

(2015) 06 GAU CK 0007
In the Gauhati High Court
Case No : Writ Petition (C) No. 3410 of 2013

Anjali Ahmed

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 10, 3, 3(1), 3(1)(ii), 3(2)
Constitution of India, 1950 — Article 30

Citation : (2015) 06 GAU CK 0007

Hon'ble Judges : Michael Zothankhuma, J

Bench : Single Bench

Advocate : U.K. Nair, R. Islam and A. Chetry, for the Appellant; P. Saikia and M. Nath, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Michael Zothankhuma, J.

1. Heard Mr. UK Nair, counsel for the petitioner and Mr. M Nath, counsel for the respondent No. 8. Also heard Mr. P Saikia, counsel for the respondent No. 2.

2. The case of the petitioner is that he was appointed as a Lecturer in English on 2.9.96 in Kalatoli Kathmi Anchalik Junior College. The petitioner joined the post on 8.9.96. The petitioner was thereafter upgraded to the 1st post of Lecturer of Alternative English in the said Junior College on 27.10.1996. The Deputy Secretary (Inspection) Assam Higher Secondary Education Council vide letter dated 16.3.2000 granted provisional permission for introducing Alternative English in the first year HS Class of the said Junior College. Thereafter, the Joint Secretary to the Govt. of Assam, Education Department vide letter dated 26.5.2005 accorded Government concurrence in respect of the subject of Alternative English and Sanskrit in the H.S. 1st year Classes in the said Junior College.

3. Counsel for the petitioner submits that the petitioner having been appointed as Lecturer in English on 2.9.96 and having joined the said post earlier than the respondent No. 8, who was appointed as Lecturer in Economics on 30.7.97 and joined on 6.8.97, the petitioner being senior to the respondent No. 8, the petitioner's name should be above the respondent No. 8 in the list of Lecturers for provincialisation. However, the petitioner's name does not figure for provincialisation.

4. Mr. UK Nair has submitted that as per Annexure-2 of the affidavit-in-reply filed by the respondent No. 8 to the additional affidavit filed by the petitioner, the enrolment of students in the subject of Economics is as follows:

5. Mr. UK Nair thus submits that by applying Section 3(1)(ii) of the Assam Venture Educational Institutions (Provincialisation of Service) Act, 2011 (hereinafter referred to as "the 2011 Act"), the minimum total enrolment of students for a Junior College in a particular subject should be 25. Counsel for the petitioner submits that in respect of Alternative English the subject-wise enrolment for the years 2010-11, 2011-12 and 2012-13 is nil whereas in the subject of English, the subject-wise enrolment is as under:

6. Mr. UK Nair thus submits that as the 2011 Act has come into force w.e.f. 5.9.2011, the petitioner's service is entitled to be provincialised in view of Section 3(2) read with Section 3(1)(ii) and 4(2) of the 2011 Act. Mr. UK Nair has also submitted that though the petitioner has been upgraded to the post of Lecturer in Alternative English on 27.10.1996, the petitioner has been teaching English all along and whenever there are students for the Alternative English subject, he also teaches Alternative English. Mr. UK Nair submits that the recommendation made by the District Scrutiny Committee in favour of the respondent No. 8 has been subsequently reviewed and another recommendation has been made in favour of the petitioner by the District Scrutiny Committee as reflected in Annexure-B of the additional affidavit of the petitioner. In the said Annexure-B the petitioner's name is reflected at serial No. 5 and shows her designation as Lecturer in Alternative English. Mr. UK Nair submits that the said Annexure-B has been received by the petitioner through a RTI application. He submits that the said document has not been denied or disputed by the respondents. Mr. UK Nair thus submits that the recommendation made by the District Scrutiny Committee in favour of the respondent No. 8 should be set aside and the subsequent recommendation which is at Annexure-B of the additional affidavit of the petitioner should be taken to its logical conclusion and the petitioner's service should be provincialised. Mr. UK Nair also submits that there is another English subject teacher in the college who is senior to the petitioner whose name has been forwarded to the authorities for provincialisation as English subject teacher. However, as per the seniority of Lecturers in the Junior College, the petitioner being senior to the respondent No. 8, his name should be considered for provincialisation prior to the respondent No. 8.

