

(2015) 07 GAU CK 0003
In the Gauhati High Court
Case No : W.P.(C) No. 5082 of 2014

Ashikur Rahman and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 15-07-2015

Acts Referred:

Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 —
Section 4(1)
Constitution of India, 1950 — Article 226

Citation : (2015) 4 GLT 815

Hon'ble Judges : Tinlianhang Vaiphei, J.

Bench : Single Bench

Advocate : D.P. Chaliha and U.P. Chaliha, Advocates, for the Appellant; N. Sarma, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Tinlianhang Vaiphei, J.—Twenty dropped teachers are filing this writ petition for referring their cases to the High Power Committee for provincialization of their services since the State-respondents have purportedly accepted that drops teachers, who were appointed 2 years prior the date of provincialization i.e. 5.9.2011 when the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011 came into force, are entitled to have their services provincialized. All the petitioners were appointed on various dates between 1989 and 1995. Though the services of the teaching staff of the school, namely, Uttar Salkati Prathamik Vidyalay were provincialized on 1.8.1995 with effect from 22.9.1995, the services of the petitioner No. 1, 2 and 3 were not provincialized and are, therefore, termed as "dropped teachers". The petitioner No. 4, 5 and 6 were appointed as Assistant Teachers of Madhaya Lalipathar Prathamik Vidyalay in 1991, their services were not provincialized when the school was provincialized on 12.3.1992 with effect from 19.11.1991. Similarly, the petitioner No. 7 and 8 were appointed as Assistant Teachers of Moiradhaz Saikul Prathamik Vidyalay on 21.1.1992, but when the school was provincialized, they were left out of the

provincialization. The petitioner No. 9, 10 and 11 were also appointed as Assistant Teachers of Pub Radha Ali Adarcha Prathamik Vidyalay on 20.9.1992, but they were also denied of provincialization of their services when the school was provincialized on 13.7.1995 with effect from 1.8.1995.

2. The petitioner No. 12 was appointed as Assistant Teacher of No. 1 Kandulimari Ballika Vidyalay Madrassa on 1.6.1988, while the respondent No. 13 was appointed as an Assistant Teacher of the same Madrassa on 16.8.1988, but both their services were not provincialized when the school/Madrassa was provincialized on 14.2.1992 with effect from 19.11.1991. Similarly, the petitioner No. 14 was appointed as Assistant Teacher of Dakhin Jamuguri L.P. School on 10.6.1989, but her service was left out of the provincialization when the school was provincialized on 14.2.1992 with effect from 19.11.1991. The petitioner No. 15, 16 and 17 were also appointed as Assistant Teacher of Dakhin Dhinggaon Prathamik Vidyalay on 15.5.1992, but their services were also not provincialized when their school was provincialized on 10.7.1995 with effect from 1.8.1995. Similarly, the petitioner No. 18, 19 and 20 were appointed as Assistant Teacher of Madhya Panbari Prathamik Vidyalay on 5.6.1989, their services were not provincialized when their school was provincialized on 14.2.1992 with effect from 12.3.1992 with effect from 19.1.1991.

3. It is submitted by Mr. D.P. Chaliha, the learned senior counsel for the petitioners, that as the schools of the petitioners had completed seven years of imparting education from the respective dates of their affiliation, recognition, concurrence or permission on the date of the coming into force of the Assam Venture Educational Institutionals (Provincialization of Services) Act, 2011, their services were deemed to have been provincialized on the date of the coming into force of the Act by the operation of Section 4(1) of the Act. He further contends that the State-respondents have already taken a policy decision to provincialize the services of dropped teachers who have completed two years of service at the time of provincialization of the schools. He points out that as per the direction of this Court, the State-respondents have already constituted a High Powered Committee to look into the claims of dropped teachers, but the claims of the petitioners have not been scrutinised by the Committee till now, and, therefore, submits that as the petitioners are similarly situated with the petitioners in WP(C) No. 1201/14 and others, they are entitled to similar treatment.

