
(2019) 07 GAU CK 0061

In the Gauhati High Court

Case No : Writ Petition (C) No. 5894 Of 2016

Jamal Uddin Rajbarbhuiya

APPELLANT

Vs

State Of Assam And 5 Ors

RESPONDENT

Date of Decision : 31-07-2019

Acts Referred:

Citation : (2019) 07 GAU CK 0061

Hon'ble Judges : N. Kotiswar Singh, J

Bench : Single Bench

Advocate : A Ahmed

Final Decision : Disposed Off

Judgement

1. Heard Mr. T.J. Mahanta, learned senior counsel assisted by Mr. JUNN Laskar, learned counsel for the petitioner. Also heard Mr. J. Abedin, learned Standing Counsel, Secondary Education, Mr. S.R. Baruah, learned Government Advocate, Assam, Mr. A.H.M.R. Choudhury, learned counsel for Respondent No.5 and Mr. J. Laskar, learned counsel for Respondent No.6.

2. The matter is taken up for disposal as no affidavit has been filed by the Respondent State in the matter. Considering the nature of the dispute, this Court is of the view that no more time is required to be granted to the Respondent State to file affidavit. The same can be disposed of on the basis of the materials available on record.

3. The claim of the petitioner is that the petitioner was initially appointed as an Assistant Teacher in Hatirchar High School. On the basis of the claim made by the petitioner, the case of the petitioner was duly considered for provincialisation. There was a counter claim by Respondent No.6 for provincialisation on the same basis. As the case of the petitioner was not considered by the competent authority, the petitioner filed Writ Petition (C) No.1818/2013, which was disposed of with direction to the petitioner to raise objection about the claim of the Respondent No.6 following due procedure for regularization of the services of the

petitioner and the authorities shall consider the objection of the petitioner in accordance with law.

4. Pursuant to the said direction of this Court, the petitioner duly raised his objection and in the meantime, the Inspector of Schools made an enquiry which was submitted to the Director of Education vide letter dated 22.04.2016, in which the Inspector of Schools made an observation that the claim of the petitioner for provincialization as Assistant Teacher is genuine and he can be provincialized against the post of Assistant Teacher (Arts) in the said school. As regards the claim of Respondent No.6, the Inspector of Schools also found on verification of record that no trace has been found in the teacher attendance register of the school in the year 2010 originally submitted to the office of the presence of Respondent No.6. It was also mentioned by the Inspector of Schools that from the information received under RTI, it is revealed that the Respondent No.6 was in a foreign country at Riyadh K.S.A. from 2008 to 2011. In that view of the matter, the Inspector of Schools did not recommend the claim of the Respondent No.6. However, in the impugned order of the Director of Secondary Education dated 18.8.2016, it has been stated that on perusal of the copy of the appointment letter of the petitioner, it was found to be doubtful and on the other hand, it was found that Respondent No.6 was recommended by the District Level Scrutiny Committee and, accordingly, rejected the claim of the petitioner for provincialization.

5. Having heard the learned counsel for the petitioners and on perusal of the materials on record, this Court is of the view that the said report submitted by the Inspector of Schools to the Director of Secondary Education, Assam on 22.4.2016 is contrary to the recommendation made by the Director of Secondary Education, Assam, in his impugned order dated 18.8.2016. In-fact, it can be seen from the report of the Inspector of Schools that he had recommended the petitioner for provincialization and not that of the said Respondent No.6.

6. Accordingly, the impugned order dated 18.8.2016 is set aside with further direction to the Director of Secondary Education to pass fresh orders taking into consideration the report of the Inspector of Schools dated 22.4.2016 and the exercise in this behalf shall be undertaken and completed within a period of two months from the date of receipt of a certified copy of this order.

7. The writ petition stands disposed of.