
(2018) 04 GAU CK 0066
In the Gauhati High Court
Case No : WP(C) 5998 of 2012

KUMUD CHANDRA BORAH

APPELLANT

Vs

THE STATE OF ASSAM AND 4 ORS

RESPONDENT

Date of Decision : 19-04-2018

Acts Referred:

Assam Secondary Education (Provincialised) Service Rules, 2003 — Rule 4, 8(4)
Constitution of India, 1950 — Article 16, 309

Citation : (2018) 04 GAU CK 0066

Hon'ble Judges : MANASH RANJAN PATHAK

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. Heard Mr. K. L.R. Yanthan, learned counsel for the petitioner. Also heard Mr. A. Deka, learned Standing counsel, Education Department for

respondent Nos. 1 to 3, Ms. B. Gogoi, learned counsel for the respondent No.4 and Mr. P. J. Saikia, learned counsel for the respondent No.5.

2. The father of the petitioner was serving as a regular Grade IV employee in Narayanpur Higher Secondary School, in the district of Lakhimpur, a

provincialised HS School of the State. After retirement of his father as there was no earning member in the family, on his application the School

authority allowed the petitioner to serve as a Grade IV employee on honorary basis in the said HS School due to shortage of Grade IV employee in it

and accordingly, the petitioner continued to serve in the said HS School as Grade IV employee on honorary basis since 02.01.2001. The petitioner

herein prays for a direction to appoint him as a Grade IV employee in said Narayanpur HS School on regular basis against a vacant sanctioned post of

Grade IV in the said School considering his period of service of honorary basis

since 02.01.2001.

3. In this writ petition, the petitioner has also stated that interview for regular recruitment of Grade IV post in said HS School was held on 04.11.2012

in which he participated and he could come to know from reliable source that the authority of the School, the respondent No.4 recommended the name

of the respondent No.5 for his appointment as a Grade IV employee in the said School.

4. This Court while issuing notice to the respondents on 13.12.2012, also issued an interim order directing the parties to maintain status quo in the

process of regular appointment to the Grade IV vacancies in said Narayanpur HS School.

5. The Assam Secondary Education (Provincialised) Service Rules, 2003 as amended, a statutory Rule under Article 309 of the Constitution of India

regulates the recruitment and conditions of service of persons appointed to the Assam Secondary Education (Provincialised) service. The said 2003

Rules came into force w.e.f., 12.08.2003.

6. Rule 4 of said 2003 Rules provides for methods of recruitment to the Class IV post in such provincialised High/Higher/ Higher Secondary and Multi

Purpose School by way of direct recruitment after advertising the post school wise. Rule 8(4) of the said 2003 Rules provides for constitution of the

School Selection Committee for selection of non teaching staff of such provincialised secondary schools.

7. Mr. Deka, learned Standing counsel, Education Department in terms of the order dated 19.03.2018 have placed the relevant record regarding the

selection of Grade IV candidates in said Narayanpur HS School. It is seen from the said records that the Inspector of Schools, Lakhimpur District

Circle, North Lakhimpur, the respondent No.3 on 18.10.2012 informed the Principal of the School regarding selection and appointment to the said

vacant Grade IV post in the said school directing him to advertise the said post and to hold written and Viva Voce test for the said purpose. The said

Inspector of School in terms of the letter of the Director of Secondary Education, Assam dated 12.09.2012 constituted the School Selection

Committee under the provisions of Rule 8(4) of said 2003 Rules which includes the President of the SMDC of the School the Principal of the School

as its Member Secretary, one Sri Pradip Saikia as a Teacher Member and another

as Parent Member. In terms of the said direction of the Inspector of Schools, Lakhimpur, the respondent No.4, Principal cum Member Secretary of the Selection Committee of the said HS School issued the advertisement on 20.10.2012 for a vacant un-reserved post of Grade IV post in the said School informing the intending candidates to apply for the same in the standard form intimating that the applicant must have a Class X passed candidate and he/she should be more than 18 years and less than 36 years of age on or before 01.01.2012. By the said advertisement the intending candidates were also informed that there will be a written test of 50 marks on 29.10.2012 and Viva Voce test of 50 marks for the said purpose. The respondent No.4 also issued the said advertisement in a local daily, namely, "Ajir Dainik Batori" on 21.10.2012. It is seen from the records that pursuant to the said advertisement 10 (ten) candidates including the petitioner and the respondent No.5 applied for the same and the written test for the said post was held on 04.10.2012 in which the petitioner and the respondent No.5 participated. Thereafter, Viva Voce test was held on the same date i.e. on 04.10.2012. In the said selection process for recruitment to the vacant Grade IV post in Narayanpur HS School as advertised on 20th and 21st October, 2012, the respondent No.5 stood first whereas the present petitioner stood second and the Member Secretary of the said Selection Committee i.e., the Principal of said Narayanpur HS School, the respondent No.4 as per said 2003 statutory recruitment Rules and the directions given by the Inspector of Schools recommended the name of the respondent No.5 for his appointment to the vacant sanctioned post of Grade IV in the said School.