4. The affidavit-in-opposition filed by the State-respondents is revealing. It is seen from the affidavit that in compliance with the directions of this Court, the State-respondents by the notifications dated 16.7.2010 and 2.8.2011 re-constituted a High Powered Committee to examine the pending cases of dropped teachers including non-teaching staff, who had responded to the advertisements dated 6.11.2004 and 15.12.2005 and not for fresh applicants. At this stage, it may be relevant to reproduce below the observations of this Court in the judgment dated 16.11.2010 of WP(C) No. 4626 of 2007 (Lulewar Hazarika & Ors. Vs. State of Assam & Ors.) and other analogous writ petitions, which are in the

following terms:

"15. From the above narration of the entire facts leading to filing of the instant writ petition, what is seen is that the respondents have carried out an exercise to find out as to who are genuine dropped teachers. In the process, newspaper publications were made giving due notice to all such teachers. The teachers who did not respond to the said notice cannot now make any grievance that their names have not been included in the list. As regards the applicants whose cases have been rejected on scrutiny of materials on records, having regard to the composition of the High Power Committee coupled with the exercise it had carried out to find out as to who are the dropped teachers and in absence of any allegation of mala fide and/or colourable exercise of power by any one of the members of the said committee, it cannot be said that the task of fact finding undertaken by the said Committee is arbitrary or illegal. The writ court in exercise of its power of judicial review under Article 226 of the Constitution of India certainly cannot make a roving enquiry and/or act as a Fact Finding Authority. However as fairly admitted by the learned standing counsel, Education Department, that in case of candidates, who had responded to the advertisement by submitting their particulars relating to the claim of being dropped teachers are entitled to know the reasons for rejection of their claims."

5. It is the case of the State-respondents that none of the petitioners herein have annexed any documents showing their response to the aforesaid advertisement for consideration of their cases, and the High Power Committee, therefore, cannot consider the cases of fresh candidates including that of the petitioners herein, who chose to seek provinciation of their services after more than 20 years from the dates of their respective appointments by the Managing Committees of their schools. It is further pointed out by the answering respondents that at the time of verification and examination of each case of Lower Primary Schools, the High Power Committee had examined the inspection reports of the schools prior to their provincialization, the resolutions of the respective Managing Committees of such schools submitted by and countersigned by the respective Field Officers. At the time of examination and verification of all those cases, the records available in the Directorate of Elementary Education, Assam have been checked, verified and consulted for recommendation of teachers for provincialization. The High Power Committee in its 9th sittings scrutinised 177 cases of Lower Primary Schools and recommended only 63 teachers for appointment as dropped teachers after the re-constitution of High Power Committee dated 2.8.2011 and the reason for non-consideration of the cases of the remaining dropped teachers were informed to them. Though the petitioners have annexed some certificates issued by their Headmasters in the year 2014 regarding their appointments in the schools, they have not annexed any document showing that they had earlier approached the High Power Committee for consideration of their cases at any point of time. The High Power Committee, as per the aforesaid observations of this Court, would not consider fresh cases such as the one projected by the petitioners in this writ petition. It is

contended that the writ petition has no merit and is, therefore, liable to be dismissed.

6. No reply-affidavit is filed by the petitioners to deny the aforesaid averments made by the State-respondents in their affidavit. Indeed, no whisper of statement was ever made by the petitioners in their writ petition that they have ever responded to the two advertisements dated 6.11.2004 and 15.12.2005 issued by the respondent-authorities for consideration of their cases. This militates against the genuineness of their cases. What prevented them from responding to those advertisements at the relevant time if they are really dropped teachers, whose services were not provincialized as claimed by them? Moreover, the in-service certificates annexed to the writ petition claimed to be issued by their respective Headmasters cannot be said to be unimpeachable documents either. Thus, in my opinion, the petitioners have missed the bus for consideration of their old cases, which are of the bygone century. They cannot keep on knocking at the door of this Court to prosecute stale claims: this will amount to an abuse of process of court. As succinctly observed by this Court in the paragraph extracted above, the teachers who did not respond to the said notice cannot now make any grievance that their names have not been included in the list for provincialization. It is now time for the petitioners to move on and attempt to make afresh start elsewhere since to pursue their cases at this belated stage will be something like chasing a mirage of provincialization. Not that this Court has no sympathy for them, but then the well-settled law is that sympathy, without anything more, cannot be a ground for granting a relief by a writ court: misplaced sympathy must be discouraged and avoided. For the reasons stated in the foregoing, there is no merit in this writ petition, which is hereby dismissed. However, having regard to the facts and circumstances of the case, I decline to saddle the petitioners with costs even though that is really called for.