
(2018) 05 GAU CK 0135
In the Gauhati High Court
Case No : WP(C) 115 of 2016

Amir Uddin Ahmed And 2 Ors.

APPELLANT

Vs

State Of Assam And 3 Ors

RESPONDENT

Date of Decision : 22-05-2018

Acts Referred:

Assam Secondary Education (Provincialised) Service Rules, 2003 — Rule 3, 3(1)(b), 3(1)(b)(vi), 8

Citation : (2018) 05 GAU CK 0135

Hon'ble Judges : ACHINTYA MALLA BUJOR BARUA, J

Bench : Single Bench

Advocate : H R A Choudhury

Final Decision : Disposed Off

Judgement

1. Heard Mr. F Hoque, learned counsel for the petitioners. Also heard Mr. N Sarma, learned Standing counsel, Secondary Education Department.

2. The petitioner No.1 was initially appointed as an Hindi Teacher in the Rangapani Majalia ME School as per the order dated 25.09.1981 of the

Deputy Inspector of Schools, Guwahati. The appointment order states that the petitioner No.1 was appointed as per the selection by the District

Elementary Education Officer's letter dated 13.09.1981. Subsequently, the petitioner No.1 was transferred to Tupamari ME School at his own

request as per the order of the DEEO, Kamrup, dated 13.06.2005.

3. The petitioner No.2 was initially appointed as Assistant Teacher of Tupamari Uttar Rangapani ME Madrassa on 24.02.1984 and his service was

approved in the intermediate scale of pay by the order dated 26.04.1989 of the District Elementary Education Officer, Kamrup. Thereafter, he was

transferred to Natun Badla FU M.E Madrassa and subsequently to Tupamari ME

School in the same capacity by the order dated 30.06.2005.

4. The petitioner No.3 was appointed as Assistant Teacher of Tupamari ME School in the intermediate scale of pay by the order dated 30.11.1999 of

the District Elementary Education Officer, Kamrup and he joined on 04.11.1999.

5. The Tupamari ME School was amalgamated with Rangeswari Tupamari HS School as per the order dated 11.09.2006 of the Director of Secondary

Education Assam. Upon such amalgamation, the services of the petitioners stood absorbed in the amalgamated Higher Secondary School. In the

aforesaid factual background, the petitioners claim that they are entitled to a graduate scale of pay, inasmuch as, although they were appointed as

intermediate teachers but they have the required qualification of being graduates. The said claim of the petitioners has been opposed by the

respondents in the Secondary Education Department in the Govt. of Assam by referring to an Office Memorandum dated 18.11.2011 of the

Commissioner and Secretary to the Govt. of Assam in the Secondary Education Department. According to the respondents, the proposal received by

the Department for upgradation of the teachers working in the intermediate scale of pay, but having graduate qualification to the post of Graduate

Teacher of Higher Secondary/High Schools are not to be entertained any further.

The Office Memorandum provides that the recruitment to the post of Graduate Teacher in Higher Secondary/High Schools are to be filled up by the

method of direct recruitment only under Rule 8 of the Assam Secondary Education (Provincialised) Service Rules, 2003 (for short, provincialised

Rules of 2003). In the Office Memorandum, it is further provided that â?? there is no such provision for upgradation of teachers appointed in lower

cadre having degree qualification to the post of graduate teacherâ??. Apparently as understood, the refusal of the Commissioner and Secretary to

the Govt. of Assam in the Secondary Education Department to entertain any claim for upgradation of intermediate teachers having graduate degree to

a graduate post is because their service conditions are governed by provincialised Rules of 2003 and as the said Rules do not provide for any such

upgradation, therefore, the claim for upgradation is not maintainable.

6. To scrutinize the correctness of such stand taken by the Commissioner and Secretary to the Govt. of Assam in the Secondary Education

Department, the provisions of the provincialised Rules of 2003 is required to be

examined. Rule 3 of the provincialised Rules of 2003 provides for classes and cadres where the proviso to Rule 3(1)(b) provides as under:

â??Provided that there should be no fresh recruitment to the cadres of Junior Teacher, Junior Classical Teacher, Junior Hindi Teacher, Senior Classical Teacher and all such existing posts shall stand upgraded as Graduate Teacher or Hindi Teacher having Bachelor Degree from any recognized University or Classical Teacher (Sanskrit/Arabic/Assamese Language Teacher, as the case may be) from the date such posts become vacant either as a result of retirement of existing incumbent or otherwise.â??

