

(2015) 06 GAU CK 0008

In the Gauhati High Court

Case No : Writ Petition (C) Nos. 5010 and 6912 of 2013

Amjad Ali Sheikh and Others

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision : 16-06-2015

Acts Referred:

Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 —
Section 3, 3(1), 3(1)(i), 3(1)(ii), 3(2)
Constitution of India, 1950 — Article 30

Citation : (2015) 3 LLN 380

Hon'ble Judges : Michael Zothankhuma, J

Bench : Single Bench

Advocate : A. Choudhury and S. Islam, for the Appellant; P. Saikia and J. Ahmed, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Michael Zothankhuma, J.

1. WP(C) 5010/2013 and WP(C) 6912/2013 are being disposed of by this common judgment and order as identical questions of law and facts are involved in both the writ petitions.

2. Mr. A Choudhury, counsel for the petitioner in WP(C) 5010/2013 submits that the petitioner therein was appointed as a Lecturer in the Department of Logic and Philosophy in Kalatoli Kathmi Anchalik College (Jr) on 15.7.96 and joined the said post on 16.7.96.

3. The petitioner's counsel submits that the petitioner is senior to the respondent Nos. 7 and 8 as they joined the said college as Lecturers in Advance Assamese and Education on 2.9.96 and 22.6.98 respectively.

4. Petitioner's further case is that in the particulars of the teaching staff of the said Junior College submitted by the Principal dated NIL to the higher authorities, the name of the petitioner was reflected at serial No. 6 and the private

respondents were placed below him and the private respondents were placed at serial Nos. 7 and 10 respectively.

5. Petitioner's counsel submits that when the final particulars of the eligible employees of the said Junior College were submitted on 20.9.2012 for the purpose of provincialisation of their services under the Assam Venture Educational Institutions (Provincialisation of Service) Act, 2011 (hereinafter referred to as "the 2011 Act"), petitioner's name was reflected at serial No. 13 and the names of respondent Nos. 7 and 8 were reflected at serial Nos. 7 and 9 respectively. However, when the impugned list of employees in respect of the Junior College was published on 12.4.2013 in the official website of the Director of Secondary Education, the petitioner's name was not reflected while the names of the private respondent Nos. 7 and 8 have figured at serial Nos. 6 and 8 respectively showing the date of joining as on 2.9.96 and 22.5.98.

6. The case of the petitioner is basically to the effect that the petitioner being senior to the private respondents, his name should be reflected in the list of teachers for provincialisation of service ahead of the respondent Nos. 7 and 8. Counsel for the petitioner also submits that the respondent No. 7 did not have the requisite educational qualification at the time of her appointment as Lecturer in Advance Assamese.

7. Mr. J Ahmed, counsel for respondent Nos. 7 and 8 in WP(C) No. 5010/2013 submits that the question is not with regard to length of service in the Junior College, but with regard to the service rendered in respect of a subject which has been given concurrence by the State Government. Mr. J Ahmed submits that the subjects of Advance Assamese and Education have been given +2 concurrence in the year 1992 and the subject of Logic and Philosophy has been given 1st year concurrence on 5.3.2005 and +2 concurrence only on 30.11.2010. Mr. J Ahmed also submits that a reading of Section 3(1)(i) and 3(2) of the 2011 Act read with Section 4(1) of the said Act would go to show that the subject taught by the petitioner i.e. Logic and Philosophy having been given +2 concurrence only on 30.11.2010, the petitioner could not have been recommended for provincialisation as he had not completed the required 10 years (now 7 years) of imparting education in the said subject. Section 3(1)(i), 3(2) and 4(1) of the 2011 Act are reproduced below:

"3. Eligibility criteria for selection of educational institutions for provincialisation of services of its employees.-(1) Subject to the provisions of Article 30 of the Constitution of India, the following categories of Venture Educational Institutions shall be eligible for being considered for provincialisation of the services of its employees:--

