferred u/s 3(3) of the Assam Secondary Education (Provincialisation) Act, 1977. The preamble to the Rule was amended as follows:

No. ESS 75/78/Pt. 111/27, dated the 27th May, 1982 - In exercise of the powers conferred under the proviso to Article 309 of the Assam (sic) Constitution of India, the Governor of Assam is pleased to make the following rules regulating the conditions of service of the teachers of the Secondary Schools which have been provincialised under the Assam Secondary Education (Provincialisation) Act, 1977 in the manner hereinafter appearing, namely:

(2) Notwithstanding anything contained in Sub-rule (2) of Rule 1, the provision contained in Sub-rule (1) above, shall be deemed to have come into force from the date on which the Principal Rules came into force.

3. Amendment of Rule 2. - (1) In the Principal Rules, in Rule 2, for Clause (b), (c), (e), (f), (i) and (j), respectively the following shall be substituted; namely:

(b) "Appointing Authority" means the Governor in respect of the posts in Grade I Cadre, the Director of Secondary Education Assam in respect of the posts in Grade II and Grade HI cadres and the Inspector of Schools in respect of the posts in Grade IV to Grade VII cadres of the Service."

Note:- "Cadre" means the cadre of the Service as shown in Rule 3 below and the Schedule I to these rules."

(c) "Board" means the Selection Board constituted under the Assam Education Department Selection Rules, 1981, hereinafter called the State Level Selection Board, or the District Level Selection Board constituted under Rule 7(2)(a), as

the case may be."

(e) "Director" means the Director of Secondary Education, Assam, the Additional Director of Secondary Education, Assam, or the Joint Director of Secondary Education, Assam, as the case may be, (0 "Date of recognition" means the date on which recognition was granted as per the provisions of the Act"

(f) "Recognition" or "Recognised" means recognition granted or recognised under the provisions of the Act"

(j) "Select List" means the Select list of candidates prepared by the Board in the order of preference.

(2) In the Principal Rules, in Rule 2, after the Clause (k), the following new clauses shall be inserted, namely:

(I) "District Level Selection Board" means the Board constituted under Rule 7(2) (a) for the purpose of making selection of candidates for appointment to all cadres and posts except the posts in Grade-I and Grade - II cadres of the Service; and

(m) "State Level Selection Board " means the Board constituted under the Assam Education Department Section Rules, 1981, amongst Ors. , for the purpose of making selection of candidates for appointment to the posts in Grade-I and Grade-II cadres of the Service.

(3) In the Principal Rules, the existing Rule 2 along with the aforesaid amendments shall be renumbered as Sub-rule (1) of Rule 2 and a new sub-rule shall be inserted as under: namely:

(2) The words and terms used but not defined in these rules shall have the same meaning as have been respectively assigned to them in the Act.

4. Amendment of Rule 3. - in the Principal Rules for Rule 3, the following shall be substituted, namely-

3. Class and Cadre. - (I) The Service shall consist of the following Grades, namely -

Grade- I Principal of Higher Secondary and Multipurpose School, hereinafter called Principal only. (Non-Gazetted).

Grade II - (i) Headmaster or Headmistress of High School, hereinafter called Headmaster (Non-Gazetted).

(ii) Superintendent of High Madrassa, hereinafter called Superintendent only (Non-Gazetted).

(iii) Vice-Principal of Higher Secondary and Multipurpose School, hereinafter called Vice-Principal only, (Non-Gazetted).

(iv) Subject Teacher or Post-Graduate Teacher of Higher Secondary and

Multipurpose School, hereinafter called Post-Graduate Teacher only, (Non-Gazetted).

4. Heard Mr. S.N. Medhi, learned Counsel for the Petitioner appearing in Civil Rule No. 344/92, Mr. S. Medhi, learned Counsel for the Petitioner in Civil Rule No. 1529/93, Mr. A.S. Bhattacharjee, learned Additional Advocate General, Assam assisted by Mr. D.P. Chaliha, learned Senior Government Advocate, Assam.

