
(1999) 09 GAU CK 0016
In the Gauhati High Court
Case No : Writ Appeal No. 15 of 1996

Bhuban Chandra Konwar

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 29-09-1999

Acts Referred:

Assam Education Service Rules, 1982 — Rule 12(5), 23, 23(1), 23(5), 6
Assam Public Service Commission (Limitation of Functions) Regulations, 1951 —
Regulation 3

Citation : (2000) 1 GLT 540

Hon'ble Judges : Brijesh Kumar, C.J;P.G. Agarwal, J

Bench : Division Bench

Advocate : A.C. Buragohain, P.K. Bora, N. Devi and U.C. Bhattacharyya, for the Appellant; B.C. Das, K.H. Choudhury and Deepanjalee, for the Respondent

Final Decision : Dismissed

Judgement

P.G. Agarwal, J.—This writ Appeal is directed against the common judgment and order passed on 15.11.95 in Civil Rule No. 644/95 and Civil Rule No. 2110/95. The Appellant-Petitioner Shri B.C. Konwar preferred Civil Rule No. 644/95, stating inter alia, that while serving as lecturer in Chemistry in State Institute of Science Education, Assam, the Petitioner was appointed as District Adult Education Officer, Kamrup on 4.3.83 under Regulation 3(f) of the Assam Public Service Commission (Limitation of Functions) Regulation, 1951 for a period of 4 months. Thereafter the said period was extended from time to time. In the year 1985 there was an advertisement issued by the Assam Public Service Commission for some posts of Deputy Director of Public Instruction/Inspector of School/District Elementary Education Officer/Special Officer in Class I in the Education Department. The Petitioner applied for the said posts and appeared before the A.P.S.C. in the selection process along with other candidates. The Assam Public Service Commission (for Short, A.P.S.C) recommended 64 candidates in order of merit vide their notification dated 16.1.87. In the said list the name of the Petitioner appeared at Serial No. 12. Thereafter vide Notification

No. EPG. 46/87/18 dated 13.7.88 as many as 10 persons were appointed on the basis of the recommendation of the A.P.S.C. by another Notification No. EPG. 46/87/19 of even date the services of the Petitioner along with eight other persons were regularised with effect from 16.1.87 and fresh posting was made. A gradation list was published showing the Respondents as senior to him. The present Appellant-Petitioner, therefore, prayed for quashing of the said gradation list and for treating the Petitioner as senior placing him at Serial No. 10 instead of Serial No. 31.6 Respondents of this appeal that is Respondents Nos. 3 to 8 instituted Civil Rule No. 2110/95 stating, inter alia, that this is a case of direct recruitment under the Assam Education Service Rules, 1982 and therefore, the inter se seniority should be fixed as per Rule 23(1) of the said Rules. They prayed for restoration of their seniority as per the merit list published by the A.P.S.C.

2. Both the writ petitions were heard analogously and by the impugned judgment the learned Single Judge dismissed the Civil Rule No. 644/95 and allowed Civil Rule No. 2110/95 directing the State of Assam to determine and re-fix the seniority according to Rule 23 of the Assam Education Service Rules, 1982.

3. We have heard Shri A.C. Buragohain, learned Counsel for the Appellant, Shri B.C. Das, learned Government Advocate Assam and Shri K.H. Choudhury, learned Counsel appearing for the private Respondents.

4. In the impugned judgment the learned Single Judge has held that the appointment of the Appellant-Petitioner and the Respondents was under Rule 6(d) and, as such, the inter se seniority shall be fixed as per the merit list prepared by the A.R.S.C. Learned Counsel for the Appellant, on the other hand, submits that the services of the Petitioner was regularised and, as such, Rule 12(5) will be applicable. There is no dispute at the bar that both the Appellant-Petitioner and Respondent Nos. 3 to 8 along with others submitted their applications in response to the advertisement issued by the A.R.S.C. on receipt of requisition from the State Government for filling up 15 posts in the above cadre. There is no averment that the case of the Petitioner-Appellant was sent to the A.P.S.C. or recommended by the State Government for regularisation. Respondents, on the other hand, submit that there is no provision for regularisation of the services of the persons appointed under Regulation 3(f) of the Regulations. The Appellant-Petitioner also participated in the same selection process and a single merit list was published by the A.P.S.C. on 16.1.87. We thus find that the appointment is under Rule 6(d) of the Service Rules, 1982. Rule 12(5) merely provides procedure for promotion and apparently it is not a case of promotion. Rule 23(1) reads as follows:

