

(2024) 01 GAU CK 0022

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 6104 Of 2022

Avadhesh Kumar Singh And 2 Ors.

APPELLANT

Vs

State Of Assam And 4 Ors.

RESPONDENT

Date of Decision : 19-01-2024

Acts Referred:

Constitution Of India, 1950 — Article 226

Assam Non-Government Educational Institution (Regulation and Management) Rules, 2007 — Rule 1(2), 15(3)

Assam Non-Government Educational Institution (Regulation and Management) Act, 2006 — Section 15, 15(2), 15(3)

Indian Penal Code, 1860 — Section 294, 353, 506

Citation : (2024) 01 GAU CK 0022

Hon'ble Judges : Kalyan Rai Surana, J

Bench : Single Bench

Advocate : U K Goswami

Final Decision : Dismissed

Judgement

1. Heard Mr. M.K. Choudhury, learned senior counsel, assisted by Mr. D. Bora, learned counsel for the petitioners. Also heard Mr. N.J. Khataniar, learned standing counsel for the Secondary Education Department representing respondent nos. 1 to 4 and Mr. M.A. Sheikh, learned counsel for the private respondent no.5.

2) By filing this writ petition under Article 226 of the Constitution of India, the petitioners have prayed for quashing of the order dated 20.08.2022, passed by the learned Education Tribunal, Morigaon in Education (T) Case No. 2/2016.

Case of the petitioners:

3) Bapuji High School at Jagiroad, which is a Hindi Medium School, was provincialised with effect from 01.01.2013 under the provisions of the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 and accordingly, the service of Awadhesh Kumar Singh (petitioner no. 1) and other

teaching and non-teaching staffs of the said school were provincialised. It is projected that the petitioner no. 1 was the founder Headmaster of the said school.

4) The petitioners have projected that the School Managing Committee (hereinafter referred to as 'SMC' for short) of Bapuji High School (Hindi Medium), Jagiroad the said school was reconstituted with the petitioner no. 2 as its President, which was approved by the respondent no. 3 on 15.05.2007.

5) It is projected that Ramanand Jha (respondent no. 5) was the senior-most teacher of Bapuji High School (Hindi Medium). The SMC, vide resolution dated 22.06.2001 allowed the respondent no. 5 to hold the charge of Headmaster of the said school and as Secretary of the SMC, he also entrusted him the responsibility of advertising to fill up the vacant post of Headmaster of the said school. However, on the ground of misappropriation of school funds, he was suspended by the School Managing Committee vide resolution dated 01.06.2007, which the respondent no. 5 had refused to accept. The said resolution was approved by the Inspector of Schools, Morigaon (respondent no.3) on 04.06.2007. The respondent no.3 then issued a show cause notice dated 05.06.2007 to the respondent no. 5, but he failed to respond to it within the stipulated time and the respondent no. 3 had intimated the Deputy Commissioner, Morigaon about the same vide letter dated 12.06.2007. It is also projected that the school authorities had also issued communications dated 15.05.2007, 09.06.2007 and 16.06.2007 to the respondent no. 5 as reflected in peon book, which he refused to accept. As per the direction of the respondent no.3 vide letter dated 19.06.2007, the SMC is stated to have lodged an FIR against the respondent no. 5.

6) Thereafter, the respondent no. 5 was removed from service by the SMC by adopting a resolution in its General Meeting held on 22.08.2007, which is stated to have been passed in the presence of the respondent no. 5 and Smt. Sudha Jha, his wife as well as teacher of the said school. It is projected that the respondent no. 5 and his wife had put their signature along with others present.

7) Thereafter, the SMC, by a resolution dated 05.11.2007, had resolved to appoint the petitioner no. 1 as the Headmaster of the Bapuji High School (Hindi Medium). Accordingly, the petitioner no. 1 was appointed as the Headmaster of the said school on 30.11.2007.

