
(2021) 08 GAU CK 0022

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 2339 Of 2021

Jahirul Islam

APPELLANT

Vs

State Of Assam And 5 Ors

RESPONDENT

Date of Decision : 06-08-2021

Acts Referred:

Assam Venture Educational Institutions (Provincialisation Of Services) Act, 2011 —
Section 4

Citation : (2021) 08 GAU CK 0022

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : H R A Choudhury

Final Decision : Disposed Of

Judgement

1. Heard Mr. H R A Choudhury, learned senior counsel for the petitioner. Also heard Mr. K Gogoi, learned counsel for the respondents no. 1 and 2

being the authorities under the Higher Education Department, Government of Assam

2. Considering the nature of the order proposed to be passed and as well as taking note of a subsequent order by the Director of Higher Education,

Assam, we deem it appropriate that the notices need to be issued to the respondents no. 3, 4, 5 and 6 for the present.

3. The petitioner Jahirul Islam was appointed as a Grade-IV employee (office staff) in the Rajiv Gandhi Memorial College, Lengtisinga as per

resolution no. 6 dated 01.08.1993 of the Governing Body of the college and since then the petitioner has been working as such. When the case of

provincialising the services of non-teaching staff of Rajiv Gandhi Memorial College was undertaken under the Assam Venture Educational Institutions

(Provincialisation of Services) Act, 2011 (in short Act of 2011), the services of respondents no. 5 and 6 namely Soiful Islam and Shahil Rana were

provincialised. Being aggrieved with the provincialisation of respondents no. 5 and 6, the petitioner had instituted WP(C) 1463/2014. The writ petition

was given a final consideration by the order dated 19.02.2015 wherein the following order as extracted below was passed:

“I am of the view that both the writ petitions do not survive for consideration and are, accordingly, disposed of by directing the Director of

Higher Education Department of Assam to provincialise the service of the petitioner (Jahirul Islam) against the post of Grade-IV in Rajiv Gandhi

Memorial College, Lengtisinga, Bongaigaon district. The exercise shall be completed within one month from the date of receipt of this order. In so far

as the fixation of the inter-se-seniority among the petitioner and the private respondents is concerned, the respondent authorities shall fix them in

accordance with Section 4 of the Assam Venture Educational Institutions (Provincialisation of services) Act, 2011 as amended from time to time. It is

made clear that the provincialisation of the petitioner (Jahirul Islam) shall take effect from the date when the services of the respondent Nos. 5 and 6

(Saiful Islam and Shahil Rana) were provincialised.”

5. A reading of the order dated 19.02.2014 goes to show that there was a direction to provincialise the service of the writ petitioner as a Grade-IV

employee in the Rajiv Gandhi Memorial College, Lengtisinga and in doing so, the inter-se seniority of the petitioner vis-à-vis of the private

respondents therein i.e. the respondents no. 5 and 6 herein namely Soiful Islam and Shahil Rana would be fixed in accordance with Section 4 of the

Act of 2011. It was further made clear that the provincialisation of the petitioner shall take effect from the date when the services of the respondents

no. 5 and 6 namely Soiful Islam and Shahil Rana were provincialised.

6. This writ petition is instituted with the following prayers:

“Under the circumstance, it is prayed that Your Lordships may be pleased to admit this petition, call for the records, issue a Rule calling

upon the Respondents to show cause as to why a writ of Certiorari shall not be issued setting aside and quashing the impugned order dated

20-01-2014, in respect of provincialisation of services of private Respondent Nos. 5 & 6 as Grade-IV employees in Rajiv Gandhi Memorial

College, Lengtisinga, Abhayapuri in the district of Bongaigaon, Assam;

-AND-

Why a writ in the nature of Mandamus and/or any other appropriate writ, order or direction of like nature shall not be issued commanding

the Respondents from not to give effect to the impugned order dated 20.01.2014 in respect of provincialisation of services of the private

Respondent Nos. 5 and 6 in the aforesaid college;

-AND-

Why a writ in the nature of Mandamus and/or any other appropriate writ, order or direction of like nature shall not be issued directing the

respondent authorities to provincialise the service of the petitioner as a Grade-IV employee in the said College with effect from the date

when the services of the Respondent Nos. 5 and 6 were provincialised with all service benefits as per the direction of this Honâ??ble Court

vide order dated 19.02.2015 passed in W.P (C) No. 1463/2014;

-AND-

Why a writ in the nature of Mandamus and/or any other appropriate order or direction of like nature shall not be issued upon the

Respondent Authorities to compensate the loss suffered by the petitioner because of their sheer negligence in carrying out the directions of

this Honâ??ble Court vide order dated 19.02.2015 passed in W.P (C) No. 1463/2014;

-AND-

Upon hearing the parties be pleased to make the Rule absolute giving full and complete relief to the petitioner and/or pass such other or

further, order or orders as Your lordships may deem fit and proper.