(i) the Venture Educational Institutions which have been established and had obtained the required permission or recognition or affiliation or concurrence, as the case may be, from the respective competent Authority or Authorities on or before 1.1.2006;

(ii) it has a minimum total enrolment of 25 students if it is a Primary School (both Lower Primary and Upper Primary), 25 students in Class X if it is a High School, 25 students in Class XII if it is a Higher Secondary School or Junior College; 25 students in the Final year of Three Year Degree Course, if it is a Degree College, as on the date of coming into force of this Act;

(iii) in case of a High School or a Higher Secondary School or a Junior College or a Degree College, the concerned educational institution must have a consistent good academic performance which would mean that at least 30% of the candidates appearing for the final examination must have passed in any three examinations held since 01.01.2006.

(2) In case of a Degree College and a Junior College, the eligibility criteria specified in sub-section (1) above regarding date of recognition, affiliation or concurrence, minimum enrolment and performance would mean in respect of each of the subjects with or without "Major" as the case may be, and the services of the employees appointed or engaged in connection with such subject or subjects shall be considered for provincialisation under the provisions of this Act, only if the specified eligibility criteria are satisfied.

.....

4. Employees to be Government servant.-(1) The services of the employees of all eligible Venture Educational Institutions under Section 3 shall be deemed to have been provincialised on the date of coming into force of this Act and they shall become employees of the State Government with effect from that date, provided such institutions have completed 7 years of imparting education from the date of affiliation, recognition, concurrence or permission, as the case may be, as on the date of coming into force of this Act:

Provided that the services of those employees of the Venture Educational Institutions eligible for provincialisation under Section 3 which have not completed 7 years of their imparting education from the date of their affiliation, recognition, concurrence or permission, as the case may be, as on the date of coming into force of this Act, shall be provincialised as and when the concerned educational institution completes 7 years of imparting education from the date of such affiliation, recognition, concurrence or permission, as the case may be.

(2) The numbers of employees in both teaching and non-teaching cadre in each of the Venture Educational Institution, services of whom are provincialised or to be provincialised under this Act, shall not exceed as specified in the Schedule appended to this Act:

Provided that where the number of such employees serving in such Venture Educational Institutions exceeds the number as specified in the Schedule, the provincialisation of the services of the employees shall be on the basis of seniority in the respective category in the concerned educational institution. The State Government shall not have any liability whatsoever in regard to such

excess employees :

Provided further that the State Government shall have no liability whatsoever in respect of any past liability of the Venture Educational Institutions whose employees have been provincialised under this Act."

8. Mr. J Ahmed, counsel for respondent Nos. 7 and 8 [petitioners in WP(C) 6912/2013] has submitted that the letter dated 18.8.2007 issued by the Joint Secretary (Admn), Assam Higher Secondary Education Council shows that the Kalatali Kathmi Anchalik Jr. College had been granted renewal of recognition in the Arts Stream with respect to the subjects of +2 stage. Though the subjects of English, MIL (Assamese, Hind), Political Science, Economics, History, Education, Arabic, Advance Assamese, Geography and Mathematics have been mentioned in the said letter dt. 18.8.2007, the subjects of Logic and Philosophy have not been mentioned therein. Mr. J Ahmed thus submits that there could not have been the subject of Logic and Philosophy in the year 1996 when in the aforesaid letter dt. 18.8.2007 the said subject is not even mentioned.

9. Mr. P Saikia, counsel for respondent No. 2 submits that the Kalatali Kathmi Anchalik Jr. College was established on 1.1.90. The said College was granted opening permission by the Assam Higher Secondary Education Council on 12.8.92 in respect of Geography, History, MIL (Assamese), Political Science, Advance Assamese, Economics, Education, Arabic, MIL (Hindi), Mathematics. The date of +2 state Provisional Recognition subject wise was granted to the school on 17.4.95 in respect of Geography, History, MIL (Assamese), Political Science, English, Advance Assamese, Economics, Education, Arabic, MIL (Hindi) and Mathematics. Thereafter, the College received +2 stage Government concurrence in respect of the aforementioned subjects vide order dt. 28.5.96.

