
(1999) 03 GAU CK 0015

In the Gauhati High Court

Case No : Civil Rule No's. 5781 and 6643 of 1998 and W.P. (C) No. 373 of 1999

Dadhi Kalita

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 09-03-1999

Acts Referred:

Assam Elementary Education (Provincialisation) Act, 1974 — Section 27
Assam Elementary Education (Provincialisation) Services and Conduct Rules, 1981 — Rule 5
Assam Secondary Education (Provincialisation) Act, 1977 — Section 3(3)

Citation : (1999) 2 GLT 417

Hon'ble Judges : J.N. Sharma, J

Bench : Single Bench

Advocate : S.S. Dey and M. Nath, for the Appellant; Govt. Advocate, for the Respondent

Judgement

J.N. Sarma, J.—The dispute between the Petitioner Dadhi Kalita and Respondent No. 4 Pitambar Das(C.R. Nos. 5781 and 6643/98) is with regard to claim of being selected as the Headmaster for MV Schools. Rule 5 of the Assam Elementary Education (Provincialisation) Services and Condition Rules, 1981 provides that the post of Headmaster and Head pundit of M.V. Schools is to be a promotional post and appointment in the said post is to be made on the basis of seniority cum efficiency on the recommendation of the Sub-Divisional Selection committee to be constituted by the Director of Education. The Notification dated 30th August, 1985 provides as follows:

Government of Assam Education (Personnel) Department. Orders by the Governor of Assam. Notification Dated Dispur, the 30th August, 1985.

No. SVG. 1003/96/3: In exercise of the powers conferred u/s 27(a) of the Assam Elementary Education (Provincialisation Act, 1974) and Section 3(3) of the Assam Secondary Education. (Provincialisation) Act, 1977, the Governor of Assam is pleased to frame the following procedures for promotion to the post of

Headmasters of M.E./M.V. Madrassa/M.V. and senior Basic Schools.

(1) The post of Headmaster of M.E./M.E.M./M.V. senior Basic Schools shall be promotional posts. Appointment to the posts shall be made on the basis of seniority-cum-efficiency of the recommendation of a District level selection committee to be constituted by the Director of Elementary Education Assam.

(2) The committee shall prepare a subdivision wise gradation list of teachers(separately for M.E.M/M.V. and senior Basic Schools) in order of seniority showing date of appointment, Educational Qualification, year of passing of training, age on the date of appointment, date of Retirement which should be communicated to all incumbents with copies to all the concerned authorities for information.

(3) Selection for the posts of Headmasters in such Middle Schools shall be made strictly on the basis of seniority-cum-efficiency.

(4) The teachers having less then 10 years of continuous service shall not be considered for promotion.

(5) The teachers who have successfully undergone necessary training as may be prescribed by the department shall only be considered for promotion. However, the teacher who have completed minimum of 15(fifteen) years of continuous services but no facilities have been provided to him/her for the prescribed training may also be considered provided there is nothing adverse against them.

(6) The committee shall prepare a penal of selected teachers which shall remain valid for one year from the date of selection.

(7) In case of Hindi/Classical/Language teachers having required minimum educational qualification and training may also be considered for promotion.

These procedures will come into force with immediate effect.

Sd/-B. Bhattacharjya Secretary to the Govt. of Assam, Education Department.

2. It is claimed by the Respondent No. 4 Pitambor Das that he is a selected person and in support of it, he places reliance in Annexure-1 to Misc case No. 1398/98, the certificate of the selection was given only by the Secretary, Nalbari District MV Schools Teachers Association. This certificate cannot be accepted to be genuine and valid. In that view of the matter, I remit back the entire matter to the Director of Elementary Education, Assam to find out whether the Respondent No. 4 Pitambor Das is duly selected as claimed by him. If Respondent No. 4 is duly selected as claimed by him, pursuant to the notification quoted above and if that selection is still valid, he will have the right to be the Headmaster of the school. But if that is not the position the Petitioner herein shall be allowed to continue as the Headmaster till the post is duly filled up by following the due process of law in as much as one ad hoc employee or ad hoc arrangement cannot be replaced by another ad hoc employee, but that is what sought to be done in this particular case.

3. It is also the grievance of the Petitioner Dadhi Ram Kalita that he has not been paid his salary since January, 1999. As the Petitioner is working he is entitled to his salary. The authority shall do the needful to pay salary to him. The suspension order of the Petitioner dated 3.2.99 also shall stand quashed inasmuch as I donot find any valid ground to suspend the teacher on the ground mentioned in that order. It is submitted on behalf of the Respondent No. 4 that he has been not paid his salary since the month of November, 1998. The Authority shall take necessary steps to pay the salary to the Respondent No. 4. It is further submitted that the Respondent No. 4 having been released from the school now he is hanging in the air. The authority shall allow the Respondent No. 4 to hold the post of Asstt teachers of the school till the decision taken by the Director of Education. The enquiry and decision shall be taken by the authority within a period of (two) 2 months. If necessary the authority may give necessary hearing to the parties. If on enquiry it is found that the Petitioner Dadhi Kalita is to be allowed to continue as the Headmaster being duly selected, the authority shall also give the proper posting to Respondent No. 4 according to his status and qualification. Necessary orders to that effect shall be passed by the authority to bring to end of the misery and pitiable condition of the matter.

4. All the Writ petitions and Misc cases are disposed of accordingly. Heard Mr. S.S. Dey, learned Advocate for the writ Petitioner Mr Dadhi Kalita and Mr N.C. Das, learned Advocate for the Respondent No. 4 Mr. Pitambor Das. I make no order as to costs.