

(2016) 09 GAU CK 0013
In the Gauhati High Court
Case No : WP(C) No. 2147 of 2015.

Hafiz Uddin Ansari - Petitioner @HASH State of Assam and Others

Date of Decision : 06-09-2016

Acts Referred:

Citation : (2016) 6 GauLJ 254 : (2017) 1 GauLR 352 : (2016) 4 GauLT 1051

Hon'ble Judges : Ujjal Bhuyan, J.

Bench : Single Bench

Advocate : Mr. K.K. Mahanta, Sr. Advocate, Mr. Kamaleswar Singha, Mr. K.M. Mahanta and Ms. P. Baruah, Advocates, for the Petitioners; Mr. A. Deka, SC, Education Department and D.N Bhattacharyya, Advocate, for the Respondents

Final Decision : Dismissed

Judgement

Until further order, Sri Anil Kumar Saikia, MA, B.Ed, Asstt. Teacher of Batadrava Sri Sri Sankardev H S School, District-Nagaon, is hereby allowed to hold the charge of Principal i/c of the same School along with financial power under F R 49 (C) to draw and disburse the salary etc. of the staff of School in addition to his normal duties as Assistant Teacher, vice Md Abdus Salam, Principal i/c is going to retire on 31.03.2015.

This is a purely temporary arrangement. This order will come into force w.e.f. 01.04.2015."

4. A perusal of the impugned order would go to show that as the then in-charge Principal of Sri Sri Sankardev Higher Secondary School, Batadrava (school), was going to retire on attaining the age of superannuation on 31.03.2015, petitioner was allowed to hold the charge of the office of Principal of the said school w.e.f. 01.04.2015, as a purely temporary arrangement. Impugned order reveals that respondent No. 5 is an Assistant Teacher of the school with MA, B.Ed degrees.

5. Petitioner has questioned the legality and validity of this order by contending that he had joined the school on 30.12.1994 as a Subject Teacher in English and is continuing as such since then. He possesses both MA and B.Ed. degrees. On the other hand, respondent No. 5 joined the school on 18.06.1988 as an

Assistant Teacher/Graduate Teacher with B.Sc. degree. He acquired B.Ed. while in service in the year 1989 and obtained MA degree in 2013 from the off-campus centre at Nagaon of the Institute of Advanced Studies in Education, a deemed university of Rajasthan. It is contended that MA degree obtained by respondent No. 5 from an off-campus centre of deemed university is not recognised. Therefore, the Director of Secondary Education committed an error in treating respondent No. 5 as possessing MA degree. MA degree of respondent No. 5 cannot be taken into consideration. Therefore, respondent No. 5 is ineligible to hold the post of Principal of Higher Secondary School, which has vitiated the impugned order dated 28.03.2015 and therefore, the same should be set aside.

6. This Court by order dated 10.04.2015 had issued notice and thereafter, passed order dated 08.03.2016, staying the impugned order dated 28.03.2015, further directing that the affairs of the school should be managed through the Inspector of Schools, Nagaon District Circle.

7. Though number of affidavits have been filed by the parties, attempt would be made to summarise the substance of the respective stand of the parties.

8. Respondent No. 3, i.e., Director of Secondary Education, Assam, in his affidavit has stated that respondent No. 5 acquired post-graduate degree from a deemed university, the genuineness of which is yet to be ascertained. Being the appointing authority, respondent No. 2 had entrusted the senior most teacher to be the In-charge Principal of the school. Though petitioner had made a faint attempt to project himself as being senior to respondent No. 5, the same has been negated by respondent No. 2 in his affidavit by stating that respondent No. 5 is the senior most teacher of the school. Government of Assam in the Higher Education Department had issued Office Memorandum (OM) dated 09.07.2012, banning the activities of off-campus centres of deemed universities in the State of Assam.

9. Respondent No. 5 in his affidavit has stated that he had obtained the B.Ed. degree in the year 2000 while on deputation and had obtained his MA degree by distance education mode from the Institute of Advanced Studies in Education, a deemed university in Rajasthan. The said university is recognised by the University Grants Commission (UGC). The course was undertaken by him through distance education mode, only the necessary fees etc. were deposited in the off-campus centre. It is stated that this Court in WP(C) Nos. 1741 of 2010 and 331 of 2011, had directed the State of Assam to recognise the B.Tech. degree obtained from the said university. The decision of the Single Bench was upheld by the Division Bench and the writ appeals filed by the State were dismissed. Since B.Tech. degree obtained from the said university is a valid degree in the State of Assam, there is no reason why MA degree obtained from the said university should not be recognised in the State.

10. In his additional affidavit, respondent No. 5 has stated that the deemed university is an approved deemed university in India as per communication of

Distance Education Council made in December 2011. Name of the deemed university appears in the list of approved universities compiled by the Distance Education Council. In another affidavit filed by respondent No. 5, he has stated that an advertisement was published on 22.06.2016 to fill up the post of Principal of the school on regular basis. Therefore, selection process for appointment of Principal of the school on regular basis has been initiated.

11. Petitioner has also filed a number of affidavits reiterating the stand taken in the writ petition and controverting the averments made by respondent No. 5.

