

(2010) 11 GAU CK 0065

In the Gauhati High Court

Case No : WP (C) No (s) . 2826, 2827, 2828, 2829, 2830, 2831, 2832 and 5341 of 2008

Kusheswar Borah

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 11-11-2010

Acts Referred:

Assam Elementary Education (Provincialisation) Services and Conduct Rules, 1981 — Rule 3, 5

Citation : (2011) 3 GLR 177

Hon'ble Judges : Brojendra Prasad Katakey, J

Bench : Single Bench

Advocate : D. Choudhury, Mr. A.K. Choudhury, Mr. P. Das, Mr. U.K. Das, Dr. B Ahmed, Mr. A.R. Bhuiyan and Mr. S. Bora, for the Appellant; M.R. Pathak, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Katakey, J.—As these writ petitions relate to the process of selection undertaken by the respondent-authorities for selecting the teachers for promotion to the post of Headmaster in Middle English (ME) Schools in the District of Morigaon, these are taken up for hearing and disposal together, as agreed to by the learned counsel for the parties.

2. WP(C) No. 2826/2008; WP(C) No. 2827/2008; WP(C) No. 2828/2008 WP(C) No. 2829/2008; WP(C) No. 2830/2008; WP(C) No. 2831/2008 and WP(C) No. 2832/2008 are filed by the Headmasters, in-Charge of different M.E. Schools in the District of Morigaon challenging the selection process undertaken by the respondent authorities basically contending that though the Assam Elementary Education (Provincialisation) Service and Conduct Rules, 1981 ("the 1981 Rules") requires filling up of the post of the Headmaster of M.E. Schools on the basis of seniority-cum-efficiency, the selection process has been undertaken by the respondent authorities without preparation and publication of the seniority

list, as required under rule 3(iii) of the said Rules. WHO No. 5341/2008 has been filed by 4 (four) petitioners (the petitioner No. 4, however, has expired during pendency of the writ petition), whose names were considered by the Selection Committee for the purpose of promotion to the post of Headmaster, praying for a direction to the respondent authorities to finalize the selection process, basically contending that though the Selection Committee constituted for that purpose, prepared the list and sent it to the Director of Elementary Education for approval, no decision has been taken by the Director in that regard and consequently the select list has not been acted upon.

3. I have heard Mr. D. Choudhury, the learned counsel for the writ petitioners in WP(C) No.2826/2008; WP(C) No.2827/2008; WP(C) No.2828/2008 WP(C) No.2829/2008; WP(C) No.2830/2008; WP(C) No.2831/2008 and WP(C) No.2832/2008, Mr. A.R. Bhuiyan, the learned counsel for the respondent No. 9 in all these writ petitions, who also appears for the petitioners in WP(C) No. 5341/2008. I have also heard Mr. M.R. Pathak, the learned Standing Counsel, Education Department appearing for the State respondents. The other private respondents have not entered appearance despite service of notice.

4. It is the contention of Mr. Choudhury, the learned counsel for the petitioner that though rule 3(iii) of 1981 Rules requires preparation of the gradation list of teachers in terms of the Government's Rules, i.e., by the appointing authority, namely, the Director of Elementary Education, no such seniority list has been prepared and published. Referring to rule 5 of the 1981 Rules, it has also been submitted by Mr. Choudhury that the criteria for promotion to the post of Headmaster being seniority-cum-efficiency, preparation and publication of the seniority list is a must before taking up the matter for consideration for promotion, without which, no process for selection of candidate for promotion can be initiated, as has been done in the instant case. Mr. Choudhury submits that the records produced by the learned Standing Counsel, Education Department do not reveal preparation of such seniority list and also consideration of all the eligible candidates for the purpose of promotion in respect of the Morigaon District. It has, therefore, been submitted that the entire selection process undertaken by the State respondents may be interfered with.

5. Mr. Pathak, the learned Standing Counsel, Education Department placing reliance on the affidavit-in-opposition filed by the Director of Elementary Education in WP(C) No. 2826/2008 and WP(C) No. 5341/ 2008 and also referring to the relevant provisions of the 1981 Rules as well as the Notification dated 30th August, 1986 ("the 1986 Notification") submits that the Selection Committee prepared the gradation list on the basis of the particulars submitted by the District Elementary Education Officer for the purpose of promotion to the post of Headmaster of the ME Schools in Morigaon District. Mr. Pathak, however, referring to the para-wise comment dated 5th September, 2008 furnished by the District Elementary Education Officer, Morigaon to the Director of Elementary Education, which is available on record, submits that the gradation list was

prepared by the Selection Committee on the basis of the documents submitted by the teachers and the Service Books of such teachers, who had approached the District Elementary Education Officer. Mr. Pathak is unable to draw the attention of the court to any document on record suggesting the preparation of the gradation list of the teachers and also whether apart from the names of the teachers whose names find place in the list prepared by the Committee, there were other eligible teachers, who came within the zone of consideration and whether the names of such teachers were also considered. Mr. Pathak, however, has submitted that though the gradation list was prepared by the District Level Selection Committee, no select list has been prepared by the said Committee and as such, there is no question of forwarding the same to the Director for approval.

