
(2011) 10 GAU CK 0008

In the Gauhati High Court

Case No : Writ Petition (Civil) No.(Sh) 120 of 2011

John Pajeellard K.Marak

APPELLANT

Vs

State of Meghalaya & Ors.

RESPONDENT

Date of Decision : 27-10-2011

Acts Referred:

Citation : (2011) 5 GLT 423

Hon'ble Judges : S.C.Das, J

Bench : Single Bench

Advocate : Advocates appeared for the Petitioner: Ms. A. Paul, Ms. K. Paul, Mr. S. Thapa & Ms. N. Singh, Advocates appeared for the Respondents: Mr.M. D. Chullai, Mr. R. Kar & Mr. S.G Momin, Advocates appearing for Parties

Judgement

S.C. Das, J.—In this writ petition, the petitioner challenged the appointment of respondent (hereunder mentioned as "R") No.7 as Principal by R 5 on 23.10.10 which was subsequently approved by R4 vide Office memo No. SDG/MC/DF26/2010 dated 02.03.11 (Annexure7 to the writ petition). The petitioner also challenged the order No. SSS/MCSecy/F07/2010/93dated 06.04.11 issued by R 6 reverting/demoting the petitioner to the post of Assistant Teacher (hereunder mentioned as AT) from the post of Vice Principal (hereunder mentioned as VP).

2. I have heard the learned Advocate Ms. A. Paul for the writ petitioner. Also heard learned senior GA. Mr. N. D. Chullai for respondent Nos. 1,2,3 & 4, learned Advocate Mr. R. K.ar for respondent Nos. 5 & 6 and Mr. S .G Momin, learned counsel for respondent No. 7. Brief pleadings of the parties:

3.1. It is interalia stated by the petitioner that he was appointed as AT on 12.04.86 in Selsella Higher Secondary School, Tura, which was previously named as Selsella Deficit Secondary School, at the time when he was appointed and the appointment letter has been marked as Annexure (hereunder mentioned as "A")1.

3.2. He has/had been performing his duties with all sincerity and devotion and

the authority being satisfied, appointed him as VP of the Selsella Higher Secondary School (hereunder mentioned as "School"), Tura on 13.08.05. A copy of the resolution of the Managing Committee (hereunder mentioned as MC) dated 13.08.05, annexed as A2 to the writ petition.

3.3. R7 was also appointed as AT on 02.06.90 and he was also serving in the same capacity from that day (A3).

3.4 The petitioner passed MA in English from North Eastern Hill University (NEHU), Tura Campus, in the year 2000 and also completed the orientation course by the Centre of Cultural Research and Training. He enrolled for B.Ed programme conducted by IGNOU and completed First Year. Copies of mark sheet has been annexed as A4 series to the writ petition.

3.5 One K.K. Pathak, Principal of the School retired on 31.03.10 and thereafter another Abu Malik Sheikh was principal incharge of the school w.e.f. 01.04.10 and he continued till 11.12.10, but had to resign from the post due to pressure from R6 and thereafter the post of Principal is lying vacant. There is no advertisement inviting application for filling up of the post as per provision prescribed in Rule 5 of the amended Assam Aided High and Higher Secondary School Employees Rule, 1965 (hereunder mentioned as "Rules, 1965"). Violating all the provisions of the said Rule, R7 is appointed as Principal on 23.02.10 by R5.

3.6 Immediately thereafter the petitioner submitted representation to R3 and R4 seeking redressal in respect of appointment of R7 as Principal of the school which was approved by R 4 vide Memo No. SWG/MC/DF26/2010 dated 02.03.11 (A7 to the writ petition). It is further stated that he did not receive any response but received order No. SSS/MCSecy/F07/2010.93 issued by R6 relieving him from the post of VP and reduced him to the original rank of AT without assigning any reason (A8 to the writ petition).

