

(2024) 01 GAU CK 0039

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 9361 Of 2019

Karam Ali

APPELLANT

Vs

State Of Assam

RESPONDENT

Date of Decision : 30-01-2024

Acts Referred:

Constitution Of India, 1950 — Article 14, 16
Assam Secondary Education (Provincialised) Service Rules, 2003 — Rule 12, 14, 15, 24(5)
Assam Civil Services (Conduct) Rules, 1965 — Rule 12
University Grants Commission Act, 1956 — Section 22

Citation : (2024) 01 GAU CK 0039

Hon'ble Judges : N. Unni Krishnan Nair, J

Bench : Single Bench

Advocate : P.P. Dutta, U. Sharma, M. Nath, D.P. Bora, P.J. Phukan

Final Decision : Disposed Of

Judgement

1. Heard Mr. P.P. Dutta, learned counsel for the petitioner. Also heard Mr. U. Sharma, learned standing counsel, Education (Secondary) Department, representing the respondent Nos.1, 2 & 3; Mr. M. Nath, learned senior counsel, assisted by Mr. D.P. Bora, learned counsel representing the respondent No.4 and Mr. P.J. Phukan, learned standing counsel, Gauhati University, representing the respondent No.5.

2. The petitioner, by way of instituting the present proceeding, has put to challenge an order dated 09.12.2019, by which the respondent No.4 was promoted as Headmaster of Dumunichowki Girls' High School, Darrang. The said order was issued by the Director of Secondary Education, Assam in pursuance to a process of selection.

3. The facts requisite for the purpose of adjudication of the issues arising in the present proceeding are noted herein below. The petitioner was appointed as an Assistant Teacher in the intermediate scale of pay in Dumunichowki Girls' High

School, Darrang on 28.09.1988. Thereafter, he was authorized the graduate scale of pay w.e.f. 1.12.1993. The respondent No.4 was also appointed as an Assistant Teacher in the same School in the intermediate scale of pay on 20.03.1992 and he was also authorized the graduate scale of pay w.e.f. 01.12.1993. The petitioner had, with permission from the Inspector of Schools, Darrang District Circle, Mangaldoi as well as the Headmaster of the said School, proceeded to pursue his B.Ed. Course in Sipajhar B.Ed. College and on completion of the said Course, the petitioner was conferred with the B.Ed. Degree by the Gauhati University in the year 1995.

On a vacancy arising in the post of Headmaster of the said School w.e.f. 31.01.2018, the petitioner was allowed to hold the charge of the said post of Headmaster by the Director of Secondary Education, Assam, vide order dated 17.12.2018. Thereafter, the cases of the petitioner as well as the respondent No.4 herein were considered for the purpose of promotion to the said vacant post of Headmaster available in the School in question. On conclusion of the process of selection, the respondent No.4 was appointed as the Headmaster of the said School in question by the Director of Secondary Education, Assam, vide order dated 09.12.2019. Being aggrieved, the petitioner had instituted the present proceeding.

4. Mr. Dutta, learned counsel for the petitioner, by referring to the provisions of Rule 14 of the Assam Secondary Education (Provincialised) Service Rules, 2003 (for short, "2003 Rules"), submits that the promotion to the post of Headmaster is to be effected basing on the seniority of the candidates in the School and satisfactory ACRs for 3(three) years. Mr. Dutta, by referring to a list available in the writ proceeding showing the seniority of teachers, has contended that the petitioner had joined the School on 16.05.1989, while the respondent No.4 had so joined on 20.03.1992. Both the petitioner and the respondent No.4 were initially appointed in the intermediate scale of pay and were thereafter authorized the graduate scale of pay w.e.f. 01.12.1993. It is the contention of Mr. Dutta that even if the date of receipt of graduate scale in respect of both the petitioner as well as the respondent No.4 is held to be same and the services under the intermediate scale of pay is not considered, their inter-se seniority is to be determined by reckoning their respective dates of birth.