8) In the meanwhile, vide letter dated 26.03.2008, the respondent no. 3 informed the President of SMC that in respect of removal and dismissal of the service of an employee, it may act as per the provision of the Assam Non-Government Educational Institutions (Regulation and Management) Act, 2006. Thereafter, the President of the SMC by letter dated 31.03.2008, informed the respondent no. 5 about the SMC resolution dated 22.08.2007, terminating the service of the respondent no. 5. Thereafter, the Inspector of Schools (respondent no.3) gave its approval to the appointment of the petitioner no. 1 as Headmaster

of Bapuji High School (Hindi Medium) on 18.08.2008.

9) Thereafter, vide letter dated 19.06.2009, the SMC had informed the respondent no. 3 that the respondent no. 5 had been removed from his service after giving him several opportunity to clarify his position regarding anomalies to which the respondent no. 5 had not replied.

10) Thus, it is projected that the respondent no. 5 had challenged the termination of his service after a lapse of 7(seven) years by filing a writ petition before this Court, which was registered and numbered as W.P.(C) 2026/2014 so as to get the benefit of provincialisation. However, by order dated 04.08.2016, this Court had directed the petitioner therein to approach the Educational Tribunal.

11) Accordingly, the respondent no. 5 had approached the Educational Tribunal, Morigaon, and the case was registered and numbered as Education (T) Case No. 2/2016. In the said case, the petitioners were arrayed as respondent nos. 4, 5 and 7. In course of hearing, the respondent no. 5 had examined two witnesses, including himself as PW-1 and his wife, Smt. Sudha Jha was examined as PW-2. On behalf of the respondents in the said case, i.e. the petitioners herein, examined two witnesses, namely, Achha Lal Sah and Mahesh Singh were examined as DW nos. 1 and 2.

12) It is projected that the various anomalies and financial irregularities committed by the respondent no. 5 was revealed in the proceedings before the learned Educational Tribunal, but the said learned Tribunal, on the sole ground that the SMC had not complied with the provisions of the Assam Non-Government Educational Institution (Regulation and Management) Rules, 2007, allowed the case of the respondent no. 5 vide its judgment dated 20.08.2022, impugned herein.

Stand of the respondent nos. 1 to 4:

13) The Director of Secondary Education, Assam (respondent no.2) had filed an affidavit-in-opposition on 17.07.2023. It was stated that in response to the letter dated 19.10.2022, the Inspector of Schools, Morigaon (respondent no.3), by letter dated 19.10.2022, had informed that the SMC of Bapuji High School (Hindi Medium), then a venture school had terminated the service of the respondent no. 5, the then Headmaster of the said school and that subsequently, on 01.12.2007, they had appointed the petitioner no. 1 as the Headmaster of the said school.

14) Moreover, it was stated that during the year 2012, the Headmaster of Bapuji High School (Hindi Medium) had submitted relevant documents along with list of teaching and non-teaching staff for provincialisation of their service, which did not contain the name of the respondent no. 5, whose service was terminated vide resolution no. 3 dated 22.08.2007. Thereafter, on recommendation by the District Level Scrutiny Committee, Morigaon vide letter dated 30.11.2012, in pursuance to the Government letter dated 13.08.2014, the respondent no. 2 vide

order dated 22.09.2014, had provincialised the service of teaching and non-teaching staff of Bapuji High School (Hindi Medium) under the Assam Venture Educational Institution (Provincialisation of Services) Act, 2011, as amended with effect on 01.01.2013. Accordingly, the service of petitioner no. 1 was provincialised as Headmaster of the said school.

Stand of the respondent no.5:

15) The respondent no. 5 had denied that he was given reasonable opportunity in terms of the provisions of Assam Non-Government Educational Institution (Regulation and Management) Act, 2006 at the time of terminating him from service. It was also stated that the petitioners had failed to prove the same before the learned Tribunal.