3.7. The petitioner felt highly aggrieved by the Memo dated 02.03.11 and order dated 06.04.11 (A7 and A8) and he submitted representation to R4 seeking redressal of his grievance but received no positive response. The petitioner therefore, submitted that he has been appointed long before appointment of R7 in the post of AT and that he has also served as VP for more than 5 years and that his service career is without any sort of blemish and that he has been deprived of legitimate claim of being appointed as Principal of the school. He has also stated that the respondents appointed R7 as Principal illegally and arbitrarily without following the procedure prescribed in Rule 5 of the Rules, 1965. He has further stated that he is holding Master Degree in English and having teaching experience more than R7 and therefore appointment of R7 as Principal depriving him is illegal, arbitrary and unconstitutional and should be set aside and quashed. He has further submitted that he has been relieved from the post of VP and reduced to his original rank as AT without assigning any reason and affording any opportunity of hearing which is violative of principle of natural justice and therefore that order is liable to be set aside and quashed. He has also alleged

that the act of the respondent is actuated by malafide and as such calls for interference and the respondent illegal and arbitrarily under colourable exercise of power, appointed R7 as Principal against public interest and against settled principle of law. He has therefore prayed for setting aside and quashing the memo dated 02.03.11 and order dated 06.04.11 (A7 and A8) annexed to the writ petition.

4. On behalf of the respondent Nos. 1,2,3 and 4, R4 submitted an affidavit in opposition inter alia stating in pursuance of letter dated 01.03.11 issued by the Additional Director of School Education and Literacy Tura, he has directed the Secretary of the School to issue appointment/promotion order to R4 as Head master/Principal of the school by his letter dated 02.03.11. He has enclosed letter of Additional Director dated 01.03.11 and his letter dated 02.03.11 as A1 and A2 to his affidavit in opposition. It is further stated that both the petitioner and R7 claimed for the post of Principal vide their letter dated 10.02.11 and 24.02.2011 and he sought for clarification from Additional Director of School Education and Literacy enclosing all the academic certificates of both the teachers and the Additional Director of School Education and Literacy (R3) has given her clarification for appointment of R7 as Principal for the reasons that R7 has done Bachelor of Arts (B.A) before the petitioner and that R7 also had B.Ed degree and based on the clarification given by R3, he has given instruction to the Secretary of the school to appoint R7 as Principal. It is also stated that the petitioner claimed to have passed M.A. in English from NEHU, Tura Campus. The mark sheets produced by him before this Court is not showing that he has passed MA and to avoid confusion, he has written a letter dated 21.06.11 to Deputy Registrar (Examination), NEHU, Tura but the reply of the Deputy Registrar is waiting. It is also stated that there is no post of VP in the unamalgamated Government Secondary School and such post is only available in amalgamated secondary school and as such the claim of the petitioner to the post of VP is not justified. Finally it is stated that R7 is more qualified for the post of Principal than the petitioner and accordingly R7 has been appointed as Principal as per the recommendation/clarification made by the R3. The writ petition therefore is not maintainable and liable to be dismissed.

5. On behalf of Respondent Nos. 5 and 6, an affidavit in opposition is submitted by R6 contending inter alia that there was nothing wrong done by the respondents as the appointment/promotion to the post of Principal of R7 is only as per direction of the Education Department of the Government of Meghalaya. It is also stated that the MC designated the petitioner as VP of the school but such designation is not approved/sanctioned by the Inspector of School (I.S.) on the ground that it is an unamalgamated school and there exist no post of VP and therefore the petitioner was accommodated in his original post which was not at all demotion in rank. It is further stated that the claim of the petitioner that he has passed MA in English, is shrouded with suspicion as the mark sheet enclosed as R4 series to the writ petition was contrary to that of the mark sheet submitted to the Principal (A1 to A4 to the affidavit in opposition) and therefore, the

Principal of the School on 31.05.11 requested the Education Department to cause an inquiry into the same. It is also stated that R7 is better qualified to be promoted as Principal as he was having with B.Ed degree, whereas the petitioner only appeared in the first year of B. Ed. course and therefore the petitioner was not having with requisite qualification. In regard to seniority the matter was brought to the notice of R4 Inspector of school and he directed considering the qualification and seniority, R7 to be promoted to the post of Principal of the school and accordingly the order is issued. The representations submitted by the petitioner are rightly ignored as he is not entitled to any relief as claimed. The respondents therefore prayed for dismissal of the writ petition.