5. Referring to the date of births, as reflected in the said seniority list, Mr. Dutta submits that the petitioner, who was born on 01.01.1963, is senior to the respondent No.4, who was born on 01.03.1967. Mr. Dutta submits that although the respondents had not disclosed to the petitioner reasons as to why he was deprived of the promotion in question, but by referring to the affidavit filed by the Director of Secondary Education, Assam in the present proceedings, Mr. Dutta has contended that the reasons are stated therein. The reasons for not considering the case of the petitioner for such promotion was that the petitioner purportedly had proceeded to acquire his B.Ed. Degree without taking permission from the Departmental Authorities and further that the Institution from where

the petitioner had so acquired his B.Ed. Degree was not an Institution recognized by the National Council for Teacher Education (NCTE) at the relevant point of time. It is the submission of Mr. Dutta that the respondents having held the B.Ed. Degree of the petitioner to be invalid, had refused consideration of his case for promotion to the post of Headmaster as the said invalidation of his B.Ed. Degree rendered him ineligible for consideration for such promotion.

6. With regard to the first ground as assigned by the respondent authorities in their pleadings, Mr. Dutta submits that he has brought on record the permissions granted to him by the respondent authorities for pursuing the said B.Ed. Course after School hours. Mr. Dutta submits that the Inspector of Schools, Darrang District Circle, Mangaldoi, vide an order dated 04.10.1994, had duly permitted the petitioner to pursue the said Course in the evening section without hampering the normal functioning of his School. The said permission was also granted by the Headmaster in consultation with the School Management & Development Committee (SMDC) of the said School. In that view of the matter, it is stated that the petitioner had proceeded to undergo the said Course by taking due permissions from the competent authorities. It is also submitted by Mr. Dutta that even if there is no permission taken for pursuing the said Course, the same would not invalidate the B.Ed. Degree as obtained by the petitioner and at best only a departmental proceeding for violation of the provisions of the Assam Civil Services (Conduct) Rules, 1965 could have been initiated against him for purportedly prosecuting studies without permission of the departmental authorities.

7. With regard to the second ground assigned by the respondent authorities towards invalidating his B.Ed. Degree, Mr. Dutta submits that the provisions of the National Council for Teacher Education Act, 1993 (for short, "NCTE Act") had came into force w.e.f. 01.07.1995 and much prior to coming into force of the said Act, the petitioner was pursuing his Course in Sipajhar B.Ed. College. During the period when the petitioner had pursued his B.Ed. Degree in Sipajhar B.Ed. College, the said College was not required to get itself recognized from the NCTE Authorities inasmuch as the NCTE Act had only came into being w.e.f. 01.07.1995. Accordingly, the petitioner having been issued with the B.Ed. certificate from a recognized University, i.e. the Gauhati University, the validity of the said Degree cannot be questioned by any authority, other than the authority issuing such Degrees. Mr. Dutta has also brought to the notice of this Court that persons similarly situated like that of the petitioner and who had also pursued the B.Ed. Course during the period when the petitioner had so pursued the said Course, were considered by the State Level Selection Committee and their cases were recommended and consequently, they were appointed but in case of the petitioner, a different yardstick came to be applied by the respondent authorities, which violates his rights under Articles 14 and 16 of the Constitution of India.

8. Mr. Dutta submits that during the pendency of the present proceedings, the petitioner retired from his services on 31.01.2023 on reaching the age of

superannuation. As the petitioner was illegally deprived of his promotion, it was prayed that appropriate directions may be issued by this Court directing the respondent authorities to promote the petitioner to the post of Headmaster of the School w.e.f. 09.12.2019 with all consequential benefits. It is also submitted by Mr. Dutta that inspite of issuance of the order dated 09.12.2019, the respondent No.4 was not allowed to hold the charge of the post of Headmaster, in view of the interim direction passed by this Court in the present proceeding on 18.12.2019, and the petitioner continued to hold the charge of the said post till the date of his superannuation.

9. Per contra, Mr. M. Nath, learned senior counsel, representing the respondent No.4, submits that the petitioner's B.Ed. Degree having not been obtained from an Institution having the NCTE recognition, his such Degree cannot be held to be valid. He further submits that the provisions of the Rules holding the field mandate possession of a valid B.Ed. Degree by a candidate for promotion to the post of Headmaster. The petitioner's B.Ed. Degree being so obtained without prior permission from the respondent authorities for pursuing the Course involved and also having been so obtained by pursuing the Course from an Institution not recognized by the NCTE, the said Degree cannot be held to be a valid Degree for the purpose of promotion and the same cannot be reckoned for considering the case of the petitioner for promotion to the post of Headmaster of the School in question in terms of the provisions of Rule 12 of the 2003 Rules. The petitioner having not satisfied the eligibility criteria as mandated under Rule 12 of the 2003 Rules, non-consideration his case has caused no illegality and the petitioner, cannot, as a matter of right without being eligible, claim for consideration of his case for promotion to the post of Headmaster solely on the ground of his seniority in the School. On the said premises, Mr. Nath submits that the order dated 09.12.2019 requires no interference and this Court would direct the respondent authorities to grant to the respondent No.4 all benefits flowing to him on account of his said promotion as Headmaster w.e.f. 09.12.2019.