10. Mr. P Saikia submits that in the present case the petitioner was appointed on 15.7.96 and joined the college on 16.7.96 as Subject Teacher in Logic and Philosophy, while the respondent Nos. 7 and 8 joined the college on 2.9.96 and 22.6.98 respectively. According to the date of joining, the petitioner is senior but, the Government accorded +2 stage concurrence only on 30.11.2010 to the subject of Logic and Philosophy against which the petitioner is working. Approval of first year permission in the subject Logic and Philosophy along with Sanskrit was granted by the Council vide letter dt. 22.11.95. The +2 stage concurrence to the college was accorded by the Government on 28.5.96 vide letter No. B(3)S.520/95/31 in respect of subjects namely, English, MIL (Assamese), Education, History, Political Science, Economics, Geography, Arabic, Advance Assamese, Mathematics and MIL (Hindi) in the said concurrence, the subject of Logic and Philosophy was not included.

11. The respondent No. 2's counsel thus submits that for the purpose of provincialisation, the question of seniority will arise only if the subjects had been given concurrence prior to 1.1.2006. He also submits that for provincialisation, the Lecturers of the subjects mentioned above minus Logic and Philosophy will

have to be considered according to their seniority from the year 1992, as +2 concurrence for the subject Logic and Philosophy was given only on 30.11.2010.

12. Mr. K Choudhury, counsel for respondent Nos. 5 and 6 submits that the submissions advanced by the counsel for the respondent No. 2 are also supported by him. He also submits that Section 4(1) and 3(2) of the 2011 Act have to be read together in order to adjudicate the present matter.

13. In reply, Mr. A Choudhury, counsel for the petitioner submits that Section 4(1) of the 2011 Act has to be read separately and cannot be read in conjunction with Section 3(2) of the said Act. He also submits that subsequent to filing of this writ petition, the District Scrutiny Committee had submitted another document dt. 15.3.2013 regarding particulars of Junior Colleges found eligible for provincialisation of services of its employees and in the said document which is at Annexure-B of the reply affidavit filed by the petitioner at Page 7, it is reflected at Para 6 as follows:

"6. Date of +2 Stage Govt. Concurrence: 28/5/1996

(a) Date of Concurrence Subject wise : 1996-Geo, Hist, MASS, P.Sc, Eng., Ad, Ass, Eco, Edu, Arabic, MIL (Hindi), Maths, L&P."

14. Mr. A Choudhury thus submits that the said document having clearly shown that the subject of Logic and Philosophy having been given +2 stage concurrence as on 28.5.96, exclusion of the petitioner by the respondents in the earlier recommendation was wrong and his service should be provincialised as per the subsequent recommendation. He also submits that this document dated 15.3.2013 has not been challenged or denied by the respondents.

15. At this stage, counsels for all the respondents have vehemently denied the veracity of the aforesaid document dated 15.3.2013 which is annexed as Annexure-B of the reply affidavit of the petitioner.

16. Thus, the question that has to be decided in the writ petition is with regard to whether concurrence is required to be given by the State Government in respect of each subject and whether seniority of the Lecturers will have to be decided only in respect of a subject taught which has received concurrence of the Government. Petitioner's case in the present case is that concurrence need not be given in respect of a subject and the entire service period of the Lecturer has to be taken into account for the purpose of provincialisation. The seniority of a Lecturer cannot be considered only from the date when a subject has been given concurrence by the Government. The respondents on the other hand have submitted that seniority of a Lecturer will have to be decided only after a lapse of 10 years (now changed to 7 years w.e.f 2013) from the date of concurrence given by the Government to the subject in question and not from the date of joining. For example, if a person had joined in the year 1990 and the subject had been given +2 concurrence only in the year 1995, then the seniority of the Lecturer of that particular subject will have to be counted only from 1995 and

not from 1990.