5. The contention of Mr. S.N. Medhi is that the 1982 Rules were framed in exercise of the powers u/s 3(3) (sic) of Assam Secondary Education (Provincialisation) Act, 1977. These rules were; challenged by the Petitioner of Civil Rule 344/92 in Civil Rule No. 496/84 and the said Civil Rule was disposed of by this Court on 29.10.90 allowing the State Government to publish the new set of Rules with a direction not to make any promotion under the old Rules. Mr. Medhi further submits that instead of making a new set of rules Government of Assam by Annexure-6 amended the old rules. According to Mr. Medhi the Government ought to have made a fresh set of rules. Mr. Medhi further submits that the amendment was made without proper application of mind which is evident from the records. According to him, Post-Graduate teachers ought to have been shown above the Headmaster because the post-graduate teachers have higher qualification and are required to teach the students of higher classes, namely, Class XI and Class XII. In Schedule-I though the post-graduate teachers are placed in Grade -II as per Rule 3, in Schedule-II the post-graduate teachers are shown as Grade-III. There is some anomalies. Mr. Medhi further submits that in exercise of the powers u/s 24 of the Assam Higher Secondary Education Act, 1984 the Council made regulations known as Regulation on "Recognition of Higher Secondary and Junior Colleges" and in Clause 6, the qualification of the Principal of a Higher Secondary School is prescribed. The qualifications so prescribed are quoted below:

(a) A Principal must at least be a second class Master Degree holder in Arts, Science, Commerce, Agriculture, Veterinary, Medicine, Engineering with a minimum of 45% of marks in aggregate, must not be less than 35 years of age and more than 60 years of age, must have at least 10 years teaching experience with a commanding personality, administrative ability & integrity. Retired persons may also be appointed and allowed to serve till 63 years of age with the approval of the Council. The present working principals below norms prescribed above but approved by the State Govt. may temporarily continue as principals until replacement by duly qualified persons.

As per the revised Regulation the qualification for Principal of a Higher Secondary School shall be Master degree holders with minimum marks of 45%. Under Sub-rule (3) of Rule 9, a member of the service either belonging to Grade II or Grade III and having 15 years continuous teaching experience or to Grade IV and having 17 years continuous experience shall be eligible for selection for the post of Principal in Grade I of the service. In all cases preference shall be given to the candidates having Post Graduate Degree In Teaching (B.Ed. or B.T.). Mr. Medhi

submits that B.Ed. is never a Post Graduate Degree in teaching. Therefore, there is incongruity in the instant Rule itself and, as such, instant rule cannot be allowed to stand. Mr. S. Medhi, learned Counsel appearing on behalf of the Petitioner in Civil Rule No. 1529 of 1993 has adopted the submission of Mr. S.N. Medhi, learned Counsel appearing on behalf of the Petitioner in Civil Rule No. 344 of 1992. In addition to what has been submitted by Mr. S.N. Medhi, Mr. S. Medhi submits that without amending the relevant provisions of 1977 Act, the Rules are inconsistent inasmuch as Sub-rule (4) of Rule 4 Grade IV employees were made outside the purview of the Act. In the Rule Post-Graduate employees are shown as III Grade employees. Graduate teachers are made Grade IV Employees. There is inconsistency in 1977 Act and Rule 3 inasmuch as the graduate teachers are shown as Grade IV. Mr. S. Medhi further submits that teaching staff are totally excluded from the purview of the rules which is also inconsistent with the 1977 Act.

Learned Addl. Advocate General, Assam, however, candidly submits before this Court by saying that on the face of it there appears to be some inconsistency. He, however, supports most of the provisions by saying that there may be some printing mistakes here and there and that can be corrected.