8. At this stage the petitioner on 05.12.2012 approached this Court in the present writ petition wherein the order of status quo was passed on 13.12.2012.

9. From the records placed by the learned Standing counsel it is also seen that 10 numbers of candidates appeared in the said selection process and the marks of said 10 candidates obtained by them in their written test as well as in Viva Voce test was duly considered by the School Selection Committee and thereafter found the respondent No.5 as the best candidate on the basis of marks obtained by him in such tests, whereas the petitioner was found to be the second best candidate.

10. The records placed by the learned Standing counsel does not reflect any illegality or any infirmity regarding the selection of the respondent No.5

for the vacant sanctioned post of Grade IV in said Narayanpur HS School in terms of the advertisement issued earlier on 20.10.2012 and 21.10.2012.

As the recruitment to the post of Grade IV post in such provincialised Higher Secondary School as in the case of present Narayanpur HS School in

the district of Lakhimpur is regulated by the statutory recruitment Rules 2003 as amended, which provides for direct recruitment to the post of Grade

IV, as such, the prayer of the petitioner for his regular appointment in said vacant post of Grade IV in the Narayanpur HS School on the basis of his

honorary service since 02.01.2001 cannot be considered in violation of the provisions of the statutory Recruitment Rules of 2003 framed under Article

309 of the Constitution of India. Though the main contention of the petitioner is that due to passage of long period of time as an honorary Grade-IV he

is entitled to be regularised, but, the said 2003 Rules regulating the appointment of Grade-IV in such provincialised Secondary schools of the State are

concerned, there is no dispute that there is no such provision for making appointment of honorary basis by the School Managing Committee.

11. It is settled that every eligible person is entitled to a chance to be selected and if such chance is not made available to such eligible persons in

general, undoubtedly it will be violative of Article 16 of the Constitution. By the device adopted, to bypass the statutory rules for direct recruitment, the

right of all other eligible persons to be considered for appointment, cannot be done away with and such eligible persons cannot be deprived of such

opportunity to be candidates for regular appointments. If such deviation is allowed to be continued, opportunity for employment will be reduced to a

selected few depriving majority of other eligible persons entitled for consideration on merit

12. It is already noted above that there is no such provision for appointment of honorary Grade-IV employee in provincialised Secondary Schools in

the State nor there is any provision for regularisation of such honorary employee. As such the claim of the petitioner for regularisation of his service as

Grade-IV employee in said Narayanpur HS School on the basis that the School Managing Committee of Narayanpur HS School allowed him to work

on honorary basis since 02.01.2001 in the absence of any provision under the law in that regard.

13. As settled in the case of Jahangir Alam and others -Vs- State of Assam and others, reported in 2003 (3) GLT 544, the relevant recruitment Rules

of 2003 do not contemplate any role of the managing Committee in the matter of appointment of Grade-IV employees and the said 2003 Rules having

provided for appointments in a particular manner by a specified authority upon due selection by a duly constituted selection Committee, the

appointment of the petitioner made by the Managing committees of the School is clearly contrary to the provisions of the statutory enactment in force.

The service rendered by the petitioner, therefore, must be held to have been rendered in fortuitous circumstances as distinguished from regular service

rendered under the State. Appointments made in departure to the Statutory Rules in force and service rendered on basis of such appointments cannot

be understood to cast any obligation on the part of the State to regularise such appointments. In fact no power to regularise such appointments is

discernible under the Rules. As it is seen that the initial appointment of the petitioner was unauthorised being contrary to the provisions of the statute,

consequently the service rendered by the petitioner, even if it is assumed to have continued for long years, would not be service rendered under the

state, thereby casting upon the State an obligation in law to regularise the writ petitioner in service as no legal right to regularisation, therefore, can be

recognised in the writ petitioner.

14. For the reasons above, this writ petition, being devoid of merit stands dismissed. Accordingly the interim order passed earlier on 13.12.2012 also

stands vacated.