

(1996) 02 GAU CK 0004
In the Gauhati High Court
Case No : Writ Appeal No. 21 of 1994

Ghana Kanta Das

APPELLANT

Vs

State of Assam and Ors.

RESPONDENT

Date of Decision : 20-02-1996

Acts Referred:

Citation : (1996) 1 GLJ 360 : (1996) 2 GLR 239 : (1996) 1 GLT 548

Hon'ble Judges : D.N.Baruah, J and B.N.Singh Neelam, J

Bench : Division Bench

Advocate : R.L.Yadav, M.Choudhary, H.N.Sharma, D.N.Choudhary,
B.D.Goswami , B.K.Goswami, Advocates appearing for Parties

Judgement

D.N. Baruah, J.—This writ appeal is directed against the judgment and order dated 12.1.94 passed by a learned Single Judge in Civil Rule No. 1184 of 1990 dismissing the writ application.

2. The petitionerappellant is a graduate from Dibrugarh University. He also passed BT Examination from the same University while he was in service. He joined as Assistant Teacher in a post of Graduate Teacher in Bafdoloni High School on 17.1.64 and thereafter served as Vice Principal of Bardoloni HS School when the post of Vice Principal fell vacant, 3rd respondent by Annexure A letter dated 11.5.00 (to the writ petition) addressed to the then Principal of the said school informed him that his date of superannuation would be 31.5.90 and directed him to hand over the charge of the said school on the said date to the appellant who was then the Vice Principal of the school. The petitionerappellant having the requisite qualifications and experience formally by Annexure B letter dated 20.5.90 (to the writ petition) applied to the 2nd respondent, praying for appointment as Principal of the said school. On 1.6.90 he took over charge as Principal of the said school from the outgoing Principal C. Dutta. This was conveyed to the 3rd respondent by Annexure C letter dated 2.6.90 (to the writ petition).

It may be pertinent to mention that Minister of Education, Commissioner and Joint Commissioner, Education settled the grievances of Assam Secondary Education Teachers and Employees' Association by agreeing to certain conditions. On 7.6.90 by Annexure D order, the 2nd respondent transferred the 4th respondent who was then the Principal of Sisi Chariali Higher Secondary School as Principal of Bardoloni Higher Secondary School in place of the petitionerappellant. Being aggrieved, the appellant submitted representation on 12.6.90 before the Government against the order dated 7.6.90. A telegraphic order was issued by the 2nd respondent cancelling the aforesaid Annexure D order dated 7.6.90. Later on 20.6.90 the 3rd respondent asked the 4th respondent to join as Principal of Sisi Chariali HS School. By Annexure G order dated 20.6.90 the 2nd respondent cancelled the earlier order and validated the order passed on 7.6.90. This was done behind the back of the petitionerappellant.

Writ petition (Civil Rule No. 1184 of 1990) was filed before this Court and this Court by order dated 2.7.90 directed the parties to maintain status quo as on that day. The 4th respondent filed an application for modification of the said order contending, inter alia, that he had already joined as Principal on 11.6.90 in terms of the order dated 7.6.90. Appellant, however, disputed the same by saying that as per order dated 14.6.90 petitionerappellant did not hand over charge and continued as Principal. By order dated 20.11.90 this Court directed the Secretary, Education to pass order regarding holding of charge. The Government also wrote a letter to the 2nd respondent stating that the order dated 2.6.90 transferring 4th respondent to Bardoloni was stayed with immediate effect and that the appellant would remain as Principal Incharge till disposal of the case. A telegraphic order was issued by the Government directing the 3rd respondent to handover examination papers including Admit Cards. On 2.8.1.91 the prayer of the 4th respondent to stay the order dated 21.12.90 was rejected by this Court, On 8.2.91 the 3rd respondent passed an order allowing the petitionerappellant to draw and disburse the pay and allowances of the staff of the school. By order dated 17.8.91 the Commissioner and Secretary, Education Department determined the seniority of 4th respondent and justified the order dated 7.6.90. The grounds for staying the operation of the order dated 14.8.91, inter alia, were that the order passed by the 2nd respondent on 7.6.90 which was ratified by order dated 14.8.91 was under challenge before this Court in Civil Rule No. 1184 of 1990. a This Court by order dated 2.7.90 in Civil Rule No.1 184 of 1990 passed order of status quo. The petitionerappellant had been holding the post of Principal, Bardoloni HS School and had been discharging his duties in the said school as Principal since 1.6.90. Petitionerappellant being senior to respondent No.4 as Graduate Teacher by more than 11 years wasentitled to hold the charge. Besides the petitionerappellant was older to 4th respondent by 14 years. The 4th respondent had already been holding the charge of Principal of another school namely, Sisi Chariali School. The petitionerappellant further alleged that since 1974 the seniority list of provincialised school teachers had not been prepared by the Government. No

