
(2008) 09 GAU CK 0077

In the Gauhati High Court

Case No : Writ Petition (C) No's. 1173 of 2006 and 1237 of 2008

Farid Uddin Choudhury

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 11-09-2008

Acts Referred:

Citation : (2009) 2 GLR 605 : (2009) 1 GLT 237

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Advocate : B. Ahmed and D. Mazumdar, for the Appellant; S.K. Medhi, for the Respondent

Final Decision : Dismissed

Judgement

Amitava Roy, J.—Whereas, the challenge in WP(C) No. 1237/2008, is lodged against the WT Message dated 2.2.2008 from the Under Secretary, Government of Assam, Education Department, Dispur, Guwahati cancelling the extension of the service of the Petitioner therein as a Lecturer of Political Science in Hojai College, Hojai (hereafter for short referred to as the College), the Petitioner in WP(C) No. 1173/2006, has assailed the order dated 19.1.2006 of the Principal, Hojai College, Hojai, appointing Md. Farid Uddin Choudhury [Petitioner in WP(C) No. 1237/2008] to the said post on probation subject to the stipulations contained therein. As the issues raised in the two petitions are evidently co-related and the parties thereto are also common, those were analogously heard and are being disposed of together.

2. I have heard Dr. B Ahmed, learned Counsel for the Petitioner [WP(C) No. 1237/2008], Mr. D Mazumdar, learned Counsel for the Petitioner [in WP(C) No. 1173/2006] and Mr. S.K. Medhi, learned Counsel for the College and its authorities.

3. The pleaded versions of the parties are necessary to be narrated in brief to better comprehend the arguments founded thereon. The Petitioner in WP(C) No.

1237/2008 asserts that he is a Post Graduate in Political Science with Public Administration as a compulsory paper. On 24.10.1998, the College published an advertisement for filling up one post of Lecturer in Political Science in the institution. Specialization in Public Administration was one of the stipulated norms. The post was declared to be unreserved. The Petitioner, accordingly, applied. While the process was, thus pending, the College advertised another vacant post of Lecturer in the same subject on 30.10.1998. Though, the said post was also open, it did not insist for any specialization. The Petitioner responded to that advertisement as well. Many others also offered their candidature. According to the Petitioner, in the interview held, nine (9) candidates including him were interviewed for the first post. For the second post, 5 out of 10 were interviewed. The Petitioner has claimed to have been adjudged second in the list of candidates for the first post. According to him, he topped in the list for the second. The selectee No. 1 for the first post was, accordingly, appointed. While the Petitioner was expecting for his turn for the second post, another advertisement was issued on 17.3.1999 for the same post. This time it was earmarked for schedule Caste/Schedule Tribe candidates. Apprehending that this move was to deny him his appointment, the Petitioner initially submitted representations before the Director of Higher Education and as those were of no avail, he approached this Court with civil rule No. 3207/1999, impugning the aforementioned advertisement. This Court by order dated 29.6.1999, inter alia, stayed the process.

4. On an application, thereafter, filed by the College authorities (M.C. No. 1123/1999), this order was vacated. The Petitioner, thereafter, filed another interim application registered as MC No. 1357/1999, on which by order dated 7.2.2000, this Court directed the Director of Higher Education, Assam, to attend to the representations submitted by him within a period of three weeks. Pursuant to the said order, the Deputy Director of Higher Education, Assam by his letter dated 3.12.2002 required the Principal of the College to take necessary action in the matter by placing the Petitioner's case again before the Governing Body. The Petitioner's representation dated 15.2.2000 submitted earlier on the issue, was also forwarded.

While the matter rested at that, the post was again advertised on 17.8.2002, indicating it to be reserved for SC candidates. Being aggrieved, the Petitioner filed another interim application in WP(C) No. 3207/1999, which, however, remains undisposed. The Petitioner's representations submitted before the departmental authorities, also did not evoke any response.

5. It was, eventually, that the Governing Body of the College vide its resolution dated 17.4.2003 decided to appoint the Petitioner and some other teachers on contract/ad hoc as a stop gap arrangement. The Petitioner was, accordingly, appointed as a Lecturer of Political Science in the College on 23.7.2003 for a period of 45 days, whereafter, he joined on 30.7.2003. The Petitioner claims that thereafter, the term of his appointment has been extended from time to time. In

view of the above developments WP(C) No. 3207/1999 was withdrawn, acting on the assurance of the College authorities that his appointment would be regularized in due course.