16) It was submitted that the respondent no. 5 and his wife Smt. Sudha Jha were present in the meeting as guardian of their daughter, namely Anjali Kumari, who was then a student of Class-X in the said school. It was also stated that in the said meeting a discussion was held for improvement of result of their wards, but there was no discussion against the respondent as Headmaster of the said school. It was stated that any show cause notice dated 05.06.2007 was not served on time, but it was served on 11.07.2007 and the date fixed for reply to the show cause notice was on 12.06.2007 and that he had filed his reply on 12.07.2007, the next day of his receipt of the said notice. It was also denied that any notice was served on him and it was stated that if the respondent no. 5 had refused to accept the notice, such notices could have been sent through registered post and the postal receipt could have been produced before the learned Tribunal. It was specifically stated by the respondent no. 5 that his service was terminated without complying with the provisions of section 15(3) of the Assam Non-Government Educational Institution (Regulation and Management) Act, 2006. It was also stated that till date the petitioners have not served any formal termination order to him and that the petitioners had failed to produce the copy of order of termination of service in respect of the respondent no. 5 before the learned Tribunal, not it has been brought on record in this writ proceeding.

17) It was submitted that the petitioner had approached this Court by filing W.P. (C) No. 6274/2012 against his suspension. But as it was disclosed by the petitioners in the said writ petition by filing affidavit-in-opposition in the year 2013 that the respondent no. 5 was discharged from service on 22.08.2007, he had withdrawn the said writ petition and filed W.P.(C) No. 2026/2014, challenging his dismissal from service. Hence, it was stated that there was no delay in challenging his termination from service. Thereafter, vide order dated 04.02.2016, passed in W.P.(C) No. 2026/2014, this Court had relegated the respondent no.5 to approach the Educational Tribunal and accordingly, Education Petition No. 2/2016 was filed, which was disposed of on 20.08.2022.

Submissions of the learned senior counsel for the petitioners:

18) The learned senior counsel for the petitioners had submitted that the respondent no. 5 was appointed as the In-Charge Headmaster and that he had never appointed in the substantive post of the Headmaster of Bapuji High School (Hindi Medium). In this regard, it was submitted that as per resolution dated 22.06.2001 adopted by the SMC of the said school, it was resolved to appoint the respondent no. 5 as the In-Charge Headmaster, but the Inspector of Schools, Morigaon (respondent no. 3) had granted approval order as Headmaster. Hence, it was submitted that even if the service of the respondent no.5 was restored, he would have joined the said school as a teacher and not as its Headmaster.

19) It was submitted that the Assam Non-Government Educational Institution (Regulation and Management) Rules, 2007 was notified on 16.10.2007 and that under Rule 1(2) thereof, it is provided that the said Rules would come into effect from the date of its publication in the Official Gazette. Accordingly, it was submitted that not only the Director of Secondary Education, Assam (respondent no. 2) had failed to take note of the fact that the service of the respondent no. 5 was terminated by the SMC prior to the enactment of the Assam Non-Government Educational Institution (Regulation and Management) Act, 2006 and 2007 Rules framed thereunder, but the learned Tribunal had also failed to appreciate the said fact and set aside the termination of service of the respondent no. 5 on the purported ground that the procedure of Rule 15(3) of the Assam Non-Government Educational Institution (Regulation and Management) Rules, 2007 were not followed. Hence, it was submitted that the impugned judgment of the learned Educational Tribunal is vitiated by consideration of extraneous materials.

20) It was further submitted that the learned Tribunal had failed to appreciate that the respondent no. 5 was not working in Bapuji High School (Hindi Medium) since the year 2007 till the impugned order was passed by the learned Tribunal.

21) It was submitted that the respondent authorities had provincialised the service of the petitioner no. 1, whereas the service of the respondent no.5 was not provincialised and accordingly, it was submitted that the learned Tribunal ought to have dealt with the issue of provincialisation of the service of respondent no. 5 separately. It was submitted that without provincialisation of service of respondent no. 5, direction could not have been issued to set aside the SMC resolution dated 22.08.2007. Similarly, it was submitted that this was not a case of suspension of respondent no. 5, but his service was terminated and therefore, the respondent no. 5 could not have been given the benefit of subsistence allowance.

22) Moreover, it was also submitted that the respondent no. 5 and his wife, Sudha Jha were present in the General Meeting and had signed the proceeding and therefore, the learned Tribunal could not have held that the respondent no. 5 had not been communicated with the termination order.

23) Moreover, it was submitted that as per his instructions, the petitioner no. 1 is

due to superannuate on 01.06.2024.

