

(2016) 05 GAU CK 0058
In the Gauhati High Court
Case No : W.P. (C) No. 4644 of 2014

Kamal Sajati

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 25-05-2016

Acts Referred:

Citation : (2016) 4 GauLJ 589 : (2016) 4 GauLR 424 : (2016) 3 GauLT 617

Hon'ble Judges : Arup Kumar Goswami, J.

Bench : Single Bench

Advocate : Mr. T.J. Mahanta, Senior Advocate, Ms. R. Devi and Mr. A.R. Tahbildar, Advocates, for the Appellant; U.K. Goswami, Senior Standing Counsel Education (Secondary) Department, for the Respondent

Final Decision : Disposed Off

Judgement

Arup Kumar Goswami, J. (Oral) - Heard Mr. T.J. Mahanta, learned Senior counsel, appearing for the petitioners. Also heard Mr. U. K. Goswami, learned Senior Standing counsel, Education (Secondary) Department, appearing for the respondents.

2. The petitioners Nos. 1 to 6 are presently working as Sanskrit Teachers in Dhemaji Adarsha High School, Frontier United High School, Batgharia Girls High School, Sarbudoi High School, Silapathar Town Hanumangadi Hindi High School and Deberajan Tribal High School, respectively. All the schools, in which the petitioners are working, have been provincialized under the Provisions of the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 (for short, "the Act") and, with the provincialization of the schools, the services of the teaching and non-teaching staff were also provincialized barring the petitioners. The petitioners represented their grievance before the authorities for non-provincialisation of their services although they are entitled to be provincialized under the provisions of the Act. Subsequently, the cases of the petitioners were placed before the District Scrutiny Committee set up under Section 10 of the Act and, finding that the petitioners are eligible for

provincialization of their services, the Inspector of Schools, Dhemaji, vide letter dated 12.09.2013, forwarded the particulars of the petitioners to the Director of Secondary Education. However, no action had been taken on their regularization, but only certain queries were raised by the Deputy Secretary to the Government of Assam, by letter dated 28.07.2014, issued to the Director of Secondary Education.

3. The petitioners filed this writ petition praying for a writ of mandamus to provincialise the services of the petitioners as also praying for setting aside the order dated 28.07.2014, which reads as follows:

"Government of Assam

Secondary Education Department:

Dispur: Guwahati-6

No. ASE.145/2012/146

Dated Dispur, the 28th July, 2014.

From:Smti. S.G. Kalita, ACS, Deputy Secretary to the Govt. of Assam,

To : The Director of Secondary Education, Assam Kahilipara, Guwahati-19

Sub : Provincialisation of services under provision of Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 and Amendment 2012.

Ref. : No. pc/Misc./8/2012/428 dated 30.06.2014.

Sir,

With reference to the above, I am directed to request you kindly to furnish the following clarifications urgently to the Govt.

1. The status of enrolment of Sanskrit Students from the date of establishment to 2011 in the schools where the 11 nos. of Sanskrit teachers have been working and praying for provincialisation of their services under Dhemaji District.
2. Reasons behind non recommendation of the names of the Sanskrit teachers earlier by the District Scrutiny Committee and fresh recommendation of the same (only 6 nos. out of 11 nos.) by the Committee on 05.03.2013.
3. No. of students appeared in the HSLC Examination for Sanskrit Subject year-wise from 2009-2011 in the concerned schools.

Yours faithfully

Sd/-

Deputy Secretary to the Govt. of Assam

Secondary Education Department"

4. Mr. T.J. Mahanta, learned Senior counsel, however, at the time of hearing, has submitted that though prayer was made for setting aside the order dated 28.07.2014, as no decision has been taken, as it would be evident from the said letter, he would not be praying for setting aside or quashing of the said order. However, he has contended that the queries raised in the said letter are irrelevant for the purpose of consideration of the case of the petitioners for provincialisation.

5. Drawing attention of the Court to the Schedule of the Act prescribing the maximum number of employees per educational institution, whose services can be provincialised, learned Senior counsel has submitted that in a High School/ High Madrasa (two classes), it is obligatory to provincialise one classical teacher. It is submitted by him that the concept of "number of students", as sought to be introduced for the purpose of provincialisation of a classical teacher, is misconceived as there is no requirement under the provisions of the Act that unless a particular number of students are enrolled in a particular subject, it would not be permissible to provincialise the service of the teacher of that subject. All that is required under the provisions of Section 3(ii) of the Act, he contends, minimum number of enrolment for the school as a whole and, admittedly, as the schools of the petitioners had fulfilled the minimum requirement of enrolment of students, the schools were provincialised. He has also submitted that the respondents had acted in a discriminatory manner on a pick and choose basis in provincialising the service of Sanskrit Teachers in some schools while not provincialising the services of many other schools like the petitioners. He has drawn the attention of the Court to the affidavit-in-reply to contend that although no student had appeared in the HSLC Examination in the subject of Sanskrit from Donyi Polo High School, Ghagar-much High School and Pandhowa High School for the years 2009, 2010 and 2011, i.e., immediately preceding provincialisation of the aforesaid schools, the services of the Sanskrit Teachers in those schools had been provincialised.