6. R7 also contended the case by filing counter affidavit/affidavit in opposition inter alia supporting the action taken by the R1 to R6 and further stated that the post of Principal is filled up by way of promotion according to law and that the M. A. degree claimed by the petitioner is shrouded with suspicion for which a clarification has been sought. It is also stated that there is no post of VP and the petitioners appointment in the post VP was in a nonexisting post and therefore he is rightly reverted to the original post of AT and there is no wrong in it. The entire process for appointment/promotion to the post of Principal is according to law and there is no violation of principles of natural justice and therefore he prayed for dismissal of the writ petition.

7. Facts admitted/undisputed:

(a) The petitioner was appointed on 12.04.86 as AT in Selsella Deficit Secondary School which subsequently became Selsella Higher Secondary School, Tura (A1 to the writ petition).

(b) R7 was appointed as AT on 02.06.1990 (A3 to the writ petition).

(c) Petitioner was appointed as VP on 13.08.05 by an order in solution of MC (A2 to the writ petition).

(d) R7 was appointed on 23.10.10 as Principal in the school by R5 and that was approved by R4 vide memo dated 02.03.11 (A7).

(e) Vide Memo dated 06.04.11, R6 reduced the petitioner from the post of VP to the post of AT (A8 to the writ petition),

8. Points for decision:

(a) Whether appointment/promotion of R7 as Principal is justified and was according to law?

(b) Whether the order dated 06.04.11 reverting the petitioner to the post of AT from the post of VP is violative of the principle of natural justice.

(c) Whether the Memo dated 02.03.11 (A7 to the writ petition) and order dated 06.04.11 (A8 to the writ petition) are liable to be set aside and quashed?

9. Decision and reasons for decision: Learned Advocate Ms. A. Paul strenuously

argued that the appointment of R7 as Principal is completely illegal, arbitrary and unconstitutional. The respondents given go by to the provision prescribed in the Rules and also to the norms and ethics. Learned counsel has drawn my attention to Rule 4 and Rule 5 of the Rules, 1965. Rule 4 prescribes the method of recruitment to the post of Headmaster/Headmistress. Sub Rule (i) of Rule 4 prescribes thus:

"4. Method of recruitment (1) Headmasters/Headmistresses:

(i) there shall be a State Selection Board consisting of the following viz:

(a) Director of Public Instruction, AssamChairman

(b) Additional Director of Public Instruction, AssamSecretary.

(c) Inspectors of Schools concernedMembers

(d) Two educationists to be nominated by the GovernmentMembers.

(ii) The Director of Public Instruction, Assam, shall ascertain from various institutions concerned well ahead of each academic year vacancies that are likely to occur during the year and advertise in at least two newspapers and also in the Assam Gazette and forward to the Selection Board the applications received together with all relevant records indicating at the same time the number of vacancies and names of the institutions involved.

(iii) The Selection Board shall after interview prepare a list of candidates In order of preference and shall forward the list so prepared to the Managing Committee of the Schools concerned.

(iv) The Managing Committee shall make appointments after due verification and with prior approved of the Inspector of Schools concerned."

Rule 5 prescribes essential academic and other qualifications for appointment to the post of Headmasters/Headmistress and Clause (i) of Rule 5 prescribes thus:

"Academic and other qualifications: (i) Headmasters/Headmistresses;

A candidate shall hold a B.T or Master's Degree in Arts, Science or Commerce and shall have at least ten years" teaching experience. The educational qualification may be relaxed to the Bachelors1 degree in Arts, Science or Commerce if:

(a) the Headmasters and Headmistresses are already confirmed in their services with due approval of the Inspector of Schools concerned on or before 1st October 1956: provided that such Headmasters/Headmistresses have put in at least ten years" service as a teacher in a recognised Secondary School:

(b) the candidates have put in at least 15 years" service as teacher in recognised Secondary Schools including 5 years as an Assistant Headmaster or Headmistress or in both capacities or at least 20 years" experience as a teacher

in recognised Secondary School. In case of women candidates, however, the candidates may have only 10 years" total teaching experience in Secondary Schools."