10. Mr. U. Sharma, leaned standing counsel, Education (Secondary) Department has reiterated the stand taken in the affidavit filed by the Director of Secondary Education, Assam and has also adopted the arguments as advanced by Mr. Nath, learned senior counsel, representing the respondent No.4.

11. Mr. P.J. Phukan, learned standing counsel, Gauhati University, has submitted that the certificate as issued to the petitioner pertaining to his B.Ed. Degree has not been cancelled till date by the Gauhati University and the same continues to be in force.

12. I have considered the submissions advanced by the learned counsel appearing for the parties and have also perused the materials available on record.

13. At the outset, it is to be noted that this Court, vide order dated 18.12.2019, while issuing notice in the matter, had directed for maintenance of status quo as on that date with regard to the officiation of the petitioner against the post of

Headmaster in Dumunichowki Girls' High School. In terms of the said order dated 18.12.2019 passed by this Court in the present proceedings, the Director of Secondary Education, Assam, vide order dated 24.06.2020, had required maintenance of status quo with regard to the said officiating arrangement against the post of Headmaster of the School in question. The petitioner accordingly continued to hold the charge of the post of Headmaster of the School till the date of his retirement, i.e. till 31.01.2023.

14. As evident from the submissions advanced before this Court by the learned counsel for the parties and also the revelations made in the affidavit filed by the respondent No.2, it is seen that the case of the petitioner was rejected from consideration for promotion to the post of Headmaster only on the ground that he had obtained his B.Ed. Degree without departmental permission and had obtained such Degree from an Institution not recognized by the NCTE at the relevant point of time.

15. With regard to the issue of the petitioner having obtained his B.Ed. Degree without permission from departmental authorities, the said issue is no longer res-integra and this Court in WP(C) No.5419/2023 (Tankeswar Nath -Vs- The State of Assam & Ors.), vide order dated 18.12.2023, had already held that the said Degree in such circumstances does not get invalidated. Relevant paragraphs of the said order dated 18.12.2023 is reproduced herein below:-

"4. The provisions of Rule 13 of the Rules of 1965, being of relevance is extracted hereinbelow:

'13. Prosecution of studies by Government servants in educational institutions. - No Government servant while in Government service shall join or attend any educational institution for the purpose of preparing himself for or shall appear at any examination of a recognized-Board or University without obtaining previous permission from the appointing authority:

Provided that the appointing authority may refuse such permission in the interest of the public service on consideration that such joining or attending any educational institution or appearing at any examination may create dislocation of work or stand in the way of the efficient discharge of his duties by the Government servant concerned. Permission of study leave or any other kind of leave granted for the purpose of joining or attending any educational institution shall be subject to the condition that the Government servant shall not seek election to or hold any electist office in Students' Union or other Association of Student's except Association formed for purely literary, academic or athletic pursuits.'

5. The provisions of Rule 13 of the Rules of 1965 mandates that no government employee while in service, shall join or shall attend any educational institution for preparing himself or shall appear at an examination of a recognized Board or University without obtaining previous permission from the appointing authority.

The provisions of Rule 13 only mandates that prior permission shall be obtained by a government employee for prosecuting any course of study. The violation of Section 13 would amount to a misconduct for which the employer may draw a disciplinary proceeding against the government employee. The provisions of Rule 13 of the Rules of 1965 cannot be invoked to invalidate any degree acquired by a government employee, the course of study for which the government employee had prosecuted without previous permission from the authorities.

6. The said issue is no longer res-integra and this Court, vide order, dated 28.09.2023, passed in IA(c)2615/2023 [Smt. Mouchumi Saharia v. Smriti Rekha Kalita & 3 ors.] had held that if a Degree had been obtained without prior permission of the appointing authority, the same would be a misconduct under Rule 13 of the Rules of 1965 and it being a misconduct, the relevant proceedings of law applicable against the candidate, would be a proceeding against such candidate under the Assam Services(Discipline and Appeal) Rules, 1964, but the same by itself cannot invalidate the otherwise valid degree obtained from the respective Universities and further, that the Degree obtained from a University is governed by Section 22 of the University Grants Commission Act, 1956.