The Governing Body of the College in its meeting held thereafter, on 19.1.2005 resolved that the Petitioner and other similarly situated teachers be appointed by way of adjustment against substantive and regular vacant posts on probation on a consolidated pay of Rs. 8,000 subject to regularisation on acquiring the basic eligibility norms as per the UGC guidelines. The Petitioner has maintained that the said resolution was duly approved by the Director of Higher Education, Assam on 18.1.2006. The Petitioner, has referred to a office memorandum dated 17.7.2004 of the Government of Assam in the Education Department to the effect that teachers working in non-sanctioned post(s) would be adjusted against vacant sanctioned posts on the condition that they would qualify in the National Eligibility Test or State Level Eligibility Test within two years. The Petitioner claims that it was pursuant to the Government policy as contained in the aforementioned office memorandum that the Governing Body of the College had taken the resolution dated 19.1.2005, which was duly approved by the Director of Higher Education, Assam. The Principal of the college, accordingly, by order dated 1.2.2006 appointed the Petitioner on probation as. a Lecturer of Political Science in the College subject to the conditions enumerated therein. The Petitioner has maintained that the Governing Body of the College in its meeting held on 19.1.2005 took a decision to the above effect in alignment of the letter and spirit of the office memorandum .dated 17.7.2004 and the resolution having been forwarded to the Director of Higher Education, Assam the same was approved.

6. The Respondent No. 6 having challenged the appointment of the Petitioner in WP(C) No. 1173/2006. This Court by order dated 8.3.2006, while issuing notice, subjected the Petitioner's, appointment to the outcome of the said proceeding. The Petitioner, meanwhile, enrolled himself in the M.Phil course to meet the prescribed academic qualification, which in the meantime, stood modified recognising M.Phil degree to be also an academic conferment as an alternative to NET/SLET following an amendment of the relevant guidelines of the University Grants Commission. In the above premise, he having submitted an application to the Commissioner & Secretary, Government of Assam, Education Department on 23.1.2008 for extension of his term, it was acceded to on 29.1.2008. The impugned WT message, cancelling the order of extension was, thereafter, dispatched following which the Principal-in-charge of the College by his communication dated 4.2.2008, restrained the Petitioner from attending the College. His representation before the Commissioner & Secretary, Government of Assam, on 14.2.2008 remains unattended.

7. The case of the Petitioner in WP(C) No. 1173 [Respondent No. 6 in WP(C) No. 1237/2008], is that he belongs to the SC community and is a Post Graduate in Political Science possessed of the UGC norms and having passed by the National

Eligibility Test, is fully qualified to be appointed as a regular Lecturer of a College. He had been appointed as such, in the department of Political Science of Hojai College on 17.3.2005 on contract basis for a period of 45 days, which has since been extended from time to time. The College advertised a post of Lecturer in the same department on 26.7.2005 indicating it to be reserved for SC candidates with UGC norms. The prospective candidates were required to have passed the NET/SLET. The Petitioner, accordingly, responded and offered his candidature. As he was already in the contract service, he had in the meantime, applied before the Director of Higher Education, Assam for his adjustment against the post in light of the resolution No. 4(b) of the Governing Body of the College adopted in its meeting held on 19.1.2005. According to this Petitioner, he and the Petitioner in WP(C) No. 1237/2008, had been serving the department against non-sanctioned posts and he being academically qualified in all respects, was preferable for regular appointment. The Petitioner averred that though Sri Farid Uddin Choudhury [Petitioner in WP(C) No. 1237/2008] was initially appointed on 25.10.2005 as a Lecturer in Political Science on contract basis for a period of 45 days, he was provided with regular appointment on 19.1.2006. This order has been assailed being impermissible in the face of the pendency of a public process initiated by the advertisement dated 26.7.2005 and further, the appointee being academically deficient for the post.

