
(2020) 01 GAU CK 0016
In the Gauhati High Court
Case No : Writ Appeal No. 16 Of 2018

Dal Pathak

APPELLANT

Vs

State Of Assam And Ors

RESPONDENT

Date of Decision : 22-01-2020

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2020) 01 GAU CK 0016

Hon'ble Judges : Manojit Bhuyan, J;Soumitra Saikia, J

Bench : Division Bench

Advocate : S K Medhi, S. K. Medhi, R. Mozumdar, R. Dhar, A. D. Choudhury

Final Decision : Disposed Off

Judgement

Soumitra Saikia, J

1. Heard Mr. S. K. Medhi, learned counsel for the appellant. Also heard Mr. R. Mozumdar, learned Standing counsel for the Higher Education, respondent Nos. 1 & 2, Mr. R. Dhar, learned Government Advocate for respondent No. 3. and Mr. A. D. Choudhury, learned Counsel assisted by Mr. T. Chakraborty, learned counsel for the respondent No. 4, 5 & 6.

2. None appears for the respondent Nos. 7, 8 & 9.

3. The appeal is preferred against the Judgment and Order dated 13.02.2016 passed by the learned Single Judge in WP(C) No. 3093 of 2016.

4. The appellant as a writ petitioner approached this Hon'ble High Court under Article 226 of the Constitution of India seeking a direction to the respondents to allow him to officiate as the Head of Mathematics Department in the M.C. College, Barpeta in terms of the Government Office Memorandum dated 05.07.2012. The case of the petitioner is that he joined as a Lecturer in the M.C. College on 01.12.1999 which was approved by the Director of Higher Education on 23.12.1999. During the course of his service, petitioner was granted Senior

Grade Scale of Pay. Subsequently, he was recommended by the Departmental Promotion Committee (DPC) for Selection Grade Scale of Pay. The appellant-petitioner states that he is the senior most Assistant Professor in the Mathematics Department of the College and by virtue of his seniority he was made the Head of Mathematics Department of the College. According to the appellant-petitioner, as per the Office Memorandum dated 05.07.2012 although the Headship of the Department is to be assigned on rotation basis in respect of an incumbent being an Associate Professor, however, where there are no Associate Professors then the Senior most Assistant Professor of the Department will be accorded the Headship of the Department. The petitioner contends that as per the Office Memorandum once the Assistant Professor is offered the Headship of the Department there will be no automatic rotation of the Headship like that in the case of the Associate Professor of the Department. Being thus situated, the Principal of the College issued an order sometime in May, 2016 that the Headship of the different Department would be rotated by the person named in same order as per the Governing Body Resolution No. 9 held in the meeting on 19.03.2016. The Headship would be rotated w.e.f. 01.05.2016.

5. Insofar as the Department of Mathematics is concerned, the appellant-petitioner was replaced by Dr. Brojen Das. The petitioner submits that there are only four Assistant Professors in the Department of Mathematics in the College and the petitioner is the senior most, as such, in view of the Office Memorandum dated 05.07.2012 there cannot be any automatic rotation of Headship.

6. The appellant-petitioner also submitted an appeal before the Governing Body to interfere in the matter but there was no response and, as such, he had approached this Hon'ble Court by way of filing writ petition. The petitioner alleges malice against the Principal of the College and who is also the Secretary of the Governing Body and it is the case of the petitioner that because of the Principal not being favourably inclined towards the appellant-petitioner, he has deliberately undermined the requirements of the Office Memorandum dated 05.07.2012 to replace the appellant-petitioner from the Headship. The appellant-petitioner also relied on the affidavit filed by the respondent No. 9 who is an Associate Professor in the Department of History before the learned Single Judge. In the said affidavit the respondent No. 9 stated that he was a Member of the Governing Body of the College and the decision of the Principal is vitiated by malice towards the appellant-petitioner and the removal of the petitioner from Headship was to ensure that the petitioner does not get his marks due for administrative experiences as the Head of the Department etc., which will be counted at the time of his selection towards his next promotion. The appellant-petitioner submitted that although the Governing Body was in favour of the continuance of the petitioner as the Head of the Department of Mathematics in the College and there was strong disapproval by the President of the Governing Body towards the proposal of the Principal in respect of the removal of the petitioner from the Headship and consequently the President of the Governing Body had also tendered his resignation because of such differences with the

Principal.