select list of Principals, Head Masters, Vice Principal, Asstt Head Masters had been prepared as required under Rule 13 of the Rules. All actions taken by the Government were on ad hoc basis without application of Rules. In the absence of a select list clause 10 of the settlement dated 19.5.1989 was to be followed. Being aggrieved by the action of the respondents the petitionerappellant approached this Court by filing the writ petition.

3. The contentions of the petitionerappellant in the writ petition were that the orders dated 7.6.90 and 20.6.90 as well as the order of the Commissioner and Secretary 5th respondent dated 14.8.91 were passed mechanically. It was absolutely unreasonable and improper in the facts and circumstances of the case. The appellant was appointed and allowed to take the charge of Principal of the said school in conformity with the present policy of the Government of Assam and the appellant having all the requisite qualifications for appointment to the said post, respondents ought to have appointed the appellant as Principal. The 4th respondent was also not selected by the State Selection Board for the post of Principal and he was junior to the appellant and the claim of the appellant to the said post was much higher than that of 4th respondent. The appellant prayed before the learned Single Judge that the order dated 14.8.91 passed by the 5th respondent was beyond his scope and in passing the said order the 5th respondent exceeded his power and jurisdiction. The order dated 14.8.91 was passed by the 5th respondent behind the back of the appellant without giving any opportunity of hearing. Neither the appellant nor the 4th respondent being selected by the State Selection Board for the post of Principal and both having held their services on ad hoc basis, it was settled position of law that one ad hoc employee should not be replaced by another ad hoc employee. Although this point was specifically pleaded by the appellant in the writ petition and urged before the learned Single Judge, this aspect of the matter was not considered by the learned Single Judge. 4th respondent did not file any affidavit in opposition. Records were not produced by the concerned respondents. The Government in their affidavit admitted that the 4th respondent had been transferred and posted as Principal in Ghilamara HS School and again transferred to Sisi Chariali HS School and when the post of Principal of Bardoloni HS School fell vacant the 4th respondent was transferred to the said school as Principal by order dated 7.6.90. They supported the impugned order. The 1st respondent in the additional affidavit filed later further contended that since no select list of Vice Principal and Principal had been prepared as per the accepted practice and professed norm the post of Principal should be filled up by the senior most person of the school.

4. The appellant challenged the order of the learned Single Judge on the ground that the learned Single Judge failed to appreciate the facts and circumstances in its true perspective and illegally upheld the order dated 7.6.90 and 20.6.90 passed by the 2nd respondent without hearing the appellant and depriving him from his right of being heard. The order dated 14.8.91 was passed by the Commissioner and Secretary to the Government of Assam, Education Department 5th respondent without hearing the appellant and that too in

violation of the direction given by this Court. The orders dated 7.6.90 and 12.6.90 passed by the 2nd respondent and also the order dated 14.8.91 passed by the 5th respondent were discriminatory in nature inasmuch as similarly situated persons like that of the appellant were appointed as Principal in their respective schools and this fact having been clearly stated in the writ petition and the names of such similarly situated persons having been categorically mentioned, the learned Single Judge ought not to have passed the impugned judgment.

