

(2021) 08 GAU CK 0079

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 1470 Of 2019

Bipul Kalita

APPELLANT

Vs

State Of Assam And 2 Ors

RESPONDENT

Date of Decision : 20-08-2021

Acts Referred:

University Grants Commission Act, 1956 — Section 20

Citation : (2021) 08 GAU CK 0079

Hon'ble Judges : Manash Ranjan Pathak, J

Bench : Single Bench

Advocate : U K Nair

Final Decision : Dismissed

Judgement

1) Heard Mr. U.K. Nair, learned Senior counsel for the petitioner. Also heard Mr. K. Gogoi, learned Standing Counsel, Higher Education for the

respondent Nos. 1 and 2 and Mr. S. Chakraborty, learned Counsel for the respondent No.3.

2) The contention of the petitioner herein is that he passed Master Degree in Commerce (Management) with 57.44% from Guwahati University in the

year 1998 and also obtained the degree of Master of Philosophy (M.Phil) in Commerce on 17.04.2009 from Periyar Institute of Distance Education

(PRIDE) Periyar University, Salem, Tamilnadu. It is stated that he served as an Assistant Professor of Management in Rangia College, Rangia,

District - Kamrup w.e.f. 08.08.2002 since the time the College was in venture stage. Though the petitioner's name was recommended for

provincialisation of his service under the provisions of the Assam Venture Educational Institution (Provincialisation of Services) Act, 2011, amended in

2012, but the respondents in the Higher Education Department dropped his

name from provincialisation under the provisions of the said 2011 Act.

3) Relying on a judgment of this Court passed in the case of Dr. Mina Kalita Vs. State of Assam and two others, [WP(C) No. 2393/2016], decided on

27.09.2018 the petitioner stated that he should also be considered for provincialisation of his service in terms of said order of the Court dated

27.09.2018. The petitioner also contended that he obtained information under RTI Act from the Directorate of Higher Education, Assam that

altogether 265 numbers of M. Phil. Degree holders have been provincialised under the provisions of said 2011 Act.

4) Petitioner stated that considering the above, his service should be provincialised as an Assistant Professor in Rangia College, Rangia w.e.f.

01.01.2003 and his salary and other benefits should be paid to him as given to his other colleagues in Rangia college, whose services have been

provincialised under the provisions of said 2011 Act.

5) The petitioner further contended that though the said 2011 Act has been struck down by a Division Bench of this Court, but the said Court by order

dated 02.01.2017 passed in WP(C) No.167/2017 have given necessary protection to the employees, whose services have been provincialised.

6) Mr. K. Gogoi, learned Standing counsel, Higher Education Department placed a judgment of the Honâ??ble Division Bench of this Court in

WP(C) No. 4788/2011 dated 07.02.2017 (Prahlaad Konch and 93 others Vs. State of Assam and Three Others) and stated that similarly placed

Assistant Professors of Venture College having M.Phil Degree approached this Court for exemption from the requirement of NET/SLET qualification

for the purpose of consideration of provincialisation of their service under the said 2011 Act and the Division Bench, by its Judgment and Order dated

07.02.2017 passed in said case, categorically observed that the decision of the Central Government, communicated through the letter dated

03.11.2010, in pursuant to the resolution of the UGC for exemption from NET requirement, to reject the resolution for exemption and specifying that

NET/SLET was a compulsory for teaching positions, as a part of the National policy for maintenance of standards in higher education and, therefore,

any dilution of standard by a Court order would surely undermine the Nationâ??s interest and also the power given to the Central Government, under

Section 20 of the UGC Act, 1956. Therefore the Court (said Division Bench)

cannot but hold that the petitioners are not entitled to any exemption from the requirement of NET/SLET qualification (at Para 17).

7) Mr. Gogoi, learned Standing counsel, Higher Education also stated that in the said Judgment and Order dated 07.02.2017, the Honâ??ble Court

further observed that the petitioners are serving in venture category institutions, where they must have been appointed under relaxed criterion and

therefore by virtue of such appointment, they cannot have a legitimate expectation to be provincialised, as faculty members for under graduate level

teaching. Such indulgence in our mind would be undeserved, as it will compromise the uniform standard of excellence, intended through NET/SLET

qualification, on account of the wide variation of standards in different institutions, for perusing the M.Phil degrees (at Para 18). From the said

Judgment and Order dated 07.02.2017 Mr. Gogoi further placed before the Court that in the same the Court observed that - the Court must not pass

any order which will undermine the required standard of excellence in appointment of faculty members for higher education and therefore, on the

strength of pursuing M.Phil curriculum in distance mode, the quality of education cannot be allowed to suffer, through recruitment of aspirants, without

possession of the required degree which reflects on their suitability and credentials for the job.

8) Considering the entire aspect of the matter and in the light of the said Division Bench judgment, the Court is of the view that the petitioner is not a

NET/SLET qualified candidate and therefore, he cannot be considered for provincialisation of his service in the year 2013 under the provisions of said

2011 Act. Though the petitioner has submitted that 265 Nos. of M.Phil. degree holders are provincialised under the provision of said 2011 Act, but a

Writ Court cannot issue a negative writ, directing the respondents to commit another illegality, by allowing the incumbent not having requisite

qualification on the date of provincialisation of the service to provincialise his/her service that too by passing the law laid down by a Division Bench in

the matter noted above.

9) Accordingly, this writ petition being devoid of any merit stands dismissed.