6. Mr. Bhuyan, the learned counsel appearing for the petitioners in WP(C) No. 5341/2008 and also for the respondent No. 9 in the other writ petitions has also submitted that though a gradation list was prepared by the District Level Selection Committee containing the names of 34 (thirty four) teachers for the purpose of consideration for promotion for the post of Headmaster in M.E. School in Morigaon District, no selection process has, thereafter, been pursued and the matter rest at that stage, as because the writ petitioners in other writ petitions have approached this court and there is a direction to maintain the status quo. Mr. Bhuiyan submits that the Selection Committee has rightly prepared the gradation list keeping in view the number of vacancy existed at that point of time and containing the names of the senior most persons in the District and as such, no illegality has been committed by the Committee in preparing such gradation list. Mr. Bhuiyan, therefore, submits that while dismissing the writ petitions being WP(C) No.2826/2008; WP(C) No.2827/2008; WP(C) No.2828/2008 WP(C) No.2829/2008; WP(C) No.2830/2008; WP(C) No.2831/2008 and WP(C) No.2832/2008, the writ petition No.5341/2008 be allowed by directing the respondent authorities to complete the process pursuant to the gradation list prepared by the authority for that purpose.

7. I have considered the submissions of the learned counsel for the parties and also perused the pleadings, apart from the materials available on record, as produced by Mr. Pathak, the learned Standing Counsel, Education Department.

8. The petitioners in all the writ petitions claim that they are eligible for consideration for promotion to the post of Headmaster in M.E. School as they fulfilled the requirements laid down in 1981 Rules and 1986 Notification. The said position has not been disputed by any of the respondents in those writ petitions, though the Director has filed the affidavit-in-opposition in WHO No.2826/2008 and WP(C) No.5341/2008. The respondent No. 9 though has also filed a Misc. Case being Misc. Case No.2478/2009 praying for vacating the interim order passed in the other writ petitions, has, however, not challenged the contention of the petitioners relating to their eligibility. Therefore, this court will proceed by assuming that the petitioners in all the writ petitions are qualified to be considered for promotion to the post of Headmaster in terms of the 1981 Rules

and the 1986 Notification.

9. Rule 5 of 1981 Rules stipulate that the post of Headmaster shall be a promotional post and appointment to the said posts shall be made on the basis of seniority-cum-efficiency and on the recommendation of the Sub-Divisional Selection Committee to be constituted by the Director of Elementary Education. Rule 3(iii) of the said Rules requires determination of inter-se-seniority of the teachers belonging to a cadre/class/grade as per the existing Government's Rules, 1986 Notification also provides that the post of Headmaster in M.E. School shall be a promotional post and the appointment to the said post is to be made on the basis of seniority-cum-efficiency and on the basis of the recommendation of the Selection Committee. In 1986 Notification, it has, however, been stated that such select has to be made by the District Level Selection Committee, though rule 5 of 1981 Rules provides for selection by the Sub-Divisional Selection Committee. In the case in hand, it is not in dispute that Morigaon District contains only 1 (one) Sub-Division and, therefore, this court is not required to go into the dispute as to whether the Selection Committee has to be a District Level Selection Committee or the Sub-Divisional Selection Committee.

10. Clause 2 of 1986 Notification provides for preparation of a Sub-Division Wise gradation list of the teachers, in order of seniority showing their dates of appointment, educational qualification, year of passing of the training, age on the date of appointment, date of retirement, which is to be communicated to all the incumbents with copies to all the concerned authorities for information.

11. Reading the provisions of 1981 Rules and 1986 Notification together, it, therefore, transpires that the authority is initially required to determine the inter-se-seniority of the teachers on the basis of the cadre/class/grade and thereafter, the Selection Committee is required to prepare the gradation list from amongst the persons, who are found to be eligible for consideration for promotion. The requirement of the Rules for the purpose of promotion being seniority-cum-efficiency, the basic requirement, before undertaking any process of selection, is to determine the inter-se-seniority of the teachers by the appropriate authority. After determination of such inter-se-seniority, the authority may fix the zone of consideration and forward the names of the eligible candidates for the purpose of consideration for promotion, depending