
(2016) 12 GAU CK 0031
In the Gauhati High Court
Case No : W.P.(C) No. 3093 of 2016

Dal Pathak

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 13-12-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 GauLT 771

Hon'ble Judges : Mr. Ujjal Bhuyan, J.

Bench : Single Bench

Advocate : Mr. S.K. Medhi, Advocate, for the Petitioner; Mr. K. Gogoi, G.A. and Mr. A.D. Choudhury, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Ujjal Bhuyan, J.— Heard Mr. S.K. Medhi, learned counsel for the petitioner, Mr. K. Gogoi, learned Standing Counsel, Higher Education Department, Govt. of Assam and Mr. A.D. Choudhury, learned counsel for respondent Nos.4 & 5.

2. By filing this petition under Article 226 of the Constitution of India, petitioner seeks a direction to the respondents to allow him to officiate as Head of the Mathematics Department in the MC College, Barpeta in terms of the Govt. Office Memorandum (OM) dated 05.07.2012 without any interference of the Principal as well as of the Governing Body of the said College.

Case of the petitioner is that petitioner joined as Lecturer in the MC College on 01.12.1999. Such appointment of the petitioner was approved by the Director of Higher Education on 23.12.1999. In the course of his service, petitioner was granted Senior Grade Scale of Pay. Subsequently, he has been recommended by the Departmental Promotion Committee (DPC) for Selection Grade Scale of Pay.

According to the petitioner, for reasons unknown, Principal of the MC College (College) i.e., respondent No.5 is not favourably inclined towards him and this is

reflected in his attitude towards the petitioner. Though the petitioner was the NCC in-charge of the College, the Principal tried to remove him from such assignment for which petitioner had to approach this Court. Petitioner states that he is the senior most Assistant Professor in the Mathematics Department of the College and by virtue of his seniority, he has been made the Head of the Mathematics Department of the College.

In the meanwhile, Principal of the College issued an order in the first week of May, 2016, notifying that Headship of different departments of the College would be rotated w.e.f. 01.05.2016. Petitioner's name appeared in the said order wherein, it was indicated that he would be replaced by Dr. Brojen Das, an Assistant Professor of Mathematics as Head of the Department. It is stated that in the Mathematics Department of the College, there are only four Assistant Professors and amongst them, petitioner is the senior most. Referring to the Govt. OM dated 05.07.2012, it is stated that though Headship of a Department is to be assigned on rotation basis, in the event Head of the Department is an Assistant Professor, there would be no rotation of Headship automatically.

Aggrieved by the move to relieve him from Headship of the Mathematics Department, petitioner submitted an appeal before the President of Governing Body to intervene in the matter. As there was no response, present writ petition has been filed seeking the reliefs as indicated above.

3. This Court by order dated 25.05.2016 had issued notice and passed an interim order to the effect that petitioner's present position as Head of the Mathematics Department in the College should not be disturbed by the respondents till returnable date.

It is for vacation of the aforesaid order that respondent Nos.4 & 5 have filed an interlocutory application which has been registered as IA (C) No.838/2016.

In the meanwhile, respondent No.9 has filed an affidavit wherein, he has stated that Principal of the College did not accept suggestion of the President of the Governing Body to discuss the matter relating to rotation of Headship. Be it stated that respondent No.9 is an Associate Professor and Head of the History Department of the said College. Petitioner has also filed an additional-affidavit alleging that Principal of the College has hatched a conspiracy against the petitioner and is trying to replace him from Headship of the Mathematics Department.

4. Mr. S.K. Medhi, learned counsel for the petitioner submits that Government of Assam in the Higher Education Department had issued OM dated 05.07.2012 laying down guidelines for adopting rotation in Headship of different Departments in provincialised Colleges of Assam. As per this OM, while ordinarily Headship is to be rotated every 3 years, but there will be no rotation amongst Assistant Professors of a Department automatically. He submits that if in a college only Assistant Professors are available in a Department or there are only one or two Assistant Professors, Governing Body of the College shall appoint one from