Submission of the learned standing counsel for the respondent nos. 1 to 4:

24) The learned standing counsel for the State respondents had submitted that during the year 2012, the Headmaster of Bapuji High School (Hindi Medium) had submitted relevant documents along with list of teaching and non-teaching staff for provincialisation of their service, which did not contain the name of the respondent no. 5, whose service was terminated vide resolution no. 3 dated 22.08.2007. Thereafter, on recommendation by the District Level Scrutiny Committee, Morigaon vide letter dated 30.11.2012, in pursuance to the Government letter dated 13.08.2014, the respondent no. 2 vide order dated 22.09.2014, had provincialised the service of teaching and non-teaching staff of Bapuji High School (Hindi Medium) under the Assam Venture Educational Institution (Provincialisation of Services) Act, 2011, as amended with effect on 01.01.2013. Accordingly, the service of petitioner no. 1 was provincialised as Headmaster of the said school. Thus, it was submitted that as per their record, the respondent no. 5 was not working as the Headmaster of Bapuji High School (Hindi Medium) since 22.08.2007.

25) Moreover, it was submitted that as per the relevant law in force, if the name of a teaching and non-teaching staff is not captured in the DISE Code of the last three preceding years, the service of the concerned employee cannot be provincialised.

Submission of the learned counsel for the respondent no. 5:

26) The learned counsel for the respondent no. 5 had submitted that there is no document on record, either before this Court or before the learned Educational Tribunal to show that the respondent no. 5 was communicated with the order of his termination from service.

27) It was submitted that the respondent no. 5 was under an impression that he had been kept under suspension and therefore, he had filed W.P.(C) No. 6274/2012 against his suspension. However, in connection with the said writ petition, an affidavit-in-opposition was filed from which the respondent no. 5 came to know for the first time that he was discharged from his service. Therefore, he had withdrawn the said writ petition and filed W.P.(C) No. 2026/2014, challenging his dismissal from service.

28) In the said context, it was submitted that the so called General Meeting proceeding dated 22.08.2007, where the respondent no. 5 and his wife had signed was merely an attendance sheet and the resolution was entered therein surreptitiously, and that the said resolution is not signed by the respondent no. 5 and his wife after and/or below the text of the resolution.

Moreover, it was submitted that although a resolution is shown to have been taken on 22.08.2007, but it was never served to the respondent no. 5 physically or by registered post.

29) It was submitted that the Assam Non-Government Educational Institution (Regulation and Management) Act, 2006 came into effect on and from 20.01.2007, the date it was notified, which provided that there could not be any termination from service without hearing. It was submitted that the show-cause notice was issued by the Inspector of School, Morigaon (respondent no. 3), which was not followed by issuance of charge-sheet and no proceeding was drawn up.

30) Moreover, it was submitted that the petitioners have not produced the copy of order appointing the petitioner no. 1 as a regular Headmaster either before the learned Tribunal or before this Court. However, the order of status quo passed by this Court on 21.09.2022, has caused the petitioner no. 1 to continue as Headmaster. In the meanwhile, the respondent no. 5 has already attained the age of superannuation.

31) Hence, it was submitted that the impugned order is liable to be affirmed as it does not suffer from any illegality.

Reasons and decision:

32) Perused the writ petition as well as affidavit filed by the petitioners on 21.09.2022. Also perused two affidavit-in-opposition filed by the respondent no. 5 on 02.02.2023 and 02.03.2023 respectively, and affidavit-in-opposition filed by respondent no. 2 on 17.07.2023.

33) In this case, most of the documents referred to by the parties are a part of proceeding before the learned Educational Tribunal. The copy of plaint by the respondent no. 5 before the Educational Tribunal, written statement filed before the said learned Tribunal by the petitioners herein, and written statement filed by the respondent nos. 1, 3 and 4 before the learned Tribunal, which have also been perused.

34) It appears that on 12.04.2001, Awadhesh Kumar Singh (petitioner no. 1) had submitted his resignation as the Headmaster of Bapuji High School (Hindi Medium), Jagiroad. The said resignation was accepted by the then President of the SMC, which also contains a note to the effect that Ramanand Jha (respondent no.5) was directed to take over charge of Headmaster from the petitioner no.1. The Inspector of Schools Morigaon District Circle (respondent no.3) vide letter dated 26.02.2002, had granted approval of appointment of the respondent no. 5 as Headmaster of the said School.