7. On application of the decision of this Court in the case of Mouchumi Saharia (supra); to the issues arising in the present case, it is clear that the petitioner having been validly granted a Masters Degree in Assamese and the said Degree having been obtained from an institution recognized by the University Grants Commission, the respondent authorities do not have the jurisdiction and authority to invalidate the said Degree obtained by the petitioner and such invalidation cannot be done even impliedly.

The effect of the denial of the benefits of holding the charge of in-charge Principal of the said school to the petitioner inspite of being the senior-most Teacher of the school, amounts to an invalidation of the Degree obtained by the petitioner in Krishna Kanta Handique State Open University, which is impermissible.

8. Accordingly, the order, dated 30.03.2023, having been issued only on the ground that the petitioner was not eligible to hold the charge of the post of Principal, Sarthebari Higher Secondary School, Sarthebari, on account of he having obtained his M.A. Degree without prior permission from the competent authorities for undergoing such a course; stands interfered with."

16. The decision of this Court in the case of Tankeswar Nath (supra) mandates that in the event an employee pursues a Course of study without taking permission for the purpose from the departmental authorities, the same may result in the violation of the provisions of the Assam Civil Services (Conduct) Rules, 1965 and for that the Degree acquired cannot be held to have been invalidated and such employee may have only exposed himself for being proceeded against departmentally. It is seen that the respondent authorities although holding that the petitioner has proceeded for the said Course without

requisite permission had not instituted any proceeding against him till the date of his superannuation from service. This also has to be seen in the light of the materials brought on record by the petitioner wherein he has demonstrated that he had proceeded for undergoing his B.Ed. Course basing on the permission granted to him by the Inspector of Schools, Darrang District Circle, Mangaldoi as well as the Principal and the School Management & Development Committee (SMDC) of the School, where he was working. What is also to be noted is that the respondent authorities, after the petitioner had acquired his B.Ed. Degree, had authorized to him the advance increment as becoming available to him in this connection. The said increment, as authorized to the petitioner, was never thereafter withdrawn and he continued to enjoy the same till the date of his superannuation.

17. In view of the said conclusion, the B.Ed. Degree of the petitioner could not have been held to be invalid on the ground that the petitioner had pursued the same without obtaining due permission from the respondent authorities. Further, the respondent authorities, while arriving at such conclusions, failed to reckon the permissions granted to the petitioner to persecute the said Course. As such, the invalidation of the B.Ed. Degree acquired by the petitioner on the ground of the Course involved to have been undertaken without prior permission of the departmental authorities is not sustainable.

18. Now this Court would consider the second issue as raised by the respondent authorities and also urged by Mr. M. Nath, learned senior counsel representing the respondent No.4 that the petitioner having obtained his B.Ed. Degree from Sipajhar B.Ed. College in the year 1995 and the said College at that relevant point of time not being recognized by the NCTE, the said Degree is invalid. It is to be noted that the NCTE Act had come into force only w.e.f. 01.07.1995 and the National Council for Teacher Education, a Statutory Body was established only w.e.f. 17.08.1995. Before the said Body could have been established, it is not understood as to how the respondent authorities can contend that the petitioner was required to pursue his B.Ed. Course from an Organization recognized by the NCTE even before it had come into existence. The Degree as pursued by the petitioner in the year 1995 was from an Institution, which was affiliated by the Gauhati University and as such, it had the competency to provide the said Course in its campus. This coupled with the fact that the petitioner had been granted advance increment for acquiring the said B.Ed. Degree shows that at the relevant point of time when the petitioner had acquired the said Degree, the same was held to be a valid Degree. A Degree valid at its initiation cannot be held to have become invalid on grounds arising after the petitioner had acquired his B.Ed. Degree. There being no requirement during the relevant point of time when the petitioner had acquired his B.Ed. Course to prosecute such Course from an Institution having NCTE recognition, and such requirement having arisen subsequently, the respondent authorities could not have applied the same to the case of the petitioner.

19. In view of the above, the petitioner's Degree cannot be held to be invalid even on the second issue raised by the respondents and the petitioner's B.Ed. Degree is held to be valid basing thereon also. Accordingly, the petitioner is held to have been eligible for a consideration by the competent authorities for his promotion to the post of Headmaster. Having held the petitioner to be eligible, this Court would now like to examine the issue of inter-se seniority between the petitioner and the respondent No.4, both having drawn their respective graduate scale of pay w.e.f. the same date.

