
(2016) 05 GAU CK 0056
In the Gauhati High Court
Case No : WP (C) No. 2869 of 2016

Himani Sutradhar

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 18-05-2016

Acts Referred:

Citation : (2016) 4 GauLJ 611 : (2016) 4 GauLR 541

Hon'ble Judges : Mr. Ajit Singh, C.J. and Mr. Suman Shyam, J.

Bench : Division Bench

Advocate : Mr. A.R. Sikdar, Learned Counsel, Mr. M.H. Talukdar and Ms. S. Parveen, Advocates, for the Appellant; Mr. S Saikia, learned Standing Counsel for Education Department, for the Respondent

Final Decision : Dismissed

Judgement

Ajit Singh, C.J. :- The petitioner claims herself to be a member of scheduled caste community. According to her, she was appointed on 26.12.1995 as Assistant Teacher in Braja Hari Musafir High School, District Cachar. Her appointment was made by the Managing Committee of that school. Later, the school was provincialised under provisions of the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011 (in short "Act, 2011"). In the result, the District Level Screening Committee considered the cases of Assistant Teachers working in the school for provincialisation of their services. But, since the petitioner was third additional Assistant Teacher and two others were senior to her, the services of petitioner could not be provincialised under the Act. Aggrieved, the petitioner has filed the present petition challenging the vires of the Act on the ground that it does not provide for reservation. The petitioner has also averred that she has wrongly been denied the benefit of Assam Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Act, 1978.

2. The Act, 2011 was enacted to provincialise the services of employees of the Venture Educational Institutions in the State of Assam and to restrict further

establishment of such educational institutions in the State. Section 3 of the Act specifies eligibility criteria for selection of educational institutions for provincialization of services of its employees; whereas Section 4 of the said Act provides that services of the employees of all eligible venture educational institutions under Section 3 shall be deemed to have been provincialised on the date of coming into force of this Act and they shall become employees of the State Government with effect from that date, provided such institutions have completed at least 7 years of imparting education from the date of affiliation, recognition, concurrence or permission, as the case may be, as on the date of coming into force of this Act. Section 4(2) stipulates that where the number of such employees serving in such venture educational institutions exceeds the number as specified in the Schedule, provincialization of services of the employees shall be on the basis of seniority in the respective category in the concerned educational institution. Further, Section 4(3) provides that services of teaching or non-teaching employees in the venture educational institutions upto higher secondary level shall be considered for provincialization, only if they have the requisite academic and professional qualifications prescribed by the relevant Rules at the time of their initial appointment. Thus, from a combined reading of Section 3 and Section 4 of the Act, it is clear that teaching and non-teaching staff are to be regularized, who were already in service on the appointed date, and as such, the services of those employees are only regularised subject to fulfilment of certain conditions as stipulated in Section 3 and 4 of the Act. Hence, it is not a fresh appointment. Therefore, the provision for keeping reservations for the Scheduled Castes and Scheduled Tribes is not applicable. Besides, by going with the intention of the makers of the legislature, it appears that the intent of the Act was to regularise the services of those employees, who were already in service, and to restrict the further establishment of venture educational institutions and not to directly appoint and fill up the vacancies in a particular school.

3. Further, Section 4 and 5 of the Assam Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Act, 1978 has clearly stipulated that reservation for filling up the vacancies is to be made in the case of direct recruitment as well as by way of promotion. Since the Act, 2011 neither provides for direct recruitment nor promotion, but merely provides for regularisation of services of the existing staff of a give school, the question of non-consideration of the provisions as enumerated in the Assam Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts), 1978 while framing the Act, 2011 does not arise.

4. Also merely because an Act does not provide for reservation of appointment on post in favour of any backward citizen, it cannot be declared ultra vires on the ground of violation of Article 16 of the Constitution.

5. We find no merit in the petition. It is accordingly dismissed.