8. The Director of Higher Education, Assam, in his affidavit filed in WP(C) No. 1173/2006, while referring to the office memorandum dated 17.7.2004 for regularizing the services of lecturers working in non-sanctioned posts in Aided Colleges of the State against the sanctioned posts subject to the conditions mentioned therein, has asserted that the Petitioner Sri Jiban Das had not been selected by the College in observance of the required procedure and that he was inducted as a contract hand for a period of 45 days on honorary basis. The answering Respondent has maintained that this Petitioner is not senior to Sri Farid Uddin Choudhury and has insisted that the office memorandum dated 17.7.2004 does not permit regularisation of a Lecturer working against non-sanctioned posts on contract basis. The deponent, however, admitted the regularization of the services of Sri Farid Uddin Choudhury in terms of the said office memorandum by acting on the proposal to the said effect received from the College.

9. The College authorities, in their affidavits, have averred that the same post of Lecturer in the department of Political Science had been published in the local daily "The Assam Tribune" on 4.10.1998 and 30.10.1998, in response to which the Petitioner [Sri Farid Uddin Choudhury in WP(C) No. 1237/2008] had offered his candidature. He was called for the interview on 30.12.1998. According to the answering Respondents, the interview was held only for one post. The Governing Body of the College, however, in its meeting held on 9.2.1992 cancelled the said selection and resolved to re-advertise the post by disclosing it to be reserved for SC/ST candidates to clear the existing backlog. The post was, accordingly re-advertised on 17.3.1999 to the above effect. Though, this Court by order dated

29.6.1999 passed in C.R. No. 3207/1999 instituted by Sri Farid Uddin Choudhury, stayed the process, on an application filed by the College authorities (MC No. 1123/1999), the restraint was vacated on 22.11.1999. The Petitioner's representation dated 15.2.2000 was, thereafter, forwarded by the College to the Director of Higher Education in terms of the order dated 7.2.2000 passed in MC No. 1357/1999. In view of the above development, the post was re-advertised on 17.8.2002 indicating it to be reserved for the SC candidates. Eventually on 17.4.2003 one Sri Kartik Das of the said community was recommended for appointment, but he did not join. By resolution No. 12 of the same date, the Principal of the College was authorized to induct 8 guest lecturers on contract basis.

The answering Respondents have alleged that this resolution was interpolated by the Petitioner, Sri. Farid Uddin Choudhury to alter the name from "Md. Farid Uddin" to "Md. Farid Uddin Choudhury", shown to have been appointed as a guest lecturer of contract basis. It was, thereafter, that the then Principal of the College issued an appointment letter in his favour illegally. The Principal, thereafter, by his letter dated 28.2.2005, also forwarded a proposal for adjustment of the Sri Farid Uddin Choudhury in a sanctioned post alongwith a copy of the appointment letter dated 23.7.2003. The College authorities have categorically stated that Sri Farid Uddin Choudhury had been appointed on contract basis for a period of 45 days. The last extension was granted to him for the same period on 25.10.2005. According to them, a lecturer working on contract basis is not entitled to be regularized in terms of the aforementioned Government policy. They also claimed that the then Principal and Secretary of the College now placed under suspension, has admitted a subsequent addition/incorporation of resolution No. 4(c) in the minutes of the meeting of the Governing Body of the college held on 19.1.2005 favouring Md. Farid Uddin Choudhury. They have also referred to a complaint by one of the members of the Governing Body and a teacher representative thereto alleging that there was no deliberation in the meeting of 19.1.2005 on the issue of adjustment of Sri Farid Uddin Choudhury as finds reflection in resolution No. 4(c), which is, therefore, fake. Reference has also been made of an enquiry report dated 18.10.2006 by Shri S.C. Sharma, Joint Director of Higher Education, Assam, containing the admission of the then Secretary & Principal of the College about subsequent addition of resolution No. 4(c) to the minutes of the said meeting. The Respondents, however, admitted of the approval of the proposal by the Director of Higher Education, Assam, whereafter, the Principal issued the appointment letter dated 19.1.2006 adjusting Sri. Farid Uddin Choudhury against the retired vacancy of Sri R.R. Sen, which was reserved for a SC candidate. It was, thereafter, that an application was submitted by Sri Farid Uddin Choudhury on 23.1.2006 before the Commissioner & Secretary, Government of Assam, Education (Higher) Department requesting for extension of his service till the declaration of the results of the M.Phil Examination, 2007, in which he had appeared. The Under Secretary to the Government of Assam, by his letter dated

29.1.2008 intimated that the services of Sri Farid Uddin Choudhury ought not to be terminated in the above situation, the conditions of eligibility contained in the appointment letter dated 19.1.2006 notwithstanding. The College authorities have asserted that Sri Farid Uddin Choudhury also failed in the M.Phil Examination. In the above view of the matter, having regard to the challenge made to his appointment in WP(C) No. 1173/2006, on a conjoint consideration of the prevailing factors, the impugned WT message dated 2.2.2008 was issued canceling the grant of extension of his service.

