
(2008) 01 GAU CK 0045
In the Gauhati High Court

Jagabandhu Das

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 24-01-2008

Acts Referred:

Citation : (2008) 117 FLR 240 : (2009) 1 GLR 696 : (2008) 1 GLT 864

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—The petitioner who was appointed as Assistant Teacher (Graduate) on 20.02.80 has filed this writ petition claiming seniority over the respondent No. 6 who according to him was appointed as such on 02.01.81. By the impugned order, it is the respondent No. 6 who has been promoted as Assistant Headmaster of the School.

2. There is no dispute that the petitioner was appointed in the school called Binapani High School, Diphu in the District of Karbi Anglong by Annexure-2 order dated 05.01.80. His such appointment was by the Secretary of the Managing Committee of the school. Pursuant thereto, the petitioner joined the school on 20.02.80. According to the petitioner, at the time of joining the school by him, there were only two other teachers excluding the respondent No. 6.

3. The appointment of the petitioner was approved by the Inspector of Schools by his order dated 15.11.80 (Annexure-3). It will be appropriate to mention here that although in the order according approval of appointment, only three teachers were indicated including the petitioner, but from the endorsement made to the school authority it appears that there were some other teachers whose appointments could not be approved in absence of their original academic certificates. This will go to show that as against the plea of the petitioner at the time of joining the school, there were only two other teachers, in fact, there were some other teachers which according to the respondents also included the

respondent No. 6.

4. By Annexure-4 order dated 18.11.81 passed by the Secretary-cum-Headmaster of the school, approval accorded by the Inspector of Schools for the appointment of the seven teachers including the petitioner and the respondent No. 6 was conveyed. While the date of approval of the petitioner was indicated as 20.02.80, such approval in respect of the respondent No. 6 was indicated as 02.01.81.

5. The school was provincialized w.e.f. 01.01.85 and by Annexure-5 order dated 19.02.85. The teaching and non-teaching staff of the school as indicated in the order were allowed to continue in their services and posts w.e.f. 01.01.85. The order was issued by the Inspector of Schools. In the order, the petitioner and the respondent No. 6 were shown in the basic scale of Rs. 620/- to 1325/-. While the petitioner was included at serial No. 3, the respondent No. 6 was included in at serial No. 6. However, the order did not speak of assignment of posts on the basis of seniority.

6. By Annexure-6 order dated 27.05.91, the respondent No. 6 was allowed to draw the arrear salary upon provincialisation of the school w.e.f. 02.01.81. However, there is no indication as to from which date the petitioner was allowed to draw the arrear salary. By Annexure-8 order dated 02.08.05, the petitioner was allowed to look after the school in absence of the Headmaster who had gone on leave for the period from 06.07.05 to 27.07.05.

7. On the basis of the above materials, it is the case of the petitioner that since he had joined the school on 20.02.80 as against the respondent No. 6 who had joined the school on 21.01.81, he is senior to him and accordingly he ought to have been promoted instead of promoting the said respondent No. 6 by the impugned order dated 26.05.06 (Annexure-11).

8. The respondents have denied the claim of the petitioner that he is senior to the respondent No. 6. Both the officials as well as the private respondents have contended that in fact, the respondent No. 6 was appointed in the school w.e.f. 16.10.79 and his subsequent appointment w.e.f. 02.01.81 against the post sanctioned was in continuation of his earlier service and that there being no break in service, his seniority has been counted from 16.10.79. According to the respondents, the approval for appointment of the respondent No. 6 w.e.f. 02.01.81 was only in respect of a particular post, which cannot obliterate his earlier period of service w.e.f. 16.10.79. Further case of the respondents is that the respondent No. 6 has been promoted strictly following the recruitment rules which provided for filling up of the promotional post on the basis of school wise seniority list of Assistant Teachers and on recommendation of the State Selection Board. This aspect of the matter finds mention in paragraph 10 of the affidavit in opposition filed by the official respondents to which there is no denial on the part of the petitioner by filing any affidavit in reply.

9. In the affidavit in opposition filed by the respondent No. 6, he has annexed

the copy of the appointment order dated 16.10.79 issued by the Secretary of the Managing Committee of the School. His such appointment was as per the resolution adopted by the Managing Committee of the School on 14.10.79. A copy of the order was forwarded to the Inspector of Schools. Thereafter, the respondent No. 6 was again appointed as Assistant Teacher against the particular post w.e.f. 02.01.81 by Annexure 2 order dated 23.01.81. This appointment was in continuation of the earlier appointment which is amply evident from the fact that the respondent No. 6 was appointed with retrospective effect, i.e. from 02.01.81.

10. In the affidavit in reply filed by the petitioner in response to the affidavit in opposition filed by the respondent No. 6, he has reiterated the plea raised in the writ petition. In paragraph-6 of the reply affidavit, the petitioner has contended that since the respondent No. 6 was appointed afresh by order dated 23.01.81 and as per own statement of the respondent No. 6, he continued in his earlier service upto 01.01.81, there was break in service. However, as stated above, the appointment of the respondent No. 6 by order dated 23.01.81 was with retrospective effect, i.e. 02.01.81. Thus, there is no dispute that the respondent No. 6 continued in his service without any break from the initial date of appointment on 16.10.79.

