
(2016) 06 GAU CK 0037

In the Gauhati High Court

Case No : W.P. (C) No. 6249 of 2014 and 3058 of 2015

Islam Uddin Kazi (MD.)

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 21-06-2016

Acts Referred:

Citation : (2016) 4 GauLJ 319 : (2016) 5 GauLR 616 : (2016) 3 GauLT 641

Hon'ble Judges : Mr. Arup Kumar Goswami, J.

Bench : Single Bench

Advocate : Ms. R. Choudhury, Advocate, for the Appellant; Mr. U.K. Goswami, Standing Counsel Education (Secondary) Department, Mr. A.K. Bhuyan, Standing Counsel, BTC, Mr. A. Motlib, G.A. and U.K. Das, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Arup Kumar Goswami, J. (Oral) - Heard Ms. R. Choudhury, learned counsel for the petitioners in both the writ petitions and Mr. U.K. Goswami, learned standing counsel, Secondary Education Department, appearing for the respondent Nos.1 and 2 in both the petitions. Also heard Mr. A.K. Bhuyan, learned standing counsel, BTC, appearing for the respondent No.3, Mr. A. Motlib, learned State counsel, appearing for the respondent No.4 in both the writ petitions and Mr. U.K. Das, learned counsel appearing for the respondent Nos.5 and 6 in WP(C) No.6249/2014. None appears for the respondent Nos.5 and 6 in WP(C) No.3058/2015, despite service of notice.

2. The petitioner in WP(C) No.6249/2014 is a Classical Teacher in Arabic subject in Bagulamari Anchalik High School, which is a mixed medium high school consisting of Assamese medium and Bodo medium. The petitioner in WP(C) No.3058/2015 is also a Classical Teacher in Arabic subject in Padma Ananda High School, which is also a mixed medium high school having Assamese medium as well as Bodo medium.

3. Ms. R. Choudhury, learned counsel for the petitioners, has submitted that in a

mixed medium high school, two posts of Classical Teachers are required to be provincialized as is done in case of two classes and five classes Assamese medium High Schools/High Madrassas in terms of the Notification dated 12.12.2012 issued by the Secretary to the Government of Assam, Education (Secondary) Department.

4. This submission is controverted by the learned counsel appearing for the respondents and they contend that the Notification dated 12.12.2012 is not applicable in connection with mixed medium schools and besides, the Schedule appended to the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 (for short, "2011 Act"), provides for provincialization of only one Classical Teacher only.

5. In reply, Ms. Choudhury has submitted that there are instances where two Classical Teachers had been provincialized and to illustrate the same, learned counsel has drawn the attention of the Court to paragraph 8 of the affidavit-in-reply filed in WP(C) No.6249/2014.

6. There is no dispute that the Schedule to the 2011 Act provides for maximum number of only one Classical Teacher, whose services shall be provincialized in respect of two classes and five classes High Schools and High Madrassas in a mixed medium school and, therefore, provisions of the 2011 Act certainly do not visualize provincialization of more than one Classical Teacher in a mixed medium school. The Notification dated 12.12.2012, which was issued in exercise of the powers conferred by Section 14 of the 2011 Act provides that two Classical Teachers in two classes and five classes Assamese medium High Schools and High Madrassas could be provincialized under Section 4(2) and 10(4) read with the Schedule of the 2011 Act. The Notification is applicable only in respect of Assamese medium High Schools/High Madrassas and, therefore, the said Notification cannot be applied in respect of mixed medium schools.

7. It is correct as contended by Ms. Choudhury that in certain schools, posts of two Classical Teachers had been provincialized but in the understanding of the Court, the same will not entitle the petitioners to a writ of mandamus to direct the respondents to provincialise two Classical Teachers in mixed medium High Schools.

8. 2011 Act and the Notification dated 12.12.2012 do not permit posts of two Classical Teachers to be provincialized in a mixed medium school.

9. Mere fact that authority had passed a particular order in the case of a particular individual similarly situated cannot be a ground for issuing a writ in favour of the petitioners on the plea of discrimination. The order in favour of the other person might be a valid and legal order or might not be. The Writ Court has to make an enquiry before the order can be directed to be followed in the case of the petitioners. If the order in favour of the other person is found to be contrary to law, such order cannot be the foundation of issuing a writ commanding the authorities to repeat the illegality.

10. The petitioners cannot claim parity with the Arabic Teachers, whose services were provincialised as second Classical Teachers, as Article 14 of the Constitution does not envisage negative equality. Article 14 of the Constitution has a positive concept and it is not meant to be used to perpetuate illegality or irregularity. If some other similarly situated persons had been granted some benefit inadvertently or by mistake, such order will not clothe the petitioners with any legal right for them to claim the same relief through the intervention of the Court.

11. Taking that view, I find no merit in the writ petitions and accordingly, the same are dismissed. No cost.