7. Mr. UK Nair submits that the petitioner having been appointed as a Lecturer in

English on 2.9.96 and the petitioner having continued to be a teacher of English along with the added responsibility of being a teacher of Alternative English from 27.10.96, the petitioner should be considered for provincialisation as he is senior to the respondents. Mr. UK Nair also submits that when the number of employees serving in 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 institutions. Mr. UK Nair submits that by reading Section 4(2) and the Schedule of the 2011 Act, it is clear that the petitioner's seniority in the category of Lecturer will have to be considered. He submits that the question of his seniority being considered only on the basis of his teaching years with respect to the subject Alternative English cannot be the criteria for consideration of provincialisation of his service. The entire years of teaching the English subject with effect from the date of his joining the post of English Lecturer from 8.9.96 till the time the recommendation is made will have to be considered.

8. Counsel for the petitioner also submits that as per Section 10 of the 2011 Act, the District Scrutiny Committee is to scrutinise the service reports and other related issues of the serving teachers and staff of Venture Educational Institutions pertaining to provincialisation of their services. The verified list of eligible teachers and staff have to be then forwarded to the concerned Director who shall forward the same to the concerned Department for consideration and for issuing notification of provincialisation. He also submits that as the District Scrutiny Committee has already reviewed its earlier recommendation and proposed the name of the petitioner for provincialisation by its subsequent recommendation (Annexure-B of the additional affidavit of the petitioner), the petitioner's service should be provincialised.

9. Section 4(1) and 4(2) of the 2011 Act are reproduced below:

"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."

The Schedule of the 2011 Act for Junior College is also reproduced below:

10. Mr. M Nath, counsel for the respondent No. 8 and Mr. P Saikia, counsel for the respondent No. 2 have disputed Annexure-B of the additional affidavit filed by the petitioner. They submit that the same is a fabricated document and was not issued in terms of Section 3(2) and 4(1) of the 2011 Act. Mr. M Nath also denies that the petitioner is taking English classes. He submits that as the College did not have any student of Alternative English for last several years, the petitioner was sitting idle. However, the petitioner being a Lecturer of Alternative English, he cannot be said to be a Lecturer of English.

11. Mr. M Nath, counsel for the respondent No. 8 has submitted that provisional permission was granted to the Junior College for introducing the subject Alternative English in the 1st year H.S. Class and the Director of Secondary Education has accorded concurrence on the subject Alternative English in the 1st year H.S. Class, but no final concurrence/+2 stage concurrence has been accorded. Mr. M Nath has also submitted that the service of the respondent No. 8 is eligible for provincialisation and the service of the petitioner is not eligible for provincialisation as per the provisions of Section 3 and 4 of the 2011 Act and, as such, the respondent No. 8 has been placed at serial No. 8 and the petitioner has been placed at serial No. 14 of the list.

12. Mr. M Nath has also submitted that Section 4 of the 2011 Act has not provided for provincialisation of the services of the employees of Venture Educational Institutions on the basis of seniority. Seniority of an employee is not at all the criteria for provincialisation of services of the employees unless the conditions stipulated under Section 3 and 4 of the 2011 Act are fulfilled. As per Section 4(2) of the 2011 Act, the employees of those private institutions who are eligible under Section 3 of the 2011 Act should be provincialised if the institution is imparting education for 10 years from the date of recognition, permission, affiliation or concurrence, as the case may be. In case of Junior College, under Section 3(2) of the 2011 Act, a lecturer shall be provincialised if the subject fulfils the criteria mentioned in Section 3(1) of the said Act. The respondent No.

8 is serving as Lecturer in Economics in the Junior College from 1997 in the Economics subject and has fulfilled all the criteria mentioned in Section 3 and 4 of the Act besides having +2 stage concurrence in 1996 and, as such, her service has been lawfully provincialised. On the other hand, the petitioner is not eligible for provincialisation of her service as a Lecturer in Alternative English as this subject has no final concurrence i.e. +2 concurrence. Alternative English received only permission and concurrence for 1st year class in 2000 and 2005 respectively and has not yet received +2 concurrence for the subject. Hence, Alternative English as a subject fails to fulfil the condition mentioned in Section 3 and 4 of the 2011 Act and, as such, the petitioner is not eligible for provincialisation of her service as a Lecturer of Alternative English.