10. The Petitioner in WP(C) No. 1237/2008, in his affidavit in WP(C) No. 1173/2006, while reiterating his above stand, has dismissed the claim of the writ Petitioner in the latter proceeding, Sri Jiban Ch. Das, for appointment to the post involved, contending that as he had not participated in any selection process, mere passing of NET or SLET automatically does not entitle him thereto.

11. In the above background of pleadings, Dr. Ahmed, has urged that as the appointment of the Petitioner in WP(C) No. 1237/2008 on contract basis was preceded by his selection in a public process duly conducted by the College, which thereafter, was regularized pursuant to a resolution of the Governing Body thereof with due approval of the Director of Higher Education, Assam, the impugned decision is, per se, illegal and arbitrary and is liable to be interfered with. The learned Counsel has argued that deficiency, if any, in his appointment having been removed due to the regularisation thereof in terms of the Government policy contained in the office memorandum dated 17.7.2004 in the manner as envisaged therein, the cancellation of the order of extension of his service was wholly arbitrary. Dr. Ahmed, insisted that the Petitioner having been permitted to pursue the M.Phil course in terms of the modified UGC norms, the impugned WT message which has the effect of cancelling his appointment is, per se, unsustainable. This Court by order dated 8.3.2006 passed in WP(C) No. 1173/2006 not having intended such a consequence, the impugned decision lacks in bona fide as well, he urged. The learned Counsel maintained that the Petitioner in WP(C) No. 1173/2006 not having been selected for the post, his claim thereto for having passed NET/SLET is fallacious.

12. Mr. Mazumdar, in reply, has argued that the appointment of the Petitioner in WP(C) No. 1237/2008 on contract basis, itself is illegal being a partisan doing of the then Principal of the College. The learned Counsel reiterated that the resolution No. 4(c) pertaining to Sri Farid Uddin Choudhury is an yield of manipulation of the records of the Governing Body and, therefore, his purported regularisation on the basis thereof, is non est in law. Even, assuming that his appointment on contract basis for a limited duration is tenable, he having failed to pass the M.Phil Examination, in the teeth of the stipulations contained in his appointment order dated 19.1.2006, the impugned WT message is unassailable, he urged. Mr. Mazumdar, has contended that in any view of the matter, the Petitioner Sri Farid Uddin Choudhury having failed to acquire the M.Phil degree, his service could not have been protected by the communication dated

29.1.2008 being clearly opposed to the stipulations to which he claims to have been appointed on the application of the office memorandum dated 17.7.2004.

13. Mr. Medhi, representing the College, while reiterating its pleaded stand, has contended that in view of the serious anomalies in the matter of appointment of Sri Farid Uddin Choudhury, a disciplinary proceeding has been initiated against the earlier Principal & Secretary of the College, wherein, charges bearing thereon, are being enquired into. The learned Counsel also amongst others, referred to the report dated 18.10.2006 submitted by the Joint Director, Higher Education of Assam, in this regard, which contains the Ex-Principal & Secretary's admission of later assimilation of the resolution No. 4(c)(ii) to the minutes of the Governing Body's meeting held on 19.1.2005. Mr. Medhi, has produced the proceeding book of the Governing Body of the College for the period from 2.12.1998 to 22.5.2001.

14. Dr. Ahmed, in reply, has argued that the Director of Higher Education, Assam having accorded his approval to the appointment to the Petitioner Sri Farid Uddin Choudhury, the validity thereof, on the ground of want of selection cannot be questioned. The process commencing from the stage of the Petitioner's selection till his regular appointment having been consciously conducted by the then Governing Body of the College, the propriety and legality thereof, cannot be permitted to be questioned by its successor in office, he urged.