23. Seniority.(1) Inter-se-seniority of the members of the service belonging to each of the cadres shall be in the order in which their names appear in the select list prepared under Rule 6(d) or the list prepared under R. 12(5) as the case may be, provided he joins his appointment within IS days from the date of receipt of the order or within the extended period:

Provided that if a member is prevented from joining within this period by the circumstances of public nature or for reasons beyond his control the Appointing authority may extend it for a further period of 15 days. If the period is not so extended the seniority shall be determined according to the date of joining.

The Respondents specifically stated that the inter-se-seniority should be fixed as per the above quoted rule and Appellant-Petitioner is not entitled to the benefits of the period of services put in by him on being appointed under Regulation 3(f) of the Regulations. Learned Counsel for the Appellant, on the other hand, places reliance on the Note provided in Sub-rule (5) of Rule 23. Sub-rule (5) reads as follows:

(5) If the confirmation of a member of the services in a cadre is delayed on account of his failure to qualify for such confirmation he shall lose his position in order of seniority in that case viz-a-viz such of his juniors as may be confirmed in that particular cadre.

His seniority shall, however, be restored on his confirmation subsequently.

Note.(a) The period of appointment under A.P.S.C. (Limitation of Function) Regulation before regulation through commission shall always be ignored for the purpose of determining seniority.

(b) The combined seniority of all lecturers belonging to different teaching departments of the colleges shall be determined according to relative preference of the commission and date of birth as the case may be.

And date of appointment with due regard to their relative position in the respective department as determined under sub-Rule (1).

Sub-rule (5) of Rule 23 relates to confirmation of a member of the service in a cadre. Learned Counsel for the Appellant submits that the Note is general in nature and not confined to sub-rule (5). Let us see whether Note (a) helps the Appellant-Petitioner in any manner. It specifically provides that the period of appointment before regulation (or regularisation, as submitted by the learned Counsel for the Appellant) shall be ignored for the purpose of seniority.

5. Without going into the question whether the services of the Appellant-Petitioner could have been regularised or not, the question is what would be the date of regularisation. Admittedly the order of appointment and the order of regularisation were passed on the same date that is on 13.7.88 According to Shri Choudhury, learned Counsel for Respondent Nos. 3 to 8, the order in respect of the said Respondents was issued prior to issuance of the order in favour of the Appellant as can be seen from the serial numbers of the notifications. The second notification itself stated that the services of the Appellant-Petitioner along with others were regularised on the recommendation of the A.R.S.C. The date of recommendation cannot be taken for the purpose of regulation as because the date of recommendation is one and the same both for the Appellant and for the Respondents. If the said date of recommendation is taken as basis for

regularisation of the services of the Appellant-Petitioner in that case the said date have to be taken as 13.7.88 when the Respondents were appointed. We, therefore, hold that the date of regularisation would be from the date of issuance of notification only and not from the date of recommendation. The facts of the case of Dr. Satyabrata Dutta Choudhury Vs. State of Assam and Others, are more or less similar wherein it was held by the Apex Court that the appointments under Regulation 3(f) of the Regulations were on an officiating basis, to avoid delay, and it was obligatory, in terms of that regulation, to consult the Service Commission as soon as possible. The appointments were thus defeasible, and could not give rise to any legal right in favour of the parties. It was further held that as the appointments were regularised after reference to the Service Commission, their inter se seniority had to be determined according to the merit list of the commission.

6. In the instant case also the Appellant was appointed under Regulation 3(f) to avoid delay. As required under the Rules, the matter was referred to the A.R.S.C and, as such, the inter se seniority of the Appellant-Petitioner shall have to be determined on the basis of the merit list published by the A.P.S.C.

7. In the result, we find no merit in this appeal and it is accordingly dismissed.