12. Submissions made have been considered.

13. Assam Secondary Education (Provincialized) Service Rules, 2003, has been enacted to regulate recruitment and conditions of service of persons appointed to the Assam Secondary Education (Provincialized) Service. As per Rule 3, Assam Secondary Education (Provincialized) Service comprises of distinct and separate cadres broadly grouped together under 2 (two) heads, namely, Class-II (Senior) and Class - II (Junior). The cadre of Principal is included in Class-II (Senior), so also the cadre of Post-Graduate Teacher. On the other hand, the cadre of Graduate Teacher is included in Class-II (Junior). As per Rule 12, post of Principal in provincialized higher secondary schools shall be filled up by direct recruitment. Minimum qualification for appointment to the post of Principal is MA/M Sc./M Com. with B.Ed/BT degree from recognised university having uniformly good academic career. Both Post-Graduate Teacher and Graduate Teacher are eligible to be considered for appointment as Principal, the only difference being that, in case of Post-Graduate Teacher, a candidate must have rendered at least 15 years of service as Post-Graduate Teacher and in case of Graduate Teacher, a candidate must have 17 (seventeen) years of teaching experience as Graduate Teacher.

14. Therefore, from the above, it is evident that both the cadres of Post-Graduate Teacher and Graduate Teacher form the feeder cadre for direct recruitment to the post of Principal. Only difference is that in case of Graduate Teacher, one must have 17 (seventeen) years of teaching experience, whereas, in case of Post-Graduate Teacher, one must have 15 (fifteen) years of teaching experience. But for appointment to the post of Principal, a candidate must have the requisite educational qualifications as mentioned. This Court has held in a number of cases that even in case of temporary or In-charge appointment, a candidate must possess the requisite eligibility criteria.

15. Coming to the issue in hand, the impugned order has already been noticed above. Respondent No. 3, who is the author of the impugned order, has filed a somewhat contradictory affidavit, which discloses an ambivalent stand. On one hand, he says that genuineness of Post-Graduate (MA) degree obtained by respondent No. 5 from the deemed university is yet to be decided, but on the other hand, he says that being the appointing authority, he had put the senior most amongst the eligible teachers, as the In-charge Principal of the school. Be that as it may, respondent No. 3 being the author of the impugned order cannot

take a stand that the impugned order is not in accordance with law. He cannot criticize his own order. In other words, he cannot take a stand that the degree of respondent No. 5 is not a valid degree and therefore, respondent No. 5 is ineligible to hold the office of the Principal, even as a temporary measure.

16. In so far the MA degree of respondent No. 5 is concerned, it would be apposite to note that WP(C) Nos. 1741 of 2010 and 331 of 2011 were filed by a group of petitioners, who were Junior Engineers in the Public Works Department (PWD), Government of Assam. As per the service rules, once a Junior Engineer acquires B.Tech. degree, he would be eligible for consideration for promotion to the next higher post of Assistant Engineer. The said group of petitioners had subsequently obtained B.Tech. degree in Civil Engineering from the deemed university, while in service, from where respondent No. 5 has obtained the MA degree. As the B.Tech. degree obtained by those petitioners were not accepted by the Public Works Department (PWD) authority, the aforesaid 2 (two) writ petitions came to be filed. The writ petitions were allowed vide order dated 21.11.2011. One of the grounds on which the writ petitions were allowed was that Water Resources Department, Government of Assam, had already recognised the B.Tech. degree obtained from the said deemed university, pursuant to which, persons having such degree from the said deemed university were promoted in the Water Resources Department. Taking note of the above, Single Bench held that under the same Government, there cannot be 2 (two) different standards. Therefore, direction was issued to the State to consider the case of those petitioners for promotion by recognising the B.Tech. degree obtained by them from the deemed university.

17. This decision of the Single Bench was challenged by the State before the Division Bench by filing 2 (two) separate appeals, i.e., Writ Appeal Nos. 248 of 2012 and 249 of 2012. By order dated 30.01.2014, both the appeals filed by the State were dismissed, by upholding the decision of the Single Bench. In fact, the Division Bench used strong language by stating that the stand of the Department was dubious and untenable. It was stated that when Director of Technical Education, Assam, had approved the degree and other departments of the State had also approved the degree obtained from the said deemed university and granted promotions based thereon, it was untenable on the part of the Public Works Department (PWD) to take a different stand. Public Works Department (PWD), being a part of the Government of Assam, cannot take a divergent stand. If this is the view and decision of the Division Bench in respect of a technical degree like B.Tech degree, there cannot be any other view in respect of non-technical degree like MA degree since it is the pleaded case of respondent No. 5 that he had obtained the MA degree from the deemed university through distance education mode; only the fees etc. were paid through the off-campus centre, Guwahati, nothing more should be read into it. When the B.Tech degree conferred by the said deemed university has been accepted by the Water Resources Department, Government of Assam and by the Public Works Department (PWD) on the basis of the Court's order, there is no reason why the

MA degree conferred by the said deemed university should not be recognised as a valid degree. That apart, in the impugned order itself, the Director has made it abundantly clear that allowing respondent No. 5 to be the In-charge Principal of the school is a purely temporary arrangement, which would come to an end on appointment of a regular Principal. As noticed above, the process for appointment of regular Principal has been set in motion by issuance of advertisement dated 22.06.2016. In such circumstances, Court is of the considered opinion that it would neither be just nor proper to interfere in a completely temporary arrangement made by the Director of Secondary Education by allowing respondent No. 5 to be the Principal In-charge of the school till appointment is made on regular basis.

18. In view of above, Court finds no merit in the writ petition, which is accordingly dismissed. Interim order passed on 08.03.2016, stands vacated.