
(2000) 08 GAU CK 0039
In the Gauhati High Court
Case No : Civil Rule No. 1600 of 1998

Gopal Deb Nath

APPELLANT

Vs

Assam Administrative Tribunal and Others

RESPONDENT

Date of Decision : 24-08-2000

Acts Referred:

Assam Elementary Education (Provincialisation) Rules, 1977 — Rule 3
Assam Elementary Education (Provincialisation) Services and Conduct Rules, 1981 — Rule 5
Constitution of India, 1950 — Article 372
Intermediate Education Regulation — Regulation 3(1)

Citation : (2001) 2 GLT 293

Hon'ble Judges : J.N. Sharma, J

Bench : Single Bench

Advocate : A.K. Phukan, G.K. Bhattacharjee, B. Chakraborty and B.C. Kalita, for the Appellant; G.A. and A.S. Choudhury, for the Respondent

Final Decision : Dismissed

Judgement

J.N.Sarma, J.—This writ application has been filed challenging the legality and validity of the judgment and order dated 11.3.98 passed by the. Assam Administrative Tribunal at Guwahati in case No. 12 ATA/94 holding that Respondent No. 2 (Mihir Ch. Sarkar) was senior to Petitioner and by the same judgment quashed the order allowing the Petitioner to hold the charges of the Headmaster of the Sishu Kalyan M.V. School.

2. The school i.e. Sishu Kalyan L.P. School was provincialised in the year 1973. The Petitioner was appointed as a regular teacher in the schoolty order dated 30.8.74 with effect from 1.1.74. The Petitioner passed Pre University Exariination in the year 1972.

3. The school i.e. Sishu Kalyan M.V.School was established and It was taken over by the Board, of Elementary Education on 27.8.75. Respondent No. 2 passcd HSLC examination in the year 1973. and he also passed Pre University

examination in the year 1980. Respondent No. 2 was initially appointed in the M.V. School by the managing committee on 24.3.75 and his appointment was regularised with effect from 1.4.77.

4. Both the schools were amalgamated with effect from 1.4.78 and one Amarendra Nath Chakraborty, the Head Pandit of the Sishu Kalyan L.P. School was allowed to act as Headmaster of the amalgamated M.V. School.

5. Both the Petitioner and Respondent No. 2 continue as Assistant Teacher in the same M.V. School. Respondent No. 2 applied for selection as Headmaster in the year 1990 and he was selected, but he could not be appointed as there is no vacancy in the said school. The Petitioner did not apply to be selected as Headmaster. The Petitioner applied for being selected in the year 1994 and he was selected and his name appeared at SI. No. 7. It is stated that Respondent No. 2 also applied, but he was not selected this time. Respondent No. 2 filed an appeal before the Assam Administrative Tribunal challenging the selection of the Petitioner and the said appeal was numbered as 12/ATA/94. By order dated 9.5.94 the appeal was disposed of and the matter was remitted back to the Director of Elementary Education to dispose of the matter afresh by passing a speaking order within 2 months. That order is dated 9.5.95. By order dated 15.7.94 the Respondent No. 3, the Director came to the decision that the Petitioner was senior to Respondent No. 2. Thereafter, on receipt of the order from Director, the Tribunal dismissed the appeal. The Petitioner was allowed to hold the charge of the Headmaster and he is continuing. Respondent No. 2 filed a writ application being C.R. 3913/94 before this Court challenging the order of the tribunal. This Court by order dated 10.9.96 disposed of the writ application and directed the tribunal to consider the matter afresh and the order of the Director was also quashed. The order appointing the Petitioner as Headmaster was also quashed. Against the judgment of the learned Single Judge, a writ appeal being W.A. 529/96 was filed and that writ appeal was disposed of by the Division Bench of this Court with the direction that the appeal be disposed of by the tribunal and also directed that status-quo as regards holding of the post by the Headmaster be maintained. Thereafter the matter was heard by the tribunal. Before the tribunal the Petitioner was Respondent No. 6 and by judgment dated 11.3.98 allowed the appeal. Hence this writ application.