5. We have perused the order dated 14.8.90. In the said order the Commissioner and Secretary, Education Department found that Shri BC Chutia was holding the post of Assistant Head Master with effect from 21.8.77, Vice Principal with effect from 1.9.77 and Principal with effect from 22.2.85 in the said school while Shri Das had been holding the post of Assistant Teacher upto 18.5.88 and was allowed to officiate as Vice Principal of the school with effect from 19.5.88. On this basis the Commissioner found that Shri BC Chutia was senior to Shri GK Das (appellant) by virtue of cadre. Therefore, posting of Shri Das as Principal at Bardoloni Higher Secondary School was justified and hence the claim of the appellant for the post of Principal was rejected. .

6. We heard the parties.

7. It was admitted by the learned counsel for the parties that no service rules had been prepared by the Government. AH appointments were made on ad hoc basis. Appellant/petitioner in paragraph 13 of the writ petition stated that he was a member of the Assam Secondary Education Teachers' and Employees' Association like all the teachers of the Secondary Schools. The said Association raised various grievances relating to their conditions of service, pensionary benefits, filling up existing vacancies, appointment of senior teachers of schools as Headmaster/Assistant Headmaster till the list was finally prepared and promotion of senior teacher was made. After long persuasion the Government of Assam settled the disputes by entering into a Bipartite Agreement on 19.5.89. The said settlement was arrived at in presence of the Education Minister, Commissioner of Education, Joint Secretary Education. As per clause 10 of the said settlement it was agreed that the existing practice of giving promotion to the seniormost teacher in the cadre would continue till regular promotions were given after preparation of the seniority list. It was further agreed that the seniormost teacher would not be deprived of promotion by transferring persons from other schools. Clause 10 has been quoted in paragraph 13 of the writ petition. The said clause is extracted below:

"The State Selection Committee has already been entrusted to prepare a list of Principals, Vice Principals, Head Master, Assistant Head Master, Superintendent of High Madrasa in accordance with the service rules. In this connection instructions have been issued to the Inspectors of Schools to prepare seniority list on District basis. It is decided to continue the existing practice of promotion of the seniormost teacher in the cadre till regular promotion is given after

preparation of the seniority list, and it is also decided that the seniormost teacher would not be deprived of promotion by transferring other person from other schools, normally...."

8. In answering the averments made in paragraph 13 of the writ petition, respondent No.2 Director of Secondary Education, Assam in paragraph 4 of his affidavit in opposition has not denied the averments made by the appellant/petitioner in respect of the settlement arrived at by and between the Government and the Association of the teachers. Other respondents have not filed any affidavit in opposition and, therefore, this averment remains uncontroverted. In view of the above, we take the averments made in paragraph 13 of the writ petition as admitted.

9. From the record also it appears that the appellant/petitioner was senior in age as well as in service, but the respondents treated him as junior only on the ground that 4th respondent was allowed to officiate as Principal of Bardoloni HS School from 22.2.85 to 19.9.86 when the then Principal Shri C. Dutta was under suspension and at that time the appellant/petitioner was a teacher in the said school and thus respondents came to the conclusion that the 4th respondent was senior to him. In our opinion, this is not a correct approach in view of the terms of the agreement arrived at. As per the terms of the agreement the senior most teacher of school should be promoted. Merely because a person was allowed to hold the charge of Principal cannot be said to be a senior. Therefore, the conclusions arrived by the respondents in treating the 4th respondent as senior is not correct. With respect we hold that this aspect of the matter escaped the notice of the learned Single Judge. Accordingly, we disagree with the conclusion arrived at by the learned Single Judge.

10. As per the agreement referred to above, the professed norms was to give promotion to the senior most teacher of the school and his right should not be curtailed by appointing a person from another school. In the present case exactly this had happened. Therefore, the impugned order dated 14.8.91 (Annexure I) passed by the Commissioner and Secretary to the Government of Assam, Education Department appointing the 4th respondent Principal of Bardoloni Higher Secondary School cannot sustain in law.

11. In view of the above, we do not feel to go into other points raised by the learned counsel for the appellant. We, therefore, set aside the order and direct the State Government to make appointment of the Principal in terms of the Bipartite Agreement referred to above till Select List is prepared and in case the Select List has already been prepared, the appointment shall be made in accordance with the select list

In the facts and circumstances of the case we make no order as to costs.