6. On the submission of the counsel for the parties it is to be seen whether the provisions contained on Rules 3 and 9 and first entry made in Schedule - II are contradictory to one another and inconsistent with the Act and the regulation 6 A of the revised Regulation. A Division Bench of this Court disposed of the Civil Rule No. 496/84 on the basis of submission made by the learned Advocate General appearing on behalf of the State Government that a new set of rules would be published soon. According to the learned Advocate General on 2nd April, 1992 new rules have already been framed but it was not yet published. The Court directed the Government to publish the new rules by 30.6.90. However, till the end of October, 1990 i.e. on 29.10.90 new set of rules was not published. Accordingly, the Court directed the Government to publish the new rule till then not to promote any person on the basis of old rules. Attempt was made to make new rules by amendment. On reading of the various amendment rules it appears that the Principal of a Higher Secondary and Multipurpose school is placed in Grade-I, Headmaster/Headmistress, Superintendent, Vice-Principal and Post Graduate Teacher in Grade - II, Assistant Headmaster/Asstt. Headmistress and Assistant Superintendent in Grade III and Graduate Teacher of Higher Secondary and Multipurpose School, Graduate of High School, Graduate teacher of High Madrasa and Senior Classical Teachers or Senior Hindi Teacher in Grade IV. In amended Rule 9 for promotion to Grade I, a member of the Service either belonging to Grade II or Grade III and having 15 years continuous teaching experience or to Grade IV and having 17 years continuous teaching experience shall be eligible for selection for the post of Principal in Grade I. However, there is a proviso. As per the said proviso, in all cases preference should be given to candidates having a Post-Graduate Degree in Teaching/a degree in Post-Graduate Teaching (B.Ed. or B.T.). B.Ed. and B.T. are graduates in Education or a graduate

in Teaching. They can never be said as holders of the Post-Graduate degree in Education or Teaching. May be, to obtain that degree also general degree is necessary. At best it can be said as Post-Graduate degree, but that does not mean that a person holding B.Ed. and B.T. are holders of Post-Graduate Degree in Teaching or a Degree in Post Graduate Teaching. There is definitely some anomalies in the Rules. Besides, in Rule 3 Post-Graduate teachers are placed in Grade - II. However in the 1st entry of the Schedule - II, Post Graduate Teachers have been placed in Grade III. This also on the face of it is inconsistent with the provisions contained in the Rule and the Schedule. Besides, as per the submission of Mr. Medhi to become a Principal of a Junior College or a Higher Secondary School as per revised recommendation of the Higher Secondary School the qualification for principal is that he must hold a second class Master Degree in Arts, Science, Commerce, Agriculture, etc. As per this Rule only the Post-Graduate degree like M.A., M.Sc., M. Com and other Post-Graduate degree holders are eligible to be appointed Principal. This also indicates inconsistency in the rules as well as in the Regulation, Mr. Medhi submits that as per the Education Council Act, 1984, the Council has power to make rule and this was done. Definitely there are some inconsistencies. Section 4 of the 1977 Act has specifically mentioned that Grade IV employees are outside the purview of the Act. However, in the Rule Graduate teachers are shown as Grade IV. This is also serious irregularity. From all these, I am of opinion that there are serious inconsistencies in Rule 9 and 1st entry of the Schedule - II as well as Regulation 6A and these are inconsistent with one Anr. . The contention of Mr. Medhi that the Post-Graduate teachers having higher educational qualification ought to have been placed above the Head Master. This, however, entirely depends on the Government. At this stage I do not like to express any opinion on it. However, this is for the Government to see. So far the inconsistencies pointed by the learned Counsel for the Petitioners, I am of opinion that this requires reconsideration. Accordingly, I direct the Government to reconsider the entire matter preferably making a fresh set of rules as early as possible by removing all the inconsistencies. Learned Addl. Advocate General submits that for that purpose at least 3 (three) months" time will be necessary for the Government to reconsider and to make a new set of rules or for amendment removing all these anomalies as indicated above. Till these anomalies are removed, no promotion to the post of Principal of Higher Secondary Schools shall be made.

7. With the above directions and observations both the Civil Rules are disposed of.