7. The further case of the petitioner is that in his writ petition he had also prayed for a direction to the respondents particularly to the respondents No. 1, 2, 3 & 4 to take necessary steps for promotion of the petitioner as per recommendation of the Departmental Promotion Committee on the basis of the Governing Body forwarding the relevant ACRs to the Office of the Director of Higher Education, Assam. However, the learned Single Judge did not pass any order on the said prayer made.

8. Mr. R. Mozumdar, learned standing counsel appearing for the Department of the Higher Education supports that the Office Memorandum dated 05.07.2012 of the Government of Assam. He, however, submits that in respect of appointment of incumbents for Headship of the Department, it is an internal matter of the College and the same is required to be decided by the Governing Body. He, therefore, submits that there appears to be no infirmity in the learned Single Judge's Order and the same ought not to be interfered with in the present appeal.

9. Mr. A. D. Choudhury, learned counsel appears for respondent Nos. 4, 5 & 6 strongly urged that there is no infirmity in the Judgment passed by the learned Single Judge which requires any interference by the Appellate Court. Mr. Choudhury urged that the Governing Body had taken a decision in the matter strictly in terms of the Office Memorandum dated 05.07.2012 and in order that other similarly situated incumbents like the appellant-petitioner also gets their share of some opportunity of administrative experiences, which would be counted at the time of their selection for promotion to the next higher post, the Governing Body in the fitness of things had taken a decision in respect of all the Departments including the Department of Mathematics in the College. The learned counsel denies that the Secretary of the Governing Body, namely, the Principal is not favourably inclined towards the appellant-petitioner as submitted. The learned counsel submits that the Principal of the College has merely acted in terms of the resolutions adopted by the Governing Body in its meeting held on 19.03.2016 which is evident from page '61' of the paper book.

10. We have heard the learned counsel for the petitioner and have examined materials available in the Court's record.

11. It will be apposite to extract the contents of the Office Memorandum dated 05.07.2012:-

"GOVERNMENT OF ASSAM

HIGHER EDUCATION DEPARTMENT,

DISPUR, GUWAHATI-6

No. AHE-177/2012/5 Dated Dispur the 5th July, 2012

OFFICE MEMORANDUM

Subject: Guide lines for adopting Rotation in Headship of Provincialised College of Assam.

With a view to enable the Provincialised College teachers to share responsibilities relating to its internal management within the framework of U.G.C. and MHRD's recommendations, a Committee is constituted to ensure that the College authority shall discharge its function towards implementation of rotation in Headship amongst the different disciplines of Colleges and to look after the other allied matters with the following members:

1. President Governing Body of the College :Chairman,
2. Principal of the College :Member-Secretary
3. Vice Principal or Senior most faculty : Member member of the College in absence of Vice Principal.

The duties and responsibilities of the Committee will be related to functions as detailed in following paras:

1. To ensure that the College can have HOD in all the Department of the College for smooth functioning of the Department.
2. To ensure that the HOD is made/Selected amongst the Associate Professors of respective Departments in order of seniority. If Associate Prof. is not available in the Department, the senior most Assistant Professor of the concerned Department can function as HOD with the approval of Governing Body.
3. The Headship will be for a period of 3 years and it will be rotated at a regular interval of 3 years by the College authority. On expiry of 3 year term of a HOD the next senior most Associate Professor in the department shall be the HOD of the concerned department. There will be no rotation amongst the Assistant Professors of the Department automatically. If in a College only Assistant Professors are available in a department, or there are only one or two Assistant Professors, the Governing Body of the College will appoint from the eligible candidates i.e. Assistant Professors, a HOD of that Department. However, performance of the HODs will have to be reviewed every year by the Committee and if the performance of a HOD is not found satisfactory, the Committee will have the power to recommend to remove the HOD from the Headship to the Governing Body and the G.B's decision shall be final.
4. The faculties who avail study leave under UGC FIP scheme or avail any leave having the duration of 6 month or more at a stretch, shall not be considered for Headship.
5. The Committee shall exercise power to recommend for appointment of Headship and also for removal of the Headship as mentioned in the foregoing paras of the Office Memorandum.
6. Govt. will not provide any financial assistance for discharging duties as HOD of

any department in a College.

