

(2015) 09 GAU CK 0052
In the Gauhati High Court
Case No : Writ Petition (C) No. 1726 of 2015

Deepanjali Saikia

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision : 30-09-2015

Acts Referred:

Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 —
Section 10(4), 4(2)

Citation : (2015) 09 GAU CK 0052

Hon'ble Judges : Tinlianhang Vaiphei, J.

Bench : Single Bench

Advocate : M.U. Mondal, H.R. Ahmed and M. Husain, Advocates, for the Appellant; P. Saikia, Standing Counsel, P. Baruah, U.K. Nair and N. Bora, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Tinlianhang Vaiphei, J.—Whether the petitioner was ever appointed as lecturer of Advance Assamese for Avanari Junior College ("the College" for short), Medak Gaon in the Lakhimpur District is the moot point in this writ petition. In my opinion, the correct answer to this question will solve the jigsaw puzzle of this writ petition.

2. Before proceeding further, the facts giving rise to the writ petition may be briefly noticed. The case of the petitioner is that she passed M.A. (Assamese) in the year 2002, and was appointed as lecturer of the College in the Department of Advance Assamese by the order dated 13-9-2004 and joined the post on 13-9-2004. The Joint Secretary, Secondary Education Department issued the order dated 16-2-2005 according the concurrence of the Government of Assam for opening the 1st Year class of Higher Secondary School in the College by including the subject of Advance Assamese, the subject taught by her. Subsequently, the Deputy Secretary, Secondary Education Department, Assam issued the letter dated 12-9-2005 according the concurrence of the Government

to the College for teaching up to +2 stage (Higher Secondary level) by including the subject of Advance Assamese. She also received her share in the financial assistance granted by the State-respondents as Lecturer in Advance Assamese from the years 2005-06 to 2011-12, was issued the Identity Card dated 17-9-2007 and her name found a place in the Utilization Certificate dated 18-2-2010 in connection with the receipt of the said financial assistance. In the particulars of staff of the College prepared by the Principal of the College (respondent 6) on 18-2-2010, her name was shown as lecturer in Advance Assamese. The respondent No. 6 also addressed her as Head of Department in Advance Assamese in his letter dated 5-11-2011 requesting her to submit course progress.

3. According to the petitioner, after the enactment of the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011 ("the Act"), the respondent No. 6 entered into a conspiracy with the private respondents to deny the benefits of provincialization to her even though she is senior to them. On coming to know of this, she submitted an application to the Governing Body on 10-12-2013 for confirming her as lecturer of Advance Assamese in the College. On 20-12-2013, the joint meeting of the current Governing Body and the earlier Governing Body of the College resolved that it was true that she was appointed as lecturer in Advance Assamese since 13-9-2004 till date. In the revised application form dated 20-12-2013 submitted by the respondent No. 6, the subject of the petitioner as Advance Assamese was included as eligible for provincialization, but in the prescribed form along with the staff pattern dated 27-2-2014 submitted by the Principal for provincialization of their services of the employees, the name of the petitioner came to be dropped and the names of the private respondents who were junior to the petitioner got included, which is bad in law. The representations made to the respondent No. 3 and 4 to include her name for the provincialization but to no effect. On the contrary, the respondent No. 3 and 4 arbitrarily recommended the private respondents for provincialization of services without considering the case of the petitioner, whose was rather dropped. The petitioner thereafter filed WP(C) No. 1725/2014 seeking provincialization of her service in the post of lecturer in Advance Assamese as per seniority, but she withdrew the same with a liberty to file a fresh case. Her representation filed on 19-7-2014, 28-1-2015 and 8-2-2015 to the respondent No. 2 did not get any positive response. On the contrary, the respondent No. 2 published the list of employees on online on 28-2-2015 for provincialization of services wherein the name of the petitioner did not find a place but included the names of the private respondents who are admittedly junior to her. Aggrieved by this, the petitioner is approaching this Court by way of this writ petition.

4. The writ petition is opposed by practically all the respondents. No affidavit-in-opposition is, however, filed by the State-respondents. The respondent No. 5 and 6 also filed their joint counter-affidavit. The respondent No. 7, 8, 9, 10 and 11 also filed their affidavit jointly. It is the case of the respondent No. 5 and 6 that the Governing Body of the College by the resolution dated 17-9-2004 resolved to

appoint the petitioner as lecturer in Assamese department vide resolution No. 2, and was issued the appointment letter on 13-9-2004(?): she was never appointed as lecturer in Advance Assamese department of the College. Annexure-1 and Annexure-B inserting the letters "Ad" before the word "Assamese" are not there in the original document and were interpolated by the petitioner and are, therefore, manufactured documents. In her joining report also, she indicated that she was joining the post of lecturer in Assamese department. Annexure-2 at page 23 of the writ petition is also a manufactured document as the signature of the concerned authority is available (?), while in Annexure-C of their affidavit (?), the signature of the concerned authority is available. Thus, according to the answering respondents, the petitioner did not join as lecturer in Advance Assamese on 13-9-2004 but did join as lecturer in Assamese department of the College on 14-9-2004. As one Maheswar Dutta is already there as lecturer in Assamese department, who is admittedly senior to the petitioner, she cannot be accommodated against the post of lecturer in Assamese department for provincialization of her service.