20. It is seen that the petitioner had joined in the said School on 16.05.1989 after he having acquired his graduation Degree. Thereafter, the petitioner was authorized his graduate scale of pay w.e.f. 01.12.1993. The respondent No.4 had joined the said School in the intermediate scale of pay on 20.03.1992. As far as the intermediate scale is concerned, the petitioner is admittedly senior to the respondent No.4. However, the petitioner and the respondent No.4 were authorized their graduate scale of pay w.e.f. 01.12.1993, i.e. on the same day, and accordingly, an issue arises as to how the seniority of the said 2(two) incumbents, who have been granted graduate scale from the same day, is to be determined. It is to be noted that the seniority for the purpose of promotion to the post of Headmaster is determined from the date a person has drawn his pay in the graduate scale of pay. The said issue need not detain this Court inasmuch as the procedure to be followed in such an eventuality is provided for in the provisions of Rule 24(5) of the 2003 Rules, which mandates that in the event the date of joining in the School is same between two or more members of service in a cadre, their inter-se seniority shall be determined by taking into account their respective dates of birth. On examining their dates of birth, it is found that while the petitioner was born on 01.01.1963, the respondent No.4 was born on 01.03.1967 as such, the other parameters being equal, the petitioner on the basis of his date of birth, would rank senior to the respondent No.4.

21. In view of the conclusions arrived at by this Court on the issues arising, it is to be held that the petitioner was illegally deprived of a fair consideration of his case for promotion to the post of Headmaster of the School and as such, the order dated 09.12.2019 promoting the respondent No.4 to the said post is not sustainable in law and the same is accordingly set aside and quashed.

22. Now this Court is to consider as to the relief that can be granted to the petitioner in the matter. As noticed herein above, in terms of the order passed by this Court in the present proceedings, the petitioner continued to hold the charge of the post of Headmaster of the School inspite of the fact that the respondent No.4 was promoted to the said post vide an order dated 09.12.2019, and the petitioner accordingly retired from his services on 31.01.2023 while functioning as the Headmaster in-charge of the said School.

23. The provisions of Rule 15 of the 2003 Rules mandates that after the names of the eligible candidates are received from each School, the Director shall place the same before the State Selection Board. It is seen that the cases of the

petitioner and the respondent No.4 were placed before the State Selection Board for selection to the post of Headmaster. The said Selection Board had rejected the case of the petitioner and had recommended the case of the respondent No.4. The consequential appointment of the respondent No.4 effected vide an order dated 9.12.2019 having been interfered with by this Court, it is now required that the petitioner's case along with that of the respondent No.4 shall be considered afresh by the State Selection Board or any other competent authority of the Secondary Education Department strictly in accordance with the conclusions reached by this Court hereinabove on the issues dealt with. Upon such consideration if it is found that the petitioner is entitled to be recommended for promotion as the Headmaster of the School in question, the respondent No.2 shall proceed to promote the petitioner as the Headmaster of the said School w.e.f. 09.12.2019 with all consequential benefits. The petitioner shall be entitled to the salaries as due to him against the post of Headmaster consequent to his such promotion w.e.f. 09.12.2019 till the date of his superannuation, i.e. 31.01.2023.

24. The Director of Secondary Education, Assam, shall compute the arrears of salary due to the petitioner and release the same to him within a period of 3(three) months from the date of receipt of a certified copy of this judgment & order. The promotion, if effected in the case of the petitioner to the post of Headmaster of the said School, it would result in an enhancement of his pay and, therefore, requiring a revision in the pension and pensionary benefits drawn by the petitioner at the time of his retirement. Accordingly, the respondent authorities, more particularly, the respondent No.2 and the Director of Pension, Assam, shall revise the pension and pensionary benefits of the petitioner on account of the petitioner's promotion w.e.f. 9.12.2019 to the post of Headmaster of the School in question and release to the petitioner the arrears thereof within a period of 4(four) months from the date of receipt of a certified copy of this judgment & order.

25. The petitioner to furnish a certified copy of this judgment & order along with a forwarding to the Director of Secondary Education, Assam for taking the matter forward.

26. With the above observations and directions, the writ petition stands disposed of.