6. The order of the tribunal is at page 39 of the writ application. The tribunal found that earlier the Respondent No. 2 was transferred as the In-charge Headmaster of Nabarun Middle School in the Kokrajhar District vice one Smti. Chaya Deb Nath, Assistant Teacher, who was transferred to the present school, but Shri Sarkar could not take over charge and that order was cancelled and Respondent No. 2 continued as Assistant teacher in the school.

7. Rule 5(a) of the Assam Elementary Education (Provincialisation) Service and Conduct Rules, 1981 provides as follows:

5. Promotion, (a) The post of Head Pandit shall be a promotion post.

Appointment to the posts shall be made on the basis of seniority-cum-efficiency of the recommendation of a sub-division selection committee to be constituted by the Director of Education.

8. There is also a Circular dated 30.8.86 issued by the authority, the context of that Circular finds place in para 5 of the judgment of the tribunal. It is not necessary to quote that circular as that aspect to the matter has been taken note of by the tribunal exhaustively. It was further found by the tribunal that in the year 1993 selection, the case of Respondent No. 2 was not considered by the selection committee as he was considered to be junior to Petitioner and as such the case which is made out in the writ application that he was not selected is not correct, as a matter of fact, his case was not at all considered. The contention of Respondent No. 2 before the tribunal was that the period of service of the Petitioner in the L.P. School from 1.4.74 to 31.3.78 cannot be counted towards seniority as teacher in the M.V. School as they belonged to two different cadres. The contention was that Respondent No. 2 became a teacher in the M.V. School from 1.4.77 and on the other hand, Petitioner became a teacher in the M.V. School from 1.4.78 i.e. after one year. The tribunal in order to determine the question took up in para 25 of the judgment the following points:

(i) Whether a teacher in L.P. School and the teacher in M.V. School belong to the same cadre or are equivalent?

(ii) Whether the entry qualifications in L.P. School and M.V. School and basic pay scales are same?

(iii) Whether the function of a teacher in L.P. School are same?

The tribunal found as follows:

That the function of M.V. School teacher are more onerous compared to that of an L.P. School teacher in terms of the varieties and standards of the subjects that are to be taught by them in the school and as such the tribunal came the finding that they do not belong to same cadre.

Other two aspects of the matter were not considered by the tribunal.

9. From Rule 3(iii)(a) of Assam Elementary Education (Provincialisation) Rules, 1977 provisions as follow:

3. (iii)(a) Matriculation/High School/School Leaving Certificate Examination or any other examination of equivalent standard shall be the minimum qualification for the post of teacher in lower primary and junior basic schools preference being given to candidates trained in senior basic, normal and junior basic training courses.

From the Rules of 1981 to which reference has been made already, the, minimum qualifications for the post of Elementary School shall be matriculation and elementary education covers both L.P. schools teachers as well as MV Schools teachers.

10. A bare perusal of this Rule will show that LP and MV schools are considered to be two different schools.

11. The tribunal having found that L.P. schools and MV schools teachers belonged to two different cadres held that Respondent No. 2 is senior to Petitioner and as such allowed the appeal and quashed the selection of the Petitioner. The pay scales also were different in the year 1978 as will be evident from a letter written on 26.11.97. That letter is quoted below:

GOVT OF ASSAM OFFICE OF THE DIRECTOR OF ELEMENTARY EDUCATION:
ASSAM No. EHA.488/97/150 Dt. Kaihilipara, the 26th Nov/97

To: The Registrar Assam Administrative Tribunal Guwahati. Sub:Report on M. Sarkar v. State of Assam case in 12ATA as directed by Hon"ble ATA.

Sir,

With reference to the subject cited above, I have the honidur to furnish the following information:

1 School Classes Qualification Pay Scales as 1978

L.P. I to IV Matriculation Rs; 240/- for untrained teacher and

Rs. 260/- for trained and intermediate teacher.