5. The answering respondents deny that they hatched conspiracy with the private respondents for denying the benefit of provincialization to the petitioner. According to the answering respondents, the seal of the Ex-Secretary of the Governing Body of the College is missing at Annexure-11, page 35 of the writ petition. In the tripartite meeting of old and present Governing Body and the teaching staff of the College held on 5-5-2014, one Dinesh Kaman, Ex-Secretary had stated that he had not used the seal in that resolution given to the petitioner and that some matters were unauthorisedly inserted by her, for which he would file a case against her, if required. As per the provisions of the Act, the services of only eight lecturers are to be provincialized as the College is an arts college. The petitioner is the second lecturer of Assamese department. However, only the service of a lecturer in each subject is to be provincialized in the College. As the said Maheshwar Dutta happens to be the senior-most lecturer in Assamese department, his service to the exclusion of the petitioner can be provincialized as lecturer in Assamese department. This is how the name of the petitioner was excluded from the list of lecturers for provincialization.

6. The answering respondents further aver that they are not aware of the submissions of the various representations claimed to have been made by the petitioner. In so far as the respondents' No. 7, 8, 9, 10 and 11 are concerned, they were appointed in different departments or with Department Assamese of the College, they are not in any way connected with this case. As the petitioner was appointed as lecturer in Assamese department, her seniority shall have to be determined vis-à-vis other lecturers of Assamese Department and not with the private respondents. The answering respondents deny that they have misappropriated the share of the petitioner in the financial assistance for the year 2012-13 payable to her. On the contrary, in terms of the resolution dated 1-5-2015 adopted by the Governing Body of the College, a show cause notice was issued to the petitioner on 5-5-2015 for her unauthorized absence from duty

from November, 2014 onwards. It is, therefore, submitted by the answering respondents that there is no illegality, mala fide, arbitrariness or impropriety in the impugned action taken by them for recommending the private respondents for provincialization of their services and that there is no merit in the writ petition, which is liable to be dismissed with costs. As the pleas taken by the respondent No. 7 to 11 in their counter-affidavit are virtually one and the same with the pleas taken by the respondent No. 5 and 6, I do not think it necessary to refer to them separately for the sake of brevity.

7. Under Section 4(2) of the Act, it is provided that the numbers of employees in both teaching and non-teaching cadre in each of the Venture Educational Institution, services of whom are provincialized or to be provincialized under the Act, shall not exceed as specified in the Schedule appended thereto. In the entry relating to Junior College of the Schedule to the Act, the maximum number of lecturers for Arts is fixed at 8 and not beyond. Then, under Section 10(4), the District Scrutiny Committee is mandated to forward the verified list of eligible teachers school-wise in accordance with the number of posts specified in the said Schedule to the concerned Director who shall, after making such further scrutiny as may be required, shall forward the same to the concerned Department of the State Government for consideration and for issuing Notification in respect of the eligible institutions and employees eligible for getting their services provincialized. The net effect of the provisions referred to above is that the services of not more than eight lecturers in Arts stream in the College can be provincialized. Those who could not make it within the eight posts of lecturer in Arts are either excess teachers or dropped teachers. The College in this writ petition is admittedly a Junior College and has eight posts lecturer in Arts.

8. The bone of contention here is the post of Advance Assamese. As per Annexure-1 to the writ petition, the Secretary of the Governing Body of the College, issued the letter of appointment dated 13-9-2004 appointing the petitioner as lecturer of Advance Assamese in the College. Annexure-2 is the joining report of the petitioner to the College dated 13-9-2004. Annexure-3 is the letter dated 16-2-2005 of the Joint Secretary, Education Department, Govt. of Assam conveying the concurrence of the Government to permit the starting of, among others, Advance Assamese in College. So is Annexure-4 issued by the Deputy Secretary, Govt. of Assam, Education Department permitting the starting of Advance Assamese. Annexure-6 is the document relating to Utilisation of Financial assistance to the College wherein the name of the petitioner is found at serial No. 5 as lecturer in Advance Assamese said to be prepared by the respondent No. 6. Annexure-7 is detail particulars of the staff of the College showing the name, among others, of the petitioner at serial No. 4 as lecturer in Advance Assamese with his date of joining as 13-9-2004. It is on the basis of the aforesaid documents that the petitioner seeks to establish her case that she was all along appointed as lecturer in Advance Assamese. Interestingly, the petitioner has not produced the resolution dated 7-9-2004 upon which heavy reliance was placed by her to show that she was appointed as lecturer in Advanced Assamese