6. Mr. U.K. Goswami, learned Standing counsel, Education (Secondary) Department, relying on paragraph 9 of the affidavit-in-opposition, has contended that as no candidates are appearing in the HSLC Examination in the subject of Sanskrit, there cannot be any justification in provincialising the services of the petitioners. Paragraph 9 of the Affidavit reads as follows:

"9. That with regard to the statements made in paragraph 6 of the writ petition, the deponent respectfully states that the Secretary, Education Department, requested vide Govt. letter No. ASE. 145/2012/13 dated 19.02.2013 to the Director of Secondary Education, Assam to examine the petitioners' representation dated 16.02.2013 and submit a report to the Government of Assam. Accordingly, the Inspector of Schools, Dhemaji, has been requested by this Directorate vide letter No. PC/Misc/8/2012/42 dated 26.02.2013 to submit a report of 11 nos. of Sanskrit Teachers. Out of 11 nos. of Sanskrit Teachers, there is no students appeared in HSLC Examination in 6 nos. of schools where there

are 6 nos. of Sanskrit teachers. The report has been submitted to Government of Assam, Education (Secondary) Department. After that, the Government have requested vide letter No. ASE.145/2012/146 dated 28.07.2014 to submit clarifications as: 1. The status of Sanskrit Students from the date of establishment of the schools to 2011 in the schools where the 11 nos. of Sanskrit teachers have been working and praying for provincialisation of their services under Dhemaji district. 2. Reasons behind non-recommendation of the names of the Sanskrit teachers earlier by the District Scrutiny Committee and fresh recommendation of the name only 6 nos. (out of 11 nos.) by the District Scrutiny Committee on 05.03.2013 and 3. No. of students appeared in the HSLC Examination for Sanskrit subject year-wise from 2009 to 2011 in the concerned schools. Accordingly, the Inspector of Schools, Dhemaji, has been requested vide office letter No. PC/Misc./8/2012/430 dated 11.08.2014 to subject clarification as per Government letter. Now, the Inspector of Schools, Dhemaji, has submitted clarification and submitted to Govt. As per clarification from the Inspector of Schools, no student of Sanskrit subject appeared in HSLC Examination of petitioners schools and as per statement it is seen that no student are studying Sanskrit subject in Class IX and I from the year 2009 to 2011."

7. A perusal of the provisions of the Act would go to show that the number of students required to be enrolled in the particular subject is not a condition precedent for the purpose of provincialisation. The schools of the petitioners are High School (two class) and the categories of staff that are required to be provincialised are laid down in the Schedule which includes Classical Teacher/ Language Teacher (for Non-Assamese Medium schools). For Classical Teacher/ Language Teacher for Non-Assamese Medium School, the maximum number of posts (General) that can be provincialised is two (one for Classical Teacher and one for Language). The eligibility criteria for selection of educational institutions for provincialisation of its employees are laid down under Section 3 (ii) of the Act, which provides that the minimum total en-rollment of students in a class is 25 if it is a High School. Subject-wise minimum number of students is not prescribed.

8. It is not in dispute that the petitioners are otherwise eligible and their provincialisation is held up on the ground that there are no students taking up the subject of Sanskrit in the last couple of years. The stand taken, according to the understanding of the Court, is not backed up by any statutory provision. When subject of Sanskrit is available in the schools for the students to opt and take, the reasoning given is not sustainable in law. It is also seen from the documents annexed with the Affidavit-in-reply that from Donyi Polo High School, Ghagarmuch High School and Pandhowa High School no students had appeared in HSLC Examination in the subject of Sanskrit during the years 2009, 2010 and 2011, nonetheless, the services of the Sanskrit Teachers in those schools were provincialised.

9. In that view of the matter, I am of the considered opinion that the writ petition

deserves to be allowed and, accordingly, the respondents are directed to take consequential action for provincialisation of the services of the petitioners within a period of three months from the date of receipt of a certified copy of this order.

10. Writ petition stands disposed of in terms of the above.