17. Thus, the question that has to be decided is with regard to whether the aforesaid contentions of the petitioner and the respondents are covered by Section 3(1) and (2) read with Section 4(1) of the 2011 Act. The further question that may have to be considered is also with regard to whether the seniority of a Lecturer has to be confined only to Section 4(2) of the 2011 Act read with the Schedule.

18. A reading of Section 3(2) of the 2011 Act clearly shows that concurrence has to be given to the subject in question. However, besides concurrence being given to the subject, the three requirements as mentioned in Section 3 have also to be complied with i.e. the venture educational institution should have obtained the required permission or recognition or affiliation or concurrence from the competent authority/authorities on or before 1.1.2006. Secondly, there has to be a minimum enrolment of the number of students. Thirdly, in case of a Junior College, the concerned educational institution must have a consistent good academic performance which would mean that at least 30% of the candidates appearing for the final examination must have passed in any three examinations held since 1.1.2006.

19. The petitioner's subject i.e. Logic and Philosophy had been given +2 concurrence only in the year 2010 and even if we assume that all the three requirements of Section 3 have been fulfilled, then the other condition required to be fulfilled for counting the petitioner's service as a teacher of Logic and Philosophy, has to be construed in the light of Section 4(1) of the 2011 Act, which states, that the services of the employees of all eligible venture educational institutions under Section 3 shall be deemed to have been provincialised on the date of coming into force of the 2011 Act, provided such institutions have completed at least 7 years of imparting education from the date of affiliation, recognition, concurrence or permission. The proviso to Section 4(1) of the 2011 Act also states that the services of those employees who have not completed 7 years of imparting education shall be provincialised as and when the concerned educational institution completes 7 years of imparting education from such date of affiliation, recognition, concurrence or permission, as the case may be. The period of 7 years mentioned in Section 4 of the 2011 Act was earlier 10 years and the figure "10" had been replaced by the figure "7" in the year 2013 (by the Assam Act XX of 2013). Thus, on a reading of Section 3(2) along with Section 4(1) of the 2011 Act, it becomes crystal clear that the petitioner would become eligible for provincialisation only after 7 years from the date +2 concurrence was given to the subject of Logic and Philosophy. The +2 concurrence having been given to the said subject only on 30.11.2010, the petitioner will become eligible for provincialisation only on 30.11.2017. Thus, the impugned list dated 12.4.2013 published in the website for provincialisation of lecturers/employees has rightly not included the petitioner.

20. Counsels for the private respondents have submitted that the subject Logic

and Philosophy had been given the 1st year concurrence on 5.3.2005 and +2 concurrence on 30.11.2010. Even if it is assumed that the 1st year concurrence given on 5.3.2005 for the subject Logic and Philosophy would also include +2 concurrence by deeming the +2 concurrence given on 30.11.2010 as an ex-post facto +2 concurrence, then also the petitioner will become eligible for provincialisation only in 2013 as his seniority in service will have to be counted only from 5.3.2005 and as the requirement of "10 years" given in Section 4(1) of the 2011 Act was replaced by "7 years" only in 2013. On the other hand, the private respondents have to have their services counted from the date when they were in service as the subjects they are teaching i.e. Advance Assamese and Education have been given +2 concurrence in the year 1992, making them senior to the petitioner for the purpose provincialisation of their service as per the 2011 Act.

21. The word "recognition" mentioned in Section 3(2) of the 2011 Act has to be read in relation to the "Regulations on Recognition of Higher Secondary and Junior College, 1989", which deals with establishment of a new institution i.e. school/college. The word "affiliation" in Section 3(2) cannot be read with respect to a particular subject. The words "minimum enrolment" is relatable to Section 3(1)(ii). The word "concurrence" in Section 3(2) has to be read in relation to the word "subject" as mentioned in Section 3(2) itself. Thus, I find that an employee of a venture educational institution whose service is to be regularized has to have his seniority counted from the date the concurrence was given by the State Government to the subject he was teaching.