Referring to the comments at Page 162 of "Meghalaya Education Code", learned counsel Ms. Paul has submitted that the provision of the amended Assam Aided High and Higher Secondary School Employees Rules, 1965 was adopted by State of Meghalaya by issuing necessary notification under North Eastern Areas (Reorganisation) Act, 1971. The relevant paragraph may be quoted thus:

"By notification No. ESS140/59 dated 9th March 1961 the following set of Rules were issued by the Government of Assam, viz.; Assam Aided College Employees Rules (1960, Assam Aided High and Higher Secondary School Employees Rules, 1960, Assam Aided Middle English Schools Teachers Rules, 1960. The above Rules came into force with effect from 15th February 1961. The Assam Aided High and Higher Secondary School Employees Rules, 1960 was amended and the Government of Assam by notification No. ESS58/64/11 dated 1st December 1965 notified the Amended Assam Aided High and Higher Secondary School Employees Rules, 1965 notified the Amended Assam Aided High and Higher Secondary School Employees Rules, 1965, which are incorporated below. The above rules are applicable in the State of Meghalaya."

To substantiate, her argument, learned counsel also referred a case law of this Court reported in (1987) 1 GLR 55 (Rev, Fr. Paul Petta Vs. Director of Public Instruction, Government of Meghalaya & Ors. In Para 15 of the said reported case, we find that the Assam Rule was applied in the State of Meghalaya and was followed by the State.

Respondents failed to controvert the argument advanced by the learned counsel of the petitioner regarding applicability of the provisions of Rule, 1965 in respect of method of recruitment and academic qualification for appointment to the post of Headmasters/Headmistress of the Higher Secondary School. It is amply clear that while appointing R7 as principal of the School, respondents did not at all follow the provisions of Rule 4 & Rule 5 of the Rules of 1965 and hence the impugned memo of appointment suffer from legal infirmity and thus can to survive.

10. Learned counsel Ms. A. Paul has further submitted that the petitioner was appointed on 12.04.86 whereas R7 was appointed on 02.06,90 i.e. after about 5 years of the appointment of the petitioner. She has also contended that the petitioner was appointed as VC on 13.08.05 and he has discharged his duties as VP efficiently and to the satisfaction of the authority and there is no blemish in his service career. She has further submitted that the requisite qualification for appointment to the post of Headmaster/Headmistress is B. T. or Master Degree in Arts, Science or Commerce (emphasis supplied) and since the petitioner was having with Master Degree in English and was senior to R7 and also holding Bachelor Degree and served as VP, he is better qualified to be appointed as

Principal above R7. She has therefore prayed for setting aside and quashing the impugned order dated 02.03.11.