15. The pleadings on record and the arguments advanced thereon have been duly considered. Noticeably the learned Counsel for the College could produce only a register being the proceeding book of its Governing Body for the period 2.12.1998 to 22.5.2001. Mr. Medhi, on instructions, has submitted that the earlier Principal and Secretary of the College, Mr. A.K. Bhattacharjee, against whom a disciplinary proceeding is pending in spite of having demitted his office in the meantime did not return the records in full. It transpires, however, from the resolution dated 9.2.1999 that the posts of Lecturers in Political Science advertised in the issues dated 24.10.1998 and 30.10.1998 were different. Whereas following the selection, Shri Prem Sagar Prasad was appointed against the first post, the selection held for the second was cancelled. The meeting held on 9.2.1999, however, confirmed in categorical terms that the said post was reserved for scheduled caste/scheduled tribe category candidates on account of backlog. The proceeding book for the period mentioned hereinabove, however, does not reveal that either of the Petitioners had been selected for the post of Lecturer in Political Science of the College following a public participatory process initiated by an advertisement. The resolution No. 12 of the Governing Body of the College adopted in its meeting held on 17.4.2003 and impeached by the Respondent Nos. 4 and 5, i.e., the Principal in-charge and the Governing Body in office as a fabricated document disclose that it was resolved to authorize the Principal to appoint the eight candidates named therein as Guest Lecturers on contract basis in the pay scale of Rs. 700 to Rs. 1,600 per month. The candidates named include Md. Farid Uddin Chowdhury though the word "Chowdhury"

appears to be in hand. In that perspective, the order dated 23.7.2003 issued by the Principal and Secretary of the College appointing him as the Lecturer in the said subject against a vacant sanctioned post on purely temporary basis on a consolidated pay of Rs. 1,900 per month appears to be in departure from the tone and tenor of the above resolution. As observed hereinabove, neither the aforementioned resolution nor the appointment letter bears any indication that it was so following a selection of the candidates concerned for the said post. Though the resolution No. 4 of the Governing Body adopted in its meeting held on 19.1.2005 records a discussion on the issue of adjustment of Lecturers in the College against vacant sanctioned posts in other departments in terms of the office memorandum dated 17.7.2004 and evidencing that by resolution No. 4(c) (ii), Md. Farid Uddin Chowdhury was decided to be adjusted against the one and only sanctioned vacant post in the Department of Political Science, it has been categorically asserted on behalf of the Respondents 4 and 5 this segment of the resolution in particular had been inserted later on by the then Principal of the College to unduly favour the candidate concerned. A reference of an admission by the Principal of the College to the above effect in an enquiry report dated 18.10.2006 submitted on the issue by the Joint Director of Higher Education, Assam, has also been made to substantiate the said allegation. Very significantly in the final order of approval of the above resolution of the Governing Body passed by the Director of Higher Education, Assam, it was clearly stipulated that if the resolution was found to be incorrect or any procedural lapse was detected regarding the selection of the candidates, the approval would stand cancelled without any notice. The order also required that the candidate would be required to qualify National Eligibility Test/State Level Eligibility Test in two years failing which his services would be discontinued and the Director of Higher Education, Assam, would have to be informed forthwith. In the appointment order dated 19.1.2006 issued by the Principal of the College, however, the requirement of passing the NET/SLET within the period specified in the approval orders was not included in the terms and conditions subject to which the same was issued.

16. The Commissioner and Secretary to the Government of Assam, Higher Education, in his official communication dated 6.1.2006 addressed to the Director of Higher Education, Assam, while conveying the approval of the Governor of Assam to the regularization of the services of 11 teachers working against non-sanctioned posts in different grants in aid Colleges of the State reiterated in unequivocal terms that they would have to qualify in NET/SLET within two years if they had not passed the same already and that on their failure their services would be discontinued. The letter also insisted that all terms and conditions embodied in the office memorandum dated 17.7.2004 ought to be strictly adhered to. The 11 Lecturers included Md. Farid Uddin Chowdhury against the department of Political Science of the College.

17. The Petitioner in WP(C) No. 1237/2008 Md. Farid Uddin Chowdhury has produced a copy of the notification dated 10.6.2006 issued by the Secretary, University Grants Commission demonstrating the amendment to the UGC

(Minimum Qualifications Required For Appointment And Career Advancement of Teachers in Universities and Institutions affiliated to it) Regulations, 2006 whereby the requirement of NET was classified in the following terms.