MV I to VII Intermediate Rs. 260/-

ME V to VII Intermediate Rs. 260/-

2. Whether considered equivalent:

A. LP and MV School cannot be considered equivalent, because the minimum qualification for joining MV School is Intermediate. Moreover, when an LP School merges with MV School it loses its original identity and becomes a full fledged MV School.

3. Whether there are instances of inter transfer?

A: LP School teacher may be transferred to MV school, but he will not teach beyond class IV in MV school. Similarly, MV school teacher may be transferred to LP school. However, there is no provision to transfer LP School teacher to MV school.

4. Seniority of teacher:

The seniority of a LP/MV/ME school teacher is determined by the date of joining against a regular vacancy in full time scale of pay. In case of dispute, the DEE, Assam has the final authority to decide the seniority of teacher in LP/MV/ME schools as per service conduct rules. Circular for H.M. promotion in ME/MV/etc. is enclosed for necessary information. Copy of service rule and ROP is enclosed for favour of information.

Yours faithfully Sd/-Illegible Director Elementary Education, Assam, Kahilipara,, Guwahati-29.

s 12. In the ROP Rules also it is found that the pay scales earlier were for junior (under graduate) teachers of High School/M.V. Schools/ME School it was Rs. 260/- to 425/- and in case of untrained teacher in LP school it was Rs. 240-380/-. In case of trained and intermediate teachers it was Rs. 260=425/- and when it was revised it was from Rs. 525-920/ - in case of MV/ME school teachers and in case of LP school trained and intermediate teacher it was Rs. 500/--875/- and in the case of untrained teacher it was Rs. 470-800/-. So, pay scales were also different, as indicated above.

13. Learned Counsel for Petitioners makes the following submissions:

- i) That the service of the Petitioner from 1.1.74 to 1.4.78 cannot be wiped out for determining seniority;
- ii) That ia the absence of any Rule to determine seniority after amalgamation, the only equity left to the authority in fixing the seniority by taking into accoimt the total length of service of the persons;
- iii) That when there is no criteria as fixed for fixing seniority, the seniority should be fixed in accordance with the date of birth in terms of the ckular dated 31.3.60 (Circular No. AAP 27 of 1950). The Petitioner is senior to Respondent No. 2 as such by virtue of his length of service.

Let us take up the points in seriatim.

14. First let us take up the first submission advanced by Mr. A.K. Phukan, learned Counsel for Petitioner. The circular is available in Handbook of general Circulars at page 96 and that is quoted below:

7. AAP 27/50, 31.3.1960.

7.1. If all the officers are promoted from a junior service their respective seniority in the former service isrto be refined and when the same batch consists of both promoted officers and direct recruits, the former are to gain seniority over the latter.

7.2 When none of the above criteria are available, the seniority should be fixed in accordance widi date of birth.

15. A bare perusal of feis circular will show that this circular cannot apply to the facts of the present case. So, the first contention of Mr. Phukan, learned Counsel shall stand rejected

16. The tribunal has rightly found that the LP school teachers and MV school teachers they belonged to two different cadres and as such when on amalagianation the LP school teachers will come to the cadre of MV school teachers, their seniority will be counted as MV school teachers only from the date of amalgamation and not earlier to it.

17. Mr. AK Phukan, learned Counsel for Petitioner places reliance on the following decisions:

1. Sudama Singh Vs. Nath Saran Singh and Others, wherein the apex Court laid down the law that when two persons are promoted on the same date in such a situation seniority among them has to be determined on the basis of age. That was the law laid down by the apex Court in view of Regulation 3(1)(b) in Chapter II of the regulation made under the Intermediate Education Act.

That case is of no help to resolve the present dispute.

2. Dr. Satyabrata Dutta Choudhury Vs. State of Assam and Others, That is a case with regard to determination of inter se seniority between the candidates whose appointment was regularised by the Service Commission in a batch. It was pointed out by the apex Court that seniority to be determined on the basis of the merit determined by the service commission.

This case also is of no help to the Petitioner.

