

(2005) 11 GAU CK 0042
In the Gauhati High Court

Dr. Manoranjan Kalita

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 06-11-2005

Acts Referred:

Citation : (2009) 3 GLR 236

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

I.A. Ansari, J.—By this common judgment and order, I propose to dispose of both these writ petitions, for, both these writ petitions, on the request made by the learned Counsel for the parties, have been heard together on the ground that both these writ petitions involve similar questions of fact and have raised similar questions of law so much so that a decision in any one of the two writ petitions would have a bearing on the outcome of the other writ petition.

2. I have heard Dr. S. Barkotoky, learned Counsel for the petitioners, namely. Dr. Manoranjan Kalita and Dr. Prasanna Kumar Khaund, in Writ Petition (C) No. 6427/2005 and Writ Petition (C) No. 6441/2005 respectively. I have also heard Mrs. M. Gogoi, learned Standing counsel, Education Department, Government of Assam, appearing on behalf of respondent Nos. 1, 2 and 3 in both these writ petitions, and Mr. B. Goswami, learned Counsel for the respondent No. 4, in Writ Petition (C) No. 6427/2005.

3. While the two writ petitioners and the respondent No. 4 in WP(C) No. 6427/2005, namely, Dr. Atul Bora, were all Assistant Professors in the Department of Civil Engineering in Engineering Colleges of Assam, there being two such colleges, namely, Assam Engineering College, Guwahati, and Jorhat Engineering College, Jorhat, a DPC was held, on 21.5.2004, in order to consider the cases of eligible Assistant Professors of, amongst others, the Engineering Colleges of Assam for promotion to the posts of Professor of Civil Engineering

Department in the two colleges aforementioned. While the present two writ petitioners were treated as ineligible for consideration for promotion from the posts of Assistant Professor to the posts of Professor, the respondent No. 4, on having been found eligible for consideration for such promotion, was considered accordingly and in course of time, the respondent No. 4 was, vide the order, dated 19-08-2005, issued by the Education (CTM) Department, Government of Assam, promoted to the post of Professor and posted accordingly in Jorhat Engineering College. It is this order of promotion, published on 19.8.2005, which stands impugned in both the writ petitions aforementioned, the case of the two writ petitioners being, in brief, thus: As in terms of the relevant recruitment rules and guidelines associated therewith, obtaining of Ph.D. is a condition precedent for promotion to the posts of Professor, from the post of Assistant Professors the two writ petitioners submitted their thesis for obtaining Ph.D., but the requisite results having not been published, both the writ petitioners were not considered eligible for consideration for promotion to the posts of Professor by the DPC on 21.5.2005, when the DPC had considered the question of promotion of the eligible candidates from the posts of Assistant Professor, in the Department of Civil Engineering, to the posts of Professor in the said Department in the Assam Engineering Colleges. However, as both these writ petitioners have been awarded Ph.D., before the date of making of the promotional order, on 19.8.2005, aforementioned, both the writ petitioners ought to have been granted promotion. It is also the case of the two petitioners that since both of them were senior to the respondent No. 4 aforementioned in the cadre of Assistant Professor, the impugned order, dated 19.8.2005, needs to be set aside and quashed and the two writ petitioners not only be directed to be promoted to the posts of Professor, but that they be also directed to be treated as senior to the respondent No. 4 even in the cadre of Professor in the Civil Engineering Department.

4. What needs to be carefully noted, at this stage, is that it is not the case of the writ petitioners that obtaining of Ph.D. by an Assistant Professor in the Engineering Colleges of Assam is not a condition precedent for his being eligible for consideration to the post of Professor. Without, therefore, entering into the question as to whether obtaining of Ph.D. is a condition precedent for consideration for promotion to the post of Professor or not, what is required to be determined is as to whether any illegality has been committed by the State respondents in not considering, on 21.5.2005, the cases of the two writ petitioners for promotion. In this regard, suffice it to mention here that since both the writ petitioners were on 21.5.2005, (i.e., when the selection to the post of Professor took place) ineligible for promotion on the ground that they had not obtained the Ph.D. till then, i.e., till 21.5.2005; hence, no illegality can be said to have been committed by the DPC concerned and/or by the State respondents in ignoring the cases of the two writ petitioners as ineligible candidates for the purpose of promotion to the post of Professor.

5. What emerges from the above discussion is that on 21.5.2005, when the selection process for the purpose of promotion to the post of Professor took

place, both the writ petitioners were ineligible for consideration and they could not have been considered for promotion and as these two writ petitioners were, thus, ineligible for promotion, they cannot challenge the promotion of the respondent No. 4 to the post of Professor, particularly, when the respondent No. 4 was, otherwise, admittedly, eligible for consideration for such promotion. The two writ petitions are, therefore, in my firm view, without any substance and must fail.

6. In the result and for the forgoing reasons, both these writ petitions fail and the same shall accordingly stand dismissed. The interim directions passed, on 13.9.2005, in Writ Petition (C) No. 6427/05 restraining the State respondents from filling up the posts of Professor in the Department of Civil Engineering in the Assam Engineering College, Guwahati, shall accordingly stand vacated.

7. No order as to costs.