7. It is stated that the teachers appointed in the intermediate scale are equivalent to Junior Teacher as en-cadred under Rule 3(1)(b)(vi) of the provincialised Rules of 2003. It is also an admitted position of the parties including the respondents that the service condition of the petitioners, who were initially appointed in ME Schools are now governed by the provisions of the provincialised Rules of 2003, after the schools are amalgamated with a Higher Secondary School. Considering both the aspects that the post of teachers receiving the intermediate scale of pay is same as that of Junior Teacher/Junior Classical Teacher/Junior Hindi Teacher as encadred under Rule 3(1)(b)(vi) of the provincialised Rules of 2003 and further that the service of the petitioners who were initially appointed as Assistant Teachers in intermediate scale was amalgamated with the Higher Secondary School, it can be concluded that the present writ petitioners in the circumstances would also come within the purview of the encadred Junior Teacher/Junior Classical Teacher/Junior Hindi Teacher under Rule 3(1)(b)(vi) of the provincialised Rules of 2003.

8. In the event, the services of the petitioners would fit into the cadre of Junior Teacher/Junior Classical Teacher/Junior Hindi Teacher under Rule 3(1)(b)(vi), the proviso to Rule 3(1)(b) of provincialised Rules of 2003 shall also be applicable in the case of the petitioners.

9. This Court is of the view that the conclusion arrived at by the Commissioner and Secretary to the Govt. of Assam in the Secondary Education Department in the Office Memorandum dated 18.11.2011 that there is no such provision for upgradation of teachers appointed in lower cadre having degree qualification to the post of graduate teacher is in conflict and contrary to the provisions of the proviso to Rule 3(1)(b) of the provincialised

Rules of 2003.

10. In view of such conclusion, the contention of the respondent authorities in the Secondary Education Department that the claim of the petitioners

for upgradation to a graduate scale of pay for having a graduate degree cannot be accepted in view of the provisions of Office Memorandum dated

18.11.2011 is found to be unacceptable.

11. Accordingly, the Commissioner and Secretary to the Govt. of Assam in the Secondary Education Department is directed to examine the matter as

to whether the claim of the petitioners for graduate scale of pay/upgradation to a graduate post for having a graduate degree is covered by the proviso

to Rule 3(1)(b) of the provincialised Rules of 2003 or not. Upon such examination, the Commissioner and Secretary to the Govt. of Assam in the

Secondary Education Department shall pass a reasoned order and if in the event, it is found that the claim of the petitioners are covered by the

aforesaid proviso, consequential benefits be granted to the petitioners.

12. In the event, the Commissioner and Secretary is of the view that the petitioners are not covered by the aforesaid proviso specific reasons thereof

shall be stated.

13. The Commissioner and Secretary shall also take note of that under the said proviso all such Junior Teacher/Junior Classical Teacher/Junior Hindi

Teacher shall stand upgraded as graduate teachers or Hindi Teachers having bachelor degree which would otherwise mean that such upgradation is

by operation of law rather than the respondent authorities providing for it. The only aspect for examination that would remain is whether the petitioners

in the factual background that they were appointed in the intermediate scale of pay and thereafter amalgamated to a Higher Secondary school and had

a graduate degree would be covered by the aforesaid proviso or not.

14. It is stated by Mr. N Sarma, learned Standing counsel that the proviso providing for upgradation as graduate teacher was incorporated by the

Assam Secondary Education (Provincialised) Service (Amendment) Rules, 2012 w.e.f., 10.07.2012. Even if the proviso was brought in w.e.f.,

10.07.2012, the same would have the implication that from the said date the conclusion arrived at by the Commissioner and Secretary to the Govt. of

Assam in the Secondary Education Department in the Office Memorandum dated 18.11.2011 would stand contrary to the provision of the statutory

Rules and the conclusion arrived at by this Court hereinabove shall be applicable from the date on which the amendment came into effect. In either case, as of now, the petitioners deserve a consideration whether their cases are covered by the proviso to Rule 3(1)(b) of the provincialised Rules of 2003.

15. The aforesaid requirement be done by the Commissioner and Secretary to the Govt. of Assam in the Secondary Education Department within a period of 3(three) months from the date of receipt of a certified copy of this order.

16. In terms of the above, this writ petition stands disposed of.