13. I have heard the counsels for the parties.

14. The facts are reiterated again. The petitioner was appointed as a Lecturer in English on 2.9.2006 and joined the post on 8.9.2006. She was thereafter upgraded to the post of Lecturer in Alternative English on 27.10.96. While the subject English had been given +2 stage concurrence by the State Government on 28.5.96, the subject of Alternative English has not been given +2 stage concurrence till today even though it was given +1 concurrence on 26.5.2005. The respondent No. 8 on the other hand was appointed as a Lecturer in Economics on 30.9.97 and joined on 6.8.97. The subject Economics was given +2 stage concurrence on 28.5.96.

15. The question that has to be considered is whether the provincialisation of the Lecturers can be decided only on the basis of length of service in the Junior College or whether the length of service of the Lecturers will have to be decided on the touchstone of Section 3(2) read with Section 4(1) of the 2011 Act. If the question is decided to the effect that provincialisation of Lecturers will have to be decided on the touchstone of Section 3(2) read with Section 4(1) of the 2011 Act, then the further question that would arise is whether the petitioner is a Lecturer of the subject English while also being a Lecturer of the subject Alternative English.

16. Section 3(1) and 3(2) of the 2011 Act read as under:

"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."

17. A reading of Section 3(2) of the 2011 Act clearly shows that +2 stage concurrence has to be given to English and Economics on 28.5.96. 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.

18. 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.

19. 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.

Thus, from the above, it is quite clear that if the petitioner is to be considered as a Lecturer of Alternative English, the petitioner would be eligible for provincialisation of his service only after the respondent. The situation would change if the petitioner is considered to be a Lecturer of English. Though both the subject, English and Economics was given +2 stage concurrence on the same date and all the other things were equal with regard to fulfillment of Section 3(1) of the 2011 Act, then as the petitioner had joined earlier, he would have a better claim for provincialisation vis-?-vis the respondent No. 8.

20. 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-?-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 +2 concurrence given by the State Government as reflected in Section 3(2) read with Section 4(1) of the 2011 Act, as a Junior College has 2 Classes i.e. Class XI and XII.

21. With regard to the petitioner's contention by referring to Annexure-B of her additional affidavit, that during the pendency of this case, the District Scrutiny Committee had re-considered the case of the petitioner and other similarly situated persons and on a review of the same, had declared the petitioner and other similarly situated persons eligible for provincialisation, it is not known on what basis the District Scrutiny Committee has recommended the name of the petitioner and whether it had dealt with the question of applicability/non-applicability of Section 3(2) of the 2011 Act. However, a Lecturer in Alternative English cannot have his service provincialised as +2 stage concurrence has not been given till date.

22. The respondents' counsels have vehemently objected to the veracity of Annexure-B of the additional affidavit of the petitioner wherein the petitioner has been subsequently found by the District Scrutiny Committee to be eligible for provincialisation. It may be noted herein that the respondent No. 8 is not included in Annexure-B of the additional affidavit filed by the petitioner.

23. This Court in WP(C) 5010/2013 (Md. Amjad Ali Sheikh -vs- State of Asam and Ors.) and WP(C) 6912/2013 (Manjuara Mhatun and Anr. -vs- State of Assam and Ors.) has held that 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. In the instant case, the question of whether the petitioner is still a Lecturer in English besides being a Lecturer in Alternative English has to be considered, in as much as, the chart showing enrolment of students in the Junior College shows that there is no student in the subject of Alternative English for the years 2010-11 to 2012-2013. The genuineness of Annexure-B of the additional affidavit of the petitioner has also to be decided. In any event, this Court having already decided that for the purpose of provincialisation of Lecturers Section 3(2) and 4(1) of the 2011 Act are applicable and only those Lecturers who have been appointed to teach the subjects having +2 stage concurrence given by the State Government, would be eligible for provincialisation.

24. In view of the above discussions, this Court directs the respondent Nos. 6 and 7 to take a joint decision as to whether the petitioner is a Lecturer in English while also being a Lecturer in Alternative English. If the joint decision of the respondent Nos. 6 and 7 is to the effect that the petitioner is a Lecturer of Alternative English only, in that event, the petitioner cannot be considered for provincialisation. However, if it is decided that the petitioner is a Lecturer of English and Alternative English from the date of his joining till date, then the petitioner's service will be considered for provincialisation. The Respondent Nos. 6 and 7 shall take the decision as to whether the petitioner is a Lecturer of English or English with Alternative English within a period of one month from the date of receipt of a certified copy of this order. Consequently, the list for provincialisation of Lecturers may or may not be modified, depending upon the joint decision to be taken.

25. The writ petition accordingly stands disposed of. No cost.