Sd/- (H.K. Sharma. IAS)

Commissioner & Secretary to the Govt. of Assam

Higher Education Department"

12. A perusal of the Office Memorandum reveals that opening lines of the Office Memorandum bring forth the intention of the Department and which appears to be to enable provincialised College teachers to share responsibilities relating to its internal management within framework of U.G.C and MHRD's recommendations and that the College Authority shall discharge their function towards implementation of the rotation in Headship amongst different disciplines of the College. As such, the very intent of the Office Memorandum is to set a guideline for selection of an incumbent for being offered the charge of the Head of the Department amongst the different disciplines of the College on a rotation basis. Further the Head of Department is to be clearly selected from amongst Associate Professors of the Department. However, in the event of non-availability of any Associate Professor in the Department, the Senior most Assistant Professor can function as the Head of Department. The provision in the Office Memorandum that there will be no rotation amongst Assistant Professors Department automatically read cannot be in isolation from the intent of the Office Memorandum.

13. The Office Memorandum, if read as a whole reveals the intention of the Government to rotate the Head of the Department amongst the Associate Professors of the Department. However, in the event of Department not having any Associate Professors, and then senior most among the Assistant Professor can be permitted to function as Head of Department by the Committee setup for the purpose. In that view of the matter, the contention raised by the appellant-petitioner that in the case of Assistant Professors rotation is not automatic, cannot be accepted as the same will lead an absurd meaning arising out of the said office memorandum and will be completely opposed to the intention of the Government sought to be implemented through the said Office Memorandum dated 05.07.2012.

14. It is not in dispute that the appellant has been the Head of the Department in the Mathematics Department of the College for the past several years. Therefore, if the Governing Body of the College in the fitness of things decides to rotate the Head of Department amongst the eligible candidates and accordingly replace the petitioner, then the same cannot be faulted with and therefore, it has been rightly upheld by the learned Single Judge. Although, the appellant-petitioner alleged malice towards the Principal of the College, namely, respondent No. 5, but the petitioner failed to substantiate his contention on the basis of any cogent material on record. In an intra-Court Appeal the scope of Judicial review by the Appellate Court is extremely circumscribed. Unless the Judgment in Appeal is perverse. If the learned Single Judge has taken a possible view, then

the Appellate Court should not interfere with the Judgment. The Apex Court has held that while considering the scope of the intra Court Appeal, unless the Appellate Bench concludes that the findings of the learned Single Judge are perverse, it shall not disturb the same [(2016) 3 SCC 340 Narendara & Company Private Limited Vs. Workmen of Narendra & Company].

15. In that view of the matter, we are not persuaded to interfere with the learned Single Judge's Judgment and Order dated 13.12.2016 in this intra-court appeal.

16. The appellant-petitioner has also urged that his prayer for seeking a direction to the respondents for considering his case to the next higher post although made before the learned Single Judge was not considered by the learned Single Judge. At this stage the counsel for the respondent Nos. 4, 5 & 6 fairly submitted that there is no difficulty for the College Authority to consider the case of the petitioner along with the other similarly situated candidates. He assures the Court that the steps will be immediately taken by the College Authority to process the case of the petitioner and other similarly situated incumbents for their promotion to the next higher post subject to fulfilling the required criteria and eligibility and forward their recommendations to the Department of Director of Higher Education for further necessary orders.

17. The writ appeal is disposed of to the extent above and also with a direction to the respondent Nos. 4, 5 & 6 to consider the case of the petitioner towards his promotion to the next higher post along with their similarly situated incumbents. The respondent No. 2 upon receipt of such recommendation will pass appropriate orders as required under the provisions of law. No cost.