22. With regard to the question as to whether the seniority of a lecturer can be confined only to Section 4(2) of the 2011 Act read with the Schedule vis-a-vis Section 3(2) read with Section 4(1) of the 2011 Act, a reading of Section 4(2) and the Schedule would go to show that the seniority of lecturers would only be in relation to another lecturer of the same category. However, for the purpose of provincialisation of a lecturer, the subject which the lecturer is teaching has to have concurrence given by the State Government as reflected in Section 3(2) read with Section 4(1) of the 2011 Act.

23. With regard to the petitioner's affidavit-in-reply wherein he has annexed a document issued by the District Scrutiny Committee dated 15.3.2013 (Annexure-B), showing that +2 stage concurrence has been given on 28.5.96 to the subject Logic and Philosophy, it may be noted that the said document (Annexure-B to the affidavit-in-reply) does not contain any date put by any of the members of the District Scrutiny Committee. The relevant portion of the aforesaid document is reproduced below:

"6. Date of +2 State Govt. Concurrence : 28/5/1996

Date of Concurrence Subject wise : 1996-Geo, Hist, MASS, P.Sc, Eng, Ad. Ass, Eco, Edu, Arabic, MIL(Hindi), Maths, L&P".

It is not known as to who has put the date 15.3.2013 in the said document.

Though the same is a document of the District Scrutiny Committee, it is not known on what basis the District Scrutiny Committee has stated that +2 stage concurrence has been given for the subject Logic and Philosophy on 28.5.96. However, as the petitioner in WP(C) 5010/2013 has placed the same on record, it would be best if the Director of Secondary Education, Assam gives a decision as to whether any +2 stage concurrence has been given by the State Government for the subject Logic and Philosophy to Kalatoli Kathmi Anchalik College (Jr).

24. With regard to the petitioner's submission that the respondent No. 7 did not have the requisite qualification at the time of her appointment on 1.9.96, the respondent No. 7 has stated in her affidavit-in-opposition that she had passed her M.A. Examination in the subject of Assamese in the year 1996. The petitioner has, however, stated that the respondent No. 7 had passed the M.A. Examination on 22.2.97. The fact, however, remains that on the date on which the respondent No. 7 was considered for provincialisation, she had the required qualification for the post of Lecturer in Advance Assamese and no challenge can be made on that score at this belated stage with regard to whether the respondent No. 7 had passed the M.A. Examination in Assamese in the year 1996 or 1997.

25. Due to the reasons stated above, this Court directs that for the purpose of provincialisation, the lecturers of Kalatoli Kathmi Anchalik College (Jr) will be provincialised by counting their service seniority with effect from the dates on which the concerned subjects which they were teaching have been given +2 stage concurrence by the State Government. However, as the petitioner in WP(C) 5010/2013 has produced the aforesaid document (Annexure-B to the affidavit-in-reply), provincialisation of the lecturers of the Kalatoli Kathmi Anchalik College (Jr) will be made after the Director of Secondary Education, Assam takes a decision by going through the records to find out as to whether +2 stage concurrence has been given to the subject Logic and Philosophy on 28.5.96 or 30.11.2010. If the Director's decision is to the effect that +2 stage concurrence has not been given on 28.5.96 for the subject Logic and Philosophy but given only on 30.11.2010, then the petitioner in WP(C) 5010/2013 would not be entitled to have his service provincialised as per Section 3(2) read with Section 4(1) of the 2011 Act and the impugned list dated 12.4.2013 should be given effect to and the services of respondent Nos. 7 and 8 (petitioners in 6912/2013) shall be provincialised. However, if the decision of the Director is that +2 stage concurrence was given on 28.5.96, the service of the petitioner will be provincialised prior to the private respondents.

26. The entire exercise as directed shall be carried out by the Director within a period of one month from the date of receipt of a certified copy of this order.

27. The writ petitions accordingly stand disposed of. No cost.