35) Thus, there is no document to show that the approval of appointment of the respondent no. 5 was not as Headmaster but In-Charge Headmaster. Hence, though the learned senior counsel for the petitioners has strenuously urged that the respondent no. 5 was appointed as Headmaster In-Charge and thus, the approval dated 26.02.2002 must be read as if approval was granted for appointing the respondent no. 5 as Headmaster In-charge appears to be a little too late.

36) The learned counsel for the respondent no. 5 had submitted that the

petitioners have not annexed any order of termination of service of the respondent no. 5 as Headmaster stands fortified because the learned senior counsel for the petitioners has not been able to show a copy of any order passed by the SMC of Bapuji High School (Hindi Medium), thereby terminating the service of the respondent no. 5.

37) The learned senior counsel for the petitioners had forcefully submitted that the respondent no. 5 was suspended by the School Managing Committee vide resolution dated 01.06.2007. The said resolution was approved by the Inspector of Schools, Morigaon (respondent no.3) on 02.06.2007.

38) The respondent no.3 then issued a show cause notice dated 05.06.2007 to the respondent no. 5 as to why a departmental proceeding should not be initiated against him. The respondent no. 5 was also directed to appear before the Inspector of Schools, MDC, Morigaon (respondent no.3) and produce attendance register of teachers, cash book, pass book of school, admission register of students, fees collection receipt, income and expenditure statement proceeding book of SMC, and other relevant documents on 12.06.2007, failing which disciplinary action would be taken against him.

39) It appears from the order dated 22.06.2007, passed by this Court in Misc. Case No. 2393/2007 arising out of W.P.(C) 2553/2007 that this Court had ordered an enquiry to be made as to which Managing Committee of the School was functioning as on 01.06.2007. Be that as it may, the said writ petition that was filed by the respondent no. 5 and his wife was allowed to be withdrawn by order dated 10.08.2007, passed by this Court in Misc. Case No. 2900/2007 arising out of W.P.(C) 2553/2007.

40) It appears that thereafter, the Director of Secondary Education, Assam (respondent no. 2) vide letter dated 22.11.2007, had written to the respondent no. 3 to take steps for reinstatement of the respondent no. 5. Accordingly, the respondent no. 3 vide letter dated 05.12.2007 and 11.01.2008, had requested the President of SMC to take steps for reinstatement of respondent no. 5 with an intimation to him. The Deputy Director of Secondary Education, Assam by letter dated 07.03.2008 also requested the respondent no. 3 to take steps for reinstating the respondent no. 5 as Headmaster of Bapuji High School and moreover, the respondent no. 3 was further directed to take necessary action in accordance with the provisions of Assam Non-Government Educational Institution (Regulation and Management) Act, 2006. There are also subsequent letters dated 26.05.2009 and 06.01.2011 from respondent no. 3 to the President, SMC of Bapuji High School to reinstate the respondent no.5 and for subsistence allowance.

41) The respondent no. 5 then filed a writ petition before this Court to challenge his suspension order dated 04.06.2007 and show cause notice dated 05.06.2007, which was registered as W.P.(C) 6274/2012. In the affidavit-in-opposition filed by the petitioner nos. 1 and 2 in the year 2013 in connection with the said writ

petition, it was disclosed in para-11 thereto that a resolution was taken in the General meeting of the SMC on 22.08.2007, the respondent no. 5 had been discharged from service and that in paragraph 8 thereof, it has been stated that the SMC by letter dated 19.06.2009, had communicated to the respondent no. 3 that the respondent no. 5 was removed from his service after giving him a number of opportunity to clarify his position.

42) It may also be mentioned that in the meanwhile, vide letter dated 26.03.2008, the respondent no. 3 had informed the President of SMC that for removal and dismissal of the service of an employee in a recognized school, the Managing/ Disciplinary Committee may act as per the provision of the Assam Non-Government Educational Institution (Regulation and Management) Act, 2006.

43) The respondents have projected that the President of the SMC by letter dated 31.03.2008, had informed the respondent no. 3 about the SMC resolution dated 22.08.2007, terminating the service of the respondent no. 5.