-AND-

Interim Relief:

Pending disposal of the writ petition, the impugned order dated 20.01.2014, in respect of provincialisation of services of Respondent Nos. 5

and 6 as Grade-IV employees in Rajiv Gandhi Memorial College, Lengtisinga, Abhayapuri in the district of Bongaigaon, Assam, may kindly

be kept in abeyance in the interest of justice.

And for this act of kindness the petitioner as in duty bound shall even pray.â??

7. The first and second prayers apparently seek for quashing of the order dated 20.01.2014 by which the respondents no. 5 and 6 were provincialised.

8. We are of the prima facie view that under the law, first and second prayers would not be maintainable in the present writ petition in view of the

aspect that the provincialisation of the respondents no. 5 and 6 by the order dated 20.01.2014 was also an issue in WP(C) 1463/2014 and this Court by

taking note of such issue had provided that the service of the petitioner be provincialised and in doing so, his seniority be fixed with that of the

respondent respondents no. 5 and 6 and also be given its effect from the date from which the services of the respondents no. 5 and 6 were

provincialised. It would be impermissible under the law to allow the petitioner to raise the issue in a subsequent writ petition, which would be barred by

the principle of constructive res judicata. As regards the third prayer for a writ in the nature of mandamus seeking a direction to the respondent

authorities to provincialise the service of the petitioner with effect from the date when the service of the respondents no. 5 and 6 were provincialised,

by taking a strict technical view, even the said prayer would not be maintainable in view of the principle of res judicata inasmuch the said relief was

already granted to the petitioner by the order dated 19.02.2015 in WP(C) 1463/2014.

9. Be that as it may, without going into such aspects, we have taken note of that by the order dated 05.08.2021 of the Director of Higher Education,

Assam the service of the petitioner has been provincialised as a Grade-IV employee in the Rajiv Gandhi Memorial College under the Assam

Education (Provincialisation of Services of Non-teaching staff of Venture Educational Institutions) Act, 2018 (in short Act of 2018) at a fixed salary of

Rs.8700/- per month with effect from 01.01.2021.

10. We have taken note that by provincialising the service of the petitioner with effect from 01.01.2021, the requirement of the earlier order dated

19.02.2015 in WP(C) 1463/2014 had not been duly followed to the extent that there was also a direction to fix the inter-se seniority of the petitioner

vis-À-vis the respondents no. 5 and 6 and further the effect of provincialisation be given to the petitioner from the date when the service of the

respondents no. 5 and 6 were provincialised.

11. We have taken note that the earlier direction to fix the inter-se seniority of the petitioner vis-à-vis the respondents no. 5 and 6 was directed to be

done in accordance with Section 4 of the Act of 2011. We are aware of the fact that by a subsequent judgment dated 23.09.2016 in WP(C)

3190/2012, the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 had been declared to be ultra vires.

12. Though the respondents intend to take a stand that the said direction cannot be complied with as the Act of 2011 itself is no more and therefore,

the petitioner was provincialised under the Act of 2018 with effect from 01.01.2021 but it cannot be overlooked that there was a specific direction of

this Court on 19.02.2015 itself that the inter-se seniority of the petitioner vis-à-vis the respondents no. 5 and 6 would be fixed in accordance with

Section 4 of the Act of 2011 and when that order was passed, the Act of 2011 was very much in force. A further direction was also there that

whatever benefit of provincialisation is given to the petitioner the same shall be with effect from the date when the services of the respondents no. 5

and 6 were provincialised. A clear, distinct and subsisting legal right goes in favour of the petitioner in terms of the provisions of the order dated

19.02.2015 in WP(C) 1463/2014, but as submitted by Mr. H R A Choudhury, learned senior counsel for the petitioner the order dated 05.08.2021 of

the Director of Higher Education, Assam do not take note of the said legal right that had accrued to the petitioner in terms of the order dated

19.02.2015 in WP(C) 1463/2015.

13. In view of the factual situation that the service of the petitioner had been provincialised by the order dated 05.08.2021 of the Director of Higher

Education, Assam in the manner as required in the order dated 19.02.2015 in WP(C) 1463/2014, we close this writ petition in view of what has been

noticed and recorded herein above but at the same time with a liberty to the petitioner to claim for his legal right to be provincialised with effect from

when the services of the respondents no. 5 and 6 were provincialised as observed and provided in the earlier order dated 19.02.2015 in WP(C)

1463/2014.

14. Writ petition stands closed in the above terms.

15. The order dated 05.08.2021 be kept on record.