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**(2002) 08 GAU CK 0034**

**In the Gauhati High Court**

**Case No :** Writ Petition (C) No"s. 6606 of 1999, 3503 of 2001 and 434 of 2002

Khalilur Rahman and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

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**Date of Decision :** 14-08-2002

**Acts Referred:**

Assam Secondary Education (Provincialised) Service Rules, 1982 — Rule 13

**Citation :** (2002) 2 GLT 687

**Hon'ble Judges :** P.G. Agarwal, J

**Bench :** Single Bench

**Advocate :** P.K. Goswami, A.M. Mazumdar, H.N. Sarma, C.K. Das, A. Choudhury, R. Islam, M.K. Choudhury, M. Dutta and A. Barkakati, for the Appellant; H.K. Barman, M.K. Choudhury, M. Dutta and P.K. Goswami, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

P.G. Agarwal, J.—All these three writ petitions are disposed of by this common order. As agreed upon by the learned Counsels for both sides, the matter was heard analogously.

2. Heard Sri P.K. Goswami, learned sr. advocate, Sri A.M. Mazumdar, learned sr. advocate, Sri H.N. Sarma, Sri C.K. Das, Sri A. Choudhury, Sri R. Islam, Mr. M.K. Choudhury, Mr. M. Dutta, Mr. A. Barkakati, learned Counsels for the Petitioners in W.P.(C) No. 6606/1999, W.P.(C) No. 434/2002 & W.P.(C) No. 3503/2001, and the learned Govt. Advocate Assam, and Mr. H.K. Barman, learned Counsel for Respondent No. 5 in W.P.(C) No. 6606/1999 and Sri M.K. Choudhury and Mr. M. Dutta, learned Counsels for Respondent No. 5 in W.P.(C) No. 434/2002 and Mr. P.K. Goswami, learned sr. advocate for the caveator in W.P.(C) No. 3503/2001.

3. The matter relates to inter-se seniority of the two Petitioners namely Khalilur Rahman and Sri Soneswar Deka, who are both serving as teachers at Dakshin Pakowa Milan High School referred to as the school. The Petitioner Khalilur Rahman, hereinafter, referred to as the Petitioner for convenience, joined the

school on 22.1.76 as Graduate Assistant Teachers, and since then he is serving in the said school.

4. Initially, the school was a Govt. aided school and it was provincialised vide Govt. letter dated 28.3.81. Soneswar Deka, the Respondent in W.P.(C) No. 6606/1999 and writ Petitioner in W.P.(C) No. 3503 of 2001, hereinafter, referred to as the Respondent, for the purpose of convenience, joined the school as a Sanskrit teacher on 18.5.1973. In the year 1999, a select list for the post of Headmaster was prepared and it was approved by the Govt. i.e., Director of Secondary Education, vide order dated 20.11.1999, wherein both the Petitioner and the Respondents participated before the selection board. The Section Board, however, recommended the name of the Respondents by placing him in the panel and the same was approved by the Government. The Petitioner alongwith one Sarbeswar Haloi, therefore, instituted W.P.(C) No. 6606 of 1999 challenging the State Govt. approval and for quashing of the said letter of approval in favour of the Respondent.

5. During the pendency of the said writ petition, the then Headmaster of the school retired on 28.2.2001 and while the Respondent was awaiting his appointment being seniormost teacher and a selectee, the Respondent authorities directed the outgoing headmaster to handover charge of the in-charge Headmaster to the Petitioner Khalilur Rahman. The Respondent, therefore, challenged the said order in W.P.(C) 3503/2001 and also prayed for direction to the Respondents authorities to appoint him as Headmaster vide interim order dated 18.5.2001, this Court stayed the impugned order dated 23.2.2001 in favour of the Petitioner and directed the authority to allow the Respondent Sri Soneswar Deka, to hold the charge of the in-charge Headmaster of the school. The Petitioner preferred W.A. No. 23 of 2001 against the said order dated 18.2.2001 but the appeal was dismissed with the observation that "let this writ petition be listed for hearing".

Pursuant to the direction of this Court, the concerned authority passed order allowing the Respondent Mr. Deka to hold the current charge of Headmaster and the said order was challenged by the Petitioner Khalilur Rahman by filing W.P.(C) No. 434 of 2002. This is how all these above cases are inter-related and they are being disposed of by this common order.

6. The broad facts of these cases, as stated above, are not in dispute. There is no dispute that the Respondent had joined the school on 18.5.73 and at the relevant time the Respondent was a graduate and he was appointed as a Sanskrit teacher. The case of the Petitioner is that the Sanskrit teachers or the Classical teachers were not considered as graduate teachers and the post of Sanskrit teachers was an ex-cadre post and they were encadred vide order dated 3rd August, 1990. The said order reads as follows:

Government of Assam Education (Personnel) Department No. EPG.890/87/29 dated Dispur,

the 3rd August, 1990

To

The Director of Secondary Education, Assam, Kahilipara, Guwahati-19.

Subject:- Inclusion of the classical teachers of Hindi, Sanskrit Arabic, Farsi, Assamese, Bodo etc; having degree qualification in the cadre of General Teachers for promotion to higher posts.