44) Thereafter, the Inspector of Schools (respondent no.3) gave its approval of the appointment of the petitioner no. 1 as Headmaster of Bapuji High School (Hindi Medium) on 18.08.2008.

45) By judgment dated 31.03.2009, passed in GR Case No. 664/2007 under sections 353/294/506 IPC, the learned Addl. Chief Judicial Magistrate, Morigaon had acquitted the respondent no. 5.

46) The indelible factual position is that the Assam Non-Government Educational Institution (Regulation and Management) Act, 2006 came into effect on and from 20.01.2007, the date it was notified. The relevant provision of section 15 of the said Act is quoted below:-

"15. Appointment and disciplinary matters –

(1) The School authority shall issue appointment letter in the event of any appointment made to any person in regard to its affairs and such appointment letter shall clearly state the terms of appointment, salary and any other conditions of service in respect of such appointment as per Scheme of Management of the institution.

(2) No employee of a non-government educational institution shall be dismissed, removed or reduced in rank or terminated without giving him a reasonable opportunity of being heard and without the matter being referred to the Managing Committee for its consideration and approval.

Provided that the School Authority may suspend an employee with immediate effect without the prior approval of the Managing Committee, if it is satisfied that such immediate suspension is necessary by reasons of his gross misconduct under the Code of Conduct framed under Section 16.

(3) The procedure to be followed in disciplinary matters shall be such as may be prescribed.

(4) No teaching or non-teaching staff of a Non-government Educational Institution shall be paid emoluments less than the norms fixed by the appropriate authority.

(5) Teachers in a Non-government Educational Institutions employed for teaching, shall be qualified as per norms set by National Council for Teacher Education and the norms fixed under the respective Service Rules framed by the State Government.

(6) The Non-government Educational Institutions shall ensure imparting of training to teaching staff employed by it for the purpose of teaching."

47) Thus, as per the provision of sub-section (2) of section 15 of the said 2006 Act, no employee of a non- Government educational institution could be terminated from service without giving him a reasonable opportunity of being heard.

48) The copy of resolution dated 22.08.2007 has been annexed as Annexure-B to the affidavit-in-opposition filed by the petitioner nos. 1 to 3. On a perusal thereof, it appears that the learned counsel for the respondent no. 5 is right in submitting that the presence of the respondent no. 5 and his wife Sudha Jha are recorded in the attendance sheet and the relevant resolution no. 3 was not counter-signed by them. On 22.08.2007, it is the admitted case of the petitioners that the respondent no. 5 was under suspension. Therefore, the respondent no. 5 was not the custodian of the proceeding book. Therefore, mere presence of the respondent no. 5 and his wife in the meeting cannot be construed to be a due notice of termination of service of respondent no.5.

49) The petitioners have not been able to show any document by which termination order was prepared and served on the respondent no. 5. There is no document on record to show that the SMC or Disciplinary Committee of Bapuji High School (Hindi Medium) had conducted any proceeding as envisaged under Assam Non-Government Educational Institution (Regulation and Management) Act, 2006 came into effect on and from 20.01.2007.

50) Therefore, the termination of service of the respondent no. 5 vide resolution dated 22.08.2007, is not found sustainable on facts and in law. Thus, the order dated 20.08.2022, passed by the learned Educational Tribunal, Morigaon in Education (T) Case No. 2/2016, to the effect that the resolution no. 3 dated 22.08.2007 is illegal and was set aside, which is impugned in this writ petition is not found to suffer from any legal infirmity or perversity whatsoever.

51) The other directions are consequential reliefs to the main relief of setting aside of the resolution dated 22.08.2007.

52) Accordingly, the Court is inclined to pass the following:-

ORDERS

a. In view of the discussions above, this writ petition fails and the same is

dismissed.

b. Interim order dated 21.09.2022, passed in this writ petition stands vacated.

53) This judgment and order shall not come in the way for the petitioner no. 2 to draw up a fresh disciplinary proceeding against the respondent no. 5, if permissible by following the due process of law, if so advised.

54) The parties are left to bear their own cost.