3. Union of India (UOI) and Others Vs. Ansusekhar Guin and Others, That is a case with regard to fixation of seniority between direct recruits and promotees and there the apex Court pointed out that the determination of on the basis of length of continuous service followed by regular appointment to that grade in absence of service rules justified. The apex Court pointed out as follows:

The tribunal examined the matter at considerable length and came to hold that it would be equitable dispensation of justice to fix the inter se seniority between the direct recruits and the promotees on the basis of length of continuous service followed by regular appointment to that grade. Where apart of such continuous service in the grade followed by regular appointment was of ad-hoc or temporary nature and even in excess of the quota fixed, that period of service would also count for seniority subject, however, to the only condition that service would be that the appointment has been made on the basis of a regularly constituted selecting body and was not fortuitous nor out of turn.

This case is of no help to Petitioner.

4. State of Punjab and Others Vs. Balbir Singh and Others, That matter arose out of merger of two states and there the apex Court pointed out that in case of reorganisation of States it would be chaotic if the principles were to be applied in the case of reorganisation of States it would be chaotic if the principles were to be applied in the case of reorganisation of States in the same country In para 14 the law has down as follows:

14. On behalf of the Respondents reliance was placed upon the decisions of this Court in Rajvi Amar Singh Vs. The State of Rajasthan, and Rajkumar Narsingh Pratap Singh Deo Vs. State of Orissa and Another, Bose, J Delivering the judgment of the Court in the former case had said at page 1018 (of SCR) (at Page 230 of AIR):

Now it is well established that when one State is absorbed in Anr. , whether by accession, conquest merger or integration, all contracts of service between the prior Government and its servants automatically terminate and there after those who elect to serve in the new State, and are taken on by it, serve on such terms and conditions as the new State may choose to impose. This is nothing more, (though on a more exalted scale), than . an application of the principles that underlines the law of Master and Servant when there is a change of masters.

The said principles is not applicable to the case on hand as it is not a case of absorption of one State in Anr. by accession, conquest, merger or integration. It would be chaotic if this principle were to be applied to the case of re-organisation of States in the same country. In the case of Raj Kumar N.R Singh Deo (supra) a question arose as to whether the sanad granted by the ruler of Dhenkanal who was an absolute monarch and which State after independence of India came to be merged in the State of Orissa was a purely executive act or a law within the meaning of Article 372 of the Constitution. This Court decided that this was purely an executive act. The Orissa Government had discontinued the payment of the allowance under the sanad to the grantee. The action was upheld on the ground that the executive act of the ruler of Anr. sovereign State could not be binding on the Orissa, Government and that Government had full authority to discontinue the payment of the allowance. Indirectly the said decision of this Court supports the view which we have expressed above. We are, therefore, of the opinion that the impugned orders passed by the Government of the erstwhile State of Punjab continued to be the orders of the Governments of the concerned successor States until and unless they were modified changed or repudiated by them. Nothing of the kind was done by the new State of Punjab rather, by treating that order as valid and adopting it as its own, the new State of Punjab resisted the writ applications and pursued the matter in the Letters Patent Appeals and upto this Court in these appeals.

This case is also of no help to the Petitioner.

The case reported in Shri L. Chandrakishore Singh Vs. State of Manipur and Others, (Shri L. Chandrakishore Singh and Ors. v. State of Manipur and Ors.) is absolutely on a different footing and as such that case is of no help to the Petitioner.

18. Before I part with the record, I agree with the contention put forward by Mr. A.K. Phukan, learned Counsel for Petitioner that by amalgamating the schools, the service rendered by a person in the earlier school should not be wiped out in determining the seniority inasmuch as that will be inequitable and unjust. In the facts/situation as indicated above, I have no option, but to hold that as they belonged to two different cadres, the earlier service put up on a different cadre cannot be considered for seniority in the present cadre. It is really high time for the authority to come forward either by framing appropriate rule or by necessary administrative order/executive instruction to sort out the matter in order to avoid such heart burn/grievance in future because this sort of situation may also arise

infuture. But it is made clear that till that is done, the present state of things must hold the field.

19. In view of that matter, there is no merit in this writ application and the same stands dismissed. I leave the parties to bear their own costs.