11. The respondents were directed to produce the records and the same have been produced during the course of hearing. Even otherwise also, they have annexed the relevant documents in their additional affidavit. According to the respondents, it is not correct to say that there were only two other teachers in the school at the time of joining of the petitioner. As per the additional affidavit, the respondent No. 6 was very much in the school at the time of joining of the petitioner. They have indicated the names of six teachers. By letter dated 30.10.80 approval of the Inspector of Schools in respect of their appointments was sought for. The respondents have also annexed certain other documents in additional affidavit which in fact show that the respondent No. 6 joined his service on 16.10.79 as against the date of joining of the petitioner on 20.02.80. They have also annexed the documents to show that drawal of salary by the respondent No. 6 was prior to the petitioner.

12. Mr. D.C. Borah, learned Counsel for the petitioner forcefully argued that the respondent No. 6 having been appointed w.e.f. 02.01.81, he can not be said to be senior to the petitioner who was appointed prior in point of time, i.e. 20.02.80. On the other hand, both Mr. A.K. Goswami, learned Sr. counsel and Standing counsel, Karbi Anglong Autonomous Council and Mr. B.D. Das, learned Counsel representing the respondent No. 6 have argued that the continuous service rendered by the respondent No. 6 in the school w.e.f. 16.10.79 cannot be ignored merely because the respondent No. 6 was appointed against the particular post w.e.f. 02.01.81 by order dated 23.01.81, but for which he would have continued in the same capacity like that of the petitioner. They have also argued that as per the rules of seniority, it is the continuous service which is the

key in the matter of determination of seniority.

13. I have given my anxious consideration to the submissions made by the learned Counsel for the parties and the materials on record. As indicated above, it is not correct to say that at the time of joining the school by the petitioner there were only two other teachers in the school. Annexure-3 order dated 15.11.80 on which the petitioner has placed reliance itself indicates that there were other teachers in the school whose appointments could not be approved in absence of the certificates in original. It is nobody's case that the appointments of other teachers could never be approved in absence of original certificate and/or that those teachers never produced the original certificates. If the respondent No. 6 was appointed on 16.10.79 there can not be any reasons as to why his seniority should not be counted from that date. It is his definite case that he continued in his service on the basis of appointment made by the Managing Committee of the School like that of the petitioner w.e.f. 16.10.79 to 02.01.81 and even thereafter he was appointed in the school against the particular post w.e.f. 02.01.81 by order dated 23.01.81. Diluting the claim of the petitioner that the respondent No. 6 came into existence in the school only w.e.f. 02.01.81, the respondents have furnished enough materials to show that the said respondent was part and parcel to the school even prior to 02.01.81 and in fact, he was appointed by the Managing Committee on 16.10.79. If the respondent No. 6 joined the school on 16.10.79 and continued uninterruptedly irrespective of the subsequent order dated 23.01.81, unless any contrary order is passed, he cannot lose his seniority from the initial date of appointment.

14. As per the Rule 13 of the Assam Secondary Education (provincialisation) Service Rules, 1982, the inter-se-seniority of the existing employees shall be determined in relation to the date of continuous appointment; date of joining and date of birth. The continuous appointment of the respondent No. 6 being w.e.f. 16.10.79, he is entitled to count his seniority from that date and not any other date. Rule 2(h) of the same Rules defines "period of service" as the "period of continuous service from the date of appointment". The Division Bench of this Court in the case reported in (1988) 2 GLR 17 (Nipen Kalita v. State of Assam and Ors.), held that the date of joining of the school even before the provincialisation of school is the factor towards determination of inter se seniority. In the instant case also, the respondent No. 6 having joined the school prior in point of time than that of the petitioner, the respondents have rightly counted his seniority above the petitioner.

15. Apart from the above, the impugned order dated 26.05.06 (Annexure-11) by which the respondent No. 6 has been promoted as Assistant Headmaster of the School does not indicate that the same is temporary and/or by way of any stop-gap arrangement. In this connection the statement made in paragraph-10 of the counter affidavit filed by the official respondents is relevant. This aspect of the matter has been discussed above. In the said paragraph, it is the categorical stand of the respondents that the impugned order has been passed following the

procedure laid down for promotion. The basis for promotion from amongst the senior teachers of the school is to conduct the selection by the Selection Board on the basis of the annual confidential report and teaching experience etc. According to the official respondents, the respondent No. 6 has been promoted following the said criteria to which there is no denial on the part of the petitioner, as noted above. Even otherwise also, once it is held that the respondent No. 6 is senior to the petitioner, in absence of any adverse materials and pleading to that effect, the promotion of the respondent No. 6 cannot be interfered with. In view of the above, I do not find any merit in the writ petition and accordingly, it is dismissed leaving the parties to bear their own costs.