on 13-9-2004. On the other hand, a copy of the resolution dated 7-9-2004 annexed at Annexure-A to the counter of the respondent No. 5 and 6 will indicate that the petitioner was appointed as lecturer in Assamese. The respondent No. 5 and 6 have also annexed at Annexure-B the letter dated 13-9-2004 allegedly appointing the petitioner as lecturer in Assamese. In the joining report dated 14-9-2004 purportedly that of the petitioner submitted by her at Annexure-C to the counter-affidavit of the respondent No. 5 and 6, she stated that she had joined the College on 14-9-2004 as lecturer in Assamese Department.

9. At this stage, it may be noticed that in the meeting proceeding of the Governing Body of the College held on 5-5-2014 (Annexure-E), it is seen that the said Dinesh Kaman, the former Secretary of the Governing Body, has disowned the resolution appointing the petitioner as lecturer in Advance Assamese. On the other hand, the appointment letter dated 213-9-2004 at Annexure-1 produced by the petitioner indicates that the letters "Ad" was inserted/interpolated by overwriting in between the original words "in" and "Assamese deptt." so as to make it appear that the appointment was for lecturer in Advance Assamese. Though in her joining report dated 13-9-2004 annexed at Annexure-2 to the writ petition, there appears to be no overwriting of the letters "Ad" before the words "Assamese Department", her joining report dated 14-9-2004 produced by the respondent No. 5 and 6 at Annexure-C indicates that she was appointed as lecturer in Assamese department and that she joined the College on 14-9-2004 as lecturer of Assamese Department. It is also to be noted that in the joining report at Annexure-2, there was not any remark or signature of the Principal to whom she had submitted the same whereas in the joining report dated 14-9-2004 at Annexure-C of the counter, there was some signature apparently acknowledging the joining report with a signature. It may also be noted that in the ID card purportedly issued by the College at Annexure-5, again, the letters "Ad" is interpolated in between the letters and figure "Deptt." and "Assamese". Moreover, which is more important, in terms of the Schedule prepared under Section 4(2) of the Act, only 8 posts of lecturers are permitted to be provincialized.

10. In the provincialization order published online (Annexure-15 to the writ petition), the services of 8 lecturers against the subjects of (i) Sociology, (ii) Assamese, (iii) Political Science, (iv) History, (v) Education, (vi) Logic and Philosophy, (vii) English and (viii) Economics were provincialized. True, by the letters dated 15-2-2005 and 12-9-2005 at Annexure-3 and 4 of the writ petition, the State-respondents conveyed their approval to the starting of the subjects of English, MIL (Assamese), Political Science, Sociology, Education, History, Economics, Logic and Philosophy and, not the least, Adv. Assamese in the College, but this is subject to the condition that the College would never claim financial benefits from the Government. In my opinion, such approval for lecturers for teaching 9 subjects cannot have the effect of increasing the number of lecturers for provincialization by exceeding the upper limit fixed by the said Schedule. In my opinion, the 8 subjects against which the services of eight

lecturers including the private respondents have been provincialized are what are usually considered to be the core subjects in any college and none of which can be substituted by Advance Assamese. What is important to note is that there is already a lecturer for Assamese department in the College and that in the limited number of posts available for provincialization, it would have been somewhat irrational to drop one of the aforesaid eight core subjects to make way for Advance Assamese when there is already a lecturer for Assamese department.

11. When the services of eight lecturers who are teaching in the eight core subjects inclusive of lecturer in Assamese department but excluding Advance Assamese are being provincialized, the object of the Schedule can be said to have been achieved. In this view of the matter, the inference is irresistible and the conclusion inescapable that the petitioner is making false and fabricated documents to somehow show that she was appointed as lecturer in Advance Assamese, for which post her service could be provincialized. If her contention is accepted, then the said Maheshwar Dutta, who is lecturer in Assamese department and who is admittedly senior to her, shall have to be shown the door to make way for her or one of the lecturers in the core subjects shall have to be removed to provincialized her service against the post of Advance Assamese. In my judgment, such an arrangement will be against the spirit, if not the letter, of the Schedule referred to earlier. The answer to the question posed in the beginning is that the petitioner was never appointed as lecturer in Advance Assamese at Avanari Junior College, and her service was rightly not provincialized at the expense of the private respondents.

12. The offshoot of the foregoing discussion is that there is no merit in this writ petition, which is hereby dismissed. However, on the facts and in the circumstances of the case, the parties are directed to bear their respective costs. The interim orders dated 25-3-2015 and 16-7-2015 stand vacated.