
(2003) 12 GAU CK 0038
In the Gauhati High Court
Case No : Civil Rule No. 1877 of 1988

Kamal Kanta Paul

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 03-12-2003

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2004) 2 GLR 16

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : H. Das and R.K. Malakar, for the Appellant; GA, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Sharma, J.

Heard Mr. R.K. Malakar, learned counsel of the petitioner and Mr. Thomas appearing on behalf of Education Department, Assam.

1. The grievance made in the writ petition is in respect of non-regularisation of the services of the petitioner as Assistant Teacher of Saidpur Janata M.E. School in the District of Cachar. It appears that the petitioner was appointed in pursuance of a resolution adopted by the Management Committee of the School on 1.3.1988. Mr. Malakar submits that the school in which he was appointed by the Managing Committee was provincialised way back in 1977. If this is so, the Managing Committee could not have appointed the petitioner in the school. By order dated 4.2.1994, the Director of Elementary Education, Assam, while sanctioning and allotting five posts of Assistant Teacher for middle school, sanctioned one such post in favour of the petitioner. However, certain conditions were mentioned in the said letter. As per the condition No. 3, the posts were directed to be filled up in anticipation of the approval of the Sub-divisional Advisory Board in due course.

2. Subsequently, the said order dated 4.3.1994 was cancelled by a

communication dated 20.12.1994. However, such cancellation was again cancelled by another communication dated 18.6.1996. By the said communication the list of M.E. School teachers appointed under Non-plan during 1993-1996 in the District of Cachar was also enclosed. However, the name of the petitioner does not figure in the said list. It is the case of the petitioner that the respondent-authority having approved the appointment of 1993-96 appointees, there is no reason as to why the appointment in favour of the petitioner made way back in 1988 should not be approved. Hence, this writ petitioner's praying for a direction to regularise the services of the petitioner who has been working as honorary Assistant Teacher in the said school since 1988.

3. The State respondents have not filed any affidavit. It is not known as to under what circumstances the annexure-7 communication dated 18.6.1996 was issued. In any case the petitioner could not have been appointed in 1988 by the Managing Committee of the school if the school was not already provincialised in the year 1977. In the provincialised school, the Managing Committee is not vested with any power of appointment. But in the instant case even after the provincialisation of the school the petitioner was appointed by the Managing Committee and that too without any advertisement and selection. In a recent decision of this Court disposing of a number of writ petitions, the issue relating to regularisation of teachers appointed by Managing Committees after provincialising of the schools, has been settled and it has been held that such teachers are not entitled to regularisation of their honorary services. The said decision is dated 29.9.2003 and one such writ petition is WP(C) No. 2560/01.

4. In the instant case also the petitioner was admittedly appointed after provincialisation of the school. Merely because the Director of Elementary Education at one stage had sanctioned the post against the name of the petitioner, the same will not cloth the petitioner with any right of being regularised without there being any selection and if the appointments are resorted to in this manner, the same will be violative of Article 14 of Constitution of India. Having regard to the facts and circumstances stated above, I find no merit in the writ petition and accordingly the same is dismissed.

5. No order to costs.