amongst the eligible candidates that is Assistant Professors as Head of the Department. However, performance of the Head of the Department would have to be reviewed every year by the Committee and if the performance of the Head of the Department is not found satisfactory, the Committee would have the power to recommend removal of Headship. The Committee is to be constituted with the President of the Governing Body of the College as the Chairman and includes Principal and Vice Principal or senior most faculty member in absence of Vice Principal. He submits that without following the procedure prescribed under the aforesaid OM dated 05.07.2012, his client is sought to be removed from the Headship of the Mathematics Department. Further submission is that impugned action of the Principal is vitiated by malice towards the petitioner. Learned counsel submits that in the selection of Principal of a degree college, marks are awarded on account of administrative experience as Vice Principal, Head of the Department etc. To ensure that petitioner does not get full marks for Headship, impugned action is being taken to terminate his Headship prematurely. He therefore submits that this Court should intervene in the matter and direct continuation of the status quo; at least no case for vacation of interim order is made out.

5. On the other hand, learned Standing Counsel, Education Department submits that Headship of a department is made by way of rotation. No Associate Professor or Assistant Professor has any indefeasible right to claim appointment or continuation of appointment as Head of the Department. Head of the Department is ordinarily by way of rotation. Object of the OM dated 05.07.2012 is to ensure rotation of Headship and not to perpetuate Headship of an individual Assistant Professor for any indeterminate period. He, therefore, submits that no legal right of the petitioner has been violated and, therefore, writ petition should be dismissed.

Similar submission has been adopted by Mr. Choudhury, learned counsel for respondent Nos.4 & 5 who contends that petitioner has no legal right to continue as Head of the Mathematics Department. Additionally, he submits that it is the imagination of the petitioner that Principal of the College is not favourably inclined towards him. There cannot be any earthly reason for the Principal of the College to be hostile towards the petitioner. No material has been placed on record to show either malice in fact or malice in law. He also submits that reliance placed on OM dated 05.07.2012 is misplaced inasmuch as the said OM does not debar rotation of Headship amongst Assistant Professors. Moreover, such an OM is in the nature of an administrative guideline which has no statutory force. Therefore, such administrative guidelines have no legal enforceability. No writ or direction can be sought for and issued based on such administrative guidelines, he submits. Mr. Choudhury, learned counsel also points out that petitioner has been the Head of the Mathematics Department since 2007 and he has now completed almost nine years as Head of the said Department. Therefore, other Assistant Professors should also get a chance now to acquire some administrative experience by becoming Head of the Department. In this

connection, he has placed reliance on a decision of the Supreme Court in Chief Commercial Manager, South Central Railway v. G. Ratnam, reported in (2007) 8 SCC 212.

Submissions made by learned counsel for the parties have been considered. Also perused the materials on record.

6. Since petitioner has placed heavy reliance on the Government OM dated 05.07.2012, it would be apposite to dilate on the same at the outset. Relevant portion of the said OM dated 05.07.2012 is extracted hereunder :-

"With a view to enable the Provincialised College teachers to share responsibilities relating to its internal management within the framework of UGC 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 Professor is not available in the Department, the senior most Assistant Professor of the concerned Department can function as HOD with the approval of the 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 GB's decision shall be final."

A careful analysis of the OM dated 05.07.2012 would go to show that the essence of the said OM is to enable the college teachers to share responsibilities relating to internal management of the respective colleges and towards this end, rotation of Headship has been provided. It states that there should be Head of the Department in all the Departments of a college for smooth functioning of the Department. Head of the Department is ordinarily to be selected from amongst Associate Professors of the respective Departments in order of seniority. If Associate Professor is not available, the senior most Assistant Professor may function as Head of the Department with the approval of the Governing Body. It further says that Headship would be for a period of 3 years and would be rotated at a regular interval of 3 years. On expiry of the 3 year term of Headship, the next senior most Associate Professor of the Department would be the Head of the Department. However, the OM says that if in a Department, there is no Associate Professor and there are only Assistant Professors, there would be no rotation amongst Assistant Professors of the Department automatically. If there is only one Assistant Professor or there are only one or two Assistant Professors, Governing Body of the College shall appoint the Head of the Department from amongst the eligible Assistant Professors. However, performance of the Head of the Department would have to be reviewed every year and if the performance is not found satisfactory, the incumbent may be removed from the Headship.