"NET" shall remain the compulsory requirement for appointment as Lecturer for those Post Graduate Degree. However, the candidates having Ph.D. Degree in the concerned subject are exempted from NET for Post Graduate Level and Under Graduate Level teaching. The candidates having M.Phil. Degree in the concerned subject are exempted from NET for UG level teaching only.

18. In view of the modified parameters as well the Petitioner Md. Farid Uddin Chowdhury was required to acquire the M.Phil. Degree within a period of two years from the date of his appointment, i.e., 19.1.2006. This is so even if the requirement of passing NET/SLET as engrafted in the orders of approval of the Director of Higher Education, Assam, had been impliedly relaxed. The Petitioner Md. Farid Uddin Chowdhury admittedly has not passed the NET/SLET till date. Though Annexure 31(a) and 31(b) appended to the writ petition in WP(C) No. 1237/2008 indicate his admission to the M.Phil (Political Science) course in the year 2006 there is nothing on record to establish that he in the meantime has the successfully completed the same. To the contrary it has been contended by the Respondent Nos. 4 and 5 that he had failed in the said examination, a statement not refuted by the Petitioner.

19. It is really intriguing as to how in the above factual premise, the Under Secretary to the Government of Assam, Education (Higher) Department by his letter dated 29.1.2008 addressed to the Principal of the College instructed against the termination of his services though the period for complying with the stipulations contained in the approval order of the Director of Higher Education, Assam, had in the meantime expired. This is to say the least a stance opposed to the manifest directives to the contrary contained in the letter dated 6.1.2006 of a higher authority, i.e., Commissioner and Secretary of the Department. Even assuming that the Petitioner Md. Farid Uddin Chowdhury had been validly appointed to the post of Lecturer of the College, he having failed to abide by the terms and conditions subject to which the same was provided, the cancellation of the extension of his term cannot in the attending facts and circumstances of the case, be denounced and repudiated as illegal, arbitrary and unsustainable in law. The plea that he having been appointed acting on the Government Policy embodied in the office memorandum dated 17.7.2004 following the approval of the Director of Higher Education, Assam, deficiencies and/or irregularities in his initial induction stood irreversibly rectified does not appeal to be accepted. Not only as noticed hereinabove his appointment on 23.7.2003 is not in conformance with the resolution dated 17.4.2003 of the Governing Body of the College, there is a serious allegation of manipulation of the resolution No. dated, 19.1.2005 of the Governing Body pursuant to which, he was eventually appointed.

20. The learned Counsel for the Respondents 3 and 4 in course of his arguments has disclosed that a disciplinary proceeding is presently pending against the

Principal and Secretary of the College, the author of the appointment order dated 19.1.2006 amongst others on the charge of having intermeddled with and interpolated the resolution dated 19.1.2005 by inserting Clause 4(c)(ii) pertaining to Md. Farid Uddin Chowdhury. As alluded hereinabove, mention has also been made of a report dated 18.1.2006 of the Joint Director of Higher Education, Assam, in the matter in which the admission of the then Principal of the College in this regard is claimed to have been recorded. All these being disputed questions of facts, as a writ court, I am not inclined to embark on a roving enquiry into the same. Suffice it to mention that having regard to the materials on record, this Court is of the view that no case has been made out warranting interference with the impugned WT Message dated 2.2.2008 recalling the decision to further extend the term of the appointment of Md. Farid Uddin Chowdhury as a Lecturer of Political Science in the College.

21. The Petitioner in WP(C) No. 1173/2006 having regard to the determination hereinabove is also not entitled, to any direction for consideration of his case for the post of Lecturer of Political Science in the College on the strength of the advertisement dated 26.7.2005 at this distant point of time. It is however made clear that the findings recorded hereinabove pertaining to the challenge to the cancellation are based on the materials available before this Court and should not be taken to have a decisive bearing on the disciplinary proceeding against the ex-principal of the College which should be conducted strictly according to the prescribed procedure and the evidence oral and documentary recorded in the course thereof.

In the result both the petitions fail and are dismissed. No costs.