11. On the other hand learned senior G A. and learned Advocate Mr. R. Kar, while could not dispute the provision prescribed in Rule 4 and Rule 5 of the Rules, 1965, have submitted that R7 was better qualified to be appointed as Principal since he was having with B.Ed degree. They have contended that mark sheet of Master Degree submitted by the petitioner and annexed with the writ petition (A4 series) is showing that he could not pass Master Degree whereas the mark sheet 3 he submitted in the school, which are annexed as AI to AV series to the affidavitinopposition, submitted by respondent Nos. 5 and 6 are showing that he has passed M.A. in English and therefore the claim of the petitioner that he is holding M.A. degree in English is shrouded with suspicion for which letter has been written to the authority of NEHU, seeking clarification but such clarification is yet to be received. R5 & R6 in their counter affidavit contended that both the petitioner and R7 exerted their claim for the post of Principal and they forwarded the claim with all their certificates to the Additional Director of School Education and Literacy (R3) seeking clarification. In the affidavitinopposition submitted by R4, it has been categorically stated that in response to the clarification sought to R3, he (R4) has been informed by R3 that respondent No. 7 was found eligible as he passed B A in the year 1997 and the petitioner passed B A in the year, 1998 and that R7 was having with B.Ed degree of the year, 2002, whereas petitioner only enrolled in B.Ed programme. The letter of R3 dated 01.03.11 addressed to R4 on the basis of which impugned letter dated 02.03.11 was issued by R4 has been annexed as AI to the affidavitinopposition filed by respondent Nos. 1,2,3 and 4 and it shows that R3 has taken an arbitrary decision regarding qualification and eligibility of the petitioner and R7, for the post of Principal and to her whims giving goodbye to the provisions of Rules, 1965 arrived at a conclusion that R7 was eligible for the post of Principal. Letter dated 01.03.11 (A1, to the affidavitinopposition of the respondents) shows that at the time of entry in the service both the petitioner and R7 were having with qualification P.U. (Arts) pass and the petitioner done his graduation in the year, 1998 and R7 done his graduation in the year, 1997 and only considering the fact that R7 done his graduation before the petitioner, the respondents decided to promote R7 to the post of Principal. They have totally ignored the service experience of the petitioner and also the Master Degree of the petitioner. The petitioner all along claimed that he had done Master Degree in English. R5 and R6 submitted the copies of the mark sheets submitted by the petitioner which shows that he has passed Master Degree in English. The copies of the mark sheets submitted by the petitioner with the writ petition marked as A4 series reflecting "x" in the column (Grand Total) and referring to it learned counsel of the respondents submitted that the petitioner failed in Master Degree examination. On the contrary, learned counsel Ms. A. Paul has submitted that the petitioner submitted a rejoinder affidavit and clarified the position that the mark sheets in original were destroyed in natural calamities, i.e. floods that took place in Garo Hills and copies of

marksheets which the petitioner submitted was duplicate marksheet obtained later on and the V mark in the column (grand total) does not indicate that the petitioner failed and the authority may get it inquired and clarified. On perusal of Ext.4 series annexed to the writ petition, I find that those were duplicate mark sheets issued on different dates whereas, the mark sheets annexed as AI to AIV to the counter affidavit of R5 and R6 shows that those copies were original mark sheets submitted by the petitioner to the school authority. So apparently I find no ambiguity in the contention of the petitioner that he has passed M.A. examination in English. If the contention of the petitioner regarding his Master degree is found to be false, it will not only amount misconduct but will constitute a criminal offence and for deciding the writ petition, I find nothing to suspect the claim of the petitioner that he has been holding the Master Degree and that has already been taken into consideration by the Respondent on the submission of the original mark sheets before them. In view of the provisions prescribed in Rule 5 of the Rules 1965, the petitioner is also eligible to be considered for the post of Principal while holding the Master degree and R7 could not be considered as better qualified than the petitioner.

There remains no confusion that the appointment of R7 to the post of Principal is illegal and arbitrary and in total violation of the provision of the Rules and therefore liable to be interfered by this Court. Consequently the appointment of R7 to the post of Principal as made by R5 on 23.10.10 which was subsequently approved/affirmed by R4 vide impugned Memo dated 02.03.11 (A7) to the writ petition is liable to be set aside and quashed.

12. The other issue challenged in this writ petition is that of reverting of the petitioner to the post of AT from the post of VC without assigning him any reason and without affording any opportunity of hearing. Admittedly the petitioner was appointed as VP on 13.08.05 and he discharged his duties as VP till the date of his reverting to the post of AT by impugned order dated 06.04.11. It is contended by the learned counsel of the respondents that there was no post of VP in unamalgamated Government Secondary School and therefore he was adjusted in the post of AF. It is not understood how the respondents posted the petitioner in the post of VP if there was no such post and could realise that there was no such post only when the post of Principal was denied to him and he made representation against such denial which smells otherwise than what the respondents have agitated. Any way the respondents, in the circumstances, if there was no such posts approved by the appropriate authority could inform him and afford him an opportunity of hearing. The respondents did not travel to that extent and straightway reverted the petitioner to the post of AT after 5 years of his service which is violative to the principle of "audi alteram partem", therefore liable to be interfered by this Court.

13. Accordingly impugned office Memo dated 02.03.2011 (A7 to the writ petition) and the impugned order dated 06.04.2011 (A8 to the writ petition) are set aside and quashed and the writ petition is accordingly allowed.

14. The parties are to bear their own costs.