7. What is discernible from the above is that in case of Associate Professor, there is automatic rotation of Headship after every 3 years. In case of Assistant Professor, there is no automatic rotation. In a situation where there is only one or two Assistant Professors, their performance as Headship is required to be reviewed every year. But this would not be the position in a case where there are more than two Assistant Professors, because there would be a pool of Assistant Professors amongst whom Headship can be rotated; though as per the Government OM, such rotation is not automatic.

8. In the course of hearing, a query was put to learned counsel for the petitioner as to whether any additional emoluments are provided on account of Headship. Learned counsel for the petitioner submitted that no such additional emoluments are provided. Appointment of Headship of Departments is an internal arrangement of a College to ensure smooth administration of the respective Departments. No right as such is associated or accrued with such assignment. As per the said OM dated 05.07.2012, ordinarily, Headship should be rotated; though in the case of Assistant Professor, such rotation is not automatic. But the OM does not debar the College authority from rotation of Headship even amongst the Assistant Professors. Insistence of learned counsel for the petitioner that before removal of Headship from amongst Assistant Professor, there has to be assessment of performance and only if performance is found to be not satisfactory, the incumbent should be removed from the Headship does not appeal to the Court as such a course of action may have adverse consequences on the service career of the incumbent. Since no legal right as such is created by conferring of Headship, providing for adverse consequences on removal of

Headship through administrative guidelines without statutory backing would not be appropriate. That apart, as has been held by the Supreme Court in *G. Ratnam* (supra), administrative instructions which have no statutory force do not give any legal right in favour of the aggrieved party and cannot be enforced in a Court of law. Such administrative guidelines or instructions do not confer any legally enforceable right on any persons. Therefore, even if there is any breach of such administrative instruction, Court would be reluctant to issue a writ under Article 226 of the Constitution of India. The Supreme Court held as under: -

"19. We have carefully gone through the contents of various chapters of the Vigilance Manual. Chapters II, III, VIII, IX and Chapter XIII deal with Railway Vigilance Organization and its role, Central Vigilance Commission, Central Bureau of Investigation, investigation of complaints by Railway Vigilance, processing of vigilance cases in Railway Board, suspension and relevant aspects of Railway Servants (Discipline and Appeal) Rules, 1968 as relevant to vigilance work etc. Paragraphs 704 and 705, as noticed earlier, cover the procedures and guidelines to be followed by the investigating officers, who are entrusted with the task of investigation of trap cases and departmental trap cases against the railway officials. Broadly speaking, the administrative rules, regulations and instructions, which have no statutory force, do not give rise to any legal right in favour of the aggrieved party and cannot be enforced in a court of law against the administration. The executive orders appropriately so-called do not confer any legally enforceable rights on any persons and impose no legal obligation on the subordinate authorities for whose guidance they are issued. Such an order would confer no legal and enforceable rights on the delinquent even if any of the directions is ignored, no right would lie. Their breach may expose the subordinate authorities to disciplinary or other appropriate action, but they cannot be said to be in the nature of statutory rules having the force of law, subject to the jurisdiction of certiorari.

20. It is well-settled that the Central Government or the State Government can give administrative instructions to its servants how to act in certain circumstances; but that will not make such instructions statutory rules which are justiciable in certain circumstances. In order that such executive instructions have the force of statutory rules, it must be shown that they have been issued either under the authority conferred on the Central Government or the State Government by some statute or under some provision of the Constitution providing therefor. Therefore, even if there has been any breach of such executive instructions that does not confer any right on any member of the public to ask for a writ against the Government by a petition under Article 226 of the Constitution of India."

9. Therefore, on a thorough consideration of the matter, this Court finds that no legal right of the petitioner as such has been violated by the decision of the Principal to rotate the Headship of the Mathematics Department in the College. Further, materials placed on record are not adequate to arrive at in any definitive

conclusion that impugned action is actuated by malice. In such circumstances, this Court is not inclined to entertain the writ petition, which is accordingly dismissed.

10. Interim order passed on 25.05.2016 would stand vacated.