Reference:- Your letter No. GB/EST/ASSO/3/86/215, dated 26.6.90

Sir,

With reference to your letter on the subject cited above, I am directed to say that the Classical teachers of Hindi, Sanskrit, Arabic, Persian, Assamese, Bodo etc; having degree qualification may be included in the cadre of general teachers for giving benefit of promotion to higher posts in the same line of general teachers.

It is therefore submitted that the Respondent Soneswar Deka, became a Member of the General teachers w.e.f. 3rd August, 1990 only and this finds amply clarified vide Govt. Office memorandum dated 15th June, 2002, which reads as follows:

Government of Assam Education (Elementary & Secondary) Department

No. B(3)244/99/93

Dated Dispur the 15th June, 2002 Office Memorandum

For the purpose of removing the stagnation in giving promotional benefit classical teachers to the higher post, Government vide letter No. EPG 890/87/29 dtd. 3.8.90 had decided to include the Classical teacher of Hindi, Sanskrit, Persian, Assamese, Bodo etc., having degree qualification to the cadre of General teacher for promotion in the same line of General teacher. Government has now hereby decided to continue the earlier policy decision adopted vide letter No. EPG 890/87/29 dtd. 3.8.90 and the inter-se-seniority of those Classical teacher having degree qualification with that of the General teacher will be fixed with effect from 3.8.90 i.e., the date of issue of Government decision.

This supersedes all the Government earlier letters/circulars issued in this regard.

Sd/- P.C. Sharma Principal Secretary to the Govt. of Assam Education Department.

7. The learned Counsel for the Petitioner has also referred to a decision of this Court in W.P. (C) No.2845/2000 decided on 28.2.2002. The learned Single Judge held that the past services rendered by classical teachers cannot be counted for fixation of the inter se seniority and the date of notification is to be taken at the entry to the general cadre, i.e., the Classical teachers are to be regarded to be

born in service w.e.f. 3.8.1990.

8. A plain reading of the Govt. circular dated 3rd August, 1990 as quoted above will show that the said notification has been issued for giving promotional avenues to higher post to the (Classical teachers) in the same line as General teachers. This was not meant for fixing inter-se seniority of teachers in High School or Secondary Schools which is governed by Rule 13 of the Assam Secondary Education (Provincialised) Services Rules, 1982. Rule 13 reads as follows:

Seniority. ?

(1) The inter se seniority of the existing employees in the respective cadre shall be determined in relation to the:

(a) Date of continuous appointment.

(b) Date of joining.

(c) Date of birth.

(2) In case of any dispute, the Director shall refer the matter in details to the State Government whose decision shall be final.

(3) In case of the members entering into the service on and after the appointed date their inter se seniority shall be determined on the basis of merit list furnished by the board.

In view of Rule 13 as quoted above, the inter se seniority in the cadre shall be made on the basis of the date of continuous appointment, date of joining or date of birth. The date of continuous appointment of the Respondent is 1973, whereas that of the Petitioner is 1976. The Respondent was a Graduate when he joined service in 1973. Although, he was appointed as a Sanskrit teacher, the Petitioner was getting same pay scale, i.e., pay scale provided to the graduate teachers. Thus, there was no difference in the pay scale, nor the Respondent was getting lower pay scale than that of the Petitioner. Before 1990 circular, as quoted above, the classical teachers were not considered for promotion, to the higher post of Assistant Headmaster, or Headmaster or Principal as the case may be and the circular dated 3rd August 1990 merely removed that bar, i.e., w.e.f. that date, those teachers became eligible for promotion to higher post. There is no question for upgradation of the Respondent to the higher cadre as the Respondent was getting the same pay scale since 1973.

9. It has been submitted that the decision in writ petition No. 2845 of 2000 has been challenged and the matter is pending before the Division Bench in Appeal. The present batch of writ petitions, however, can be disposed of without considering that aspect of the matter. There is no dispute at the bar that both the Petitioner and the Respondent had participated in the selection process for the post of Headmaster of the school. The Respondent came out successfully whereas the Petitioner failed to qualify. In view of the 1990 circular, it cannot be

said that the Petitioner Soneswar Deka was not eligible for empanelment for the post of Headmaster. There was no irregularity of infirmity in the said selection and when the said selection was approved by the concerned authority, the Respondents was to be considered for promotion/appointment when the vacancy to the post of Headmaster arose on 1.3.2001.

It is further submitted that the select list of 1999 cannot be acted upon in the year 2001/2002. The rules nowhere provided any validity period/expiry period of such selection.

The learned Counsel for the Petitioner submitted that the said empanelment is made school wise and appointment can be made only when any vacancy arises in the said school and when the vacancy arose in the said school on 1.3.2001 in absence of any rule providing for any expiry period or any other stipulation, the Respondent cannot be deprived of his dues. Further, I find that when a regularly selected candidate is available in the school itself and the vacancy in the school arose, naturally the candidate of the school itself is to be given chance and Anr. teacher, on the basis of alleged seniority, cannot be entrusted with the job as the selectee definitely has stolen a march over the other teachers.

In view of the above, the Writ Petition No. 6606 of 1999 and W.P.(C) No. 434 of 2002 has got no merit and they stand dismissed.

The Writ Petition No. 3502/2001 stands allowed.

The interim order passed on 18.2.2001 is made absolute and the Respondent State is directed to pass necessary orders for appointment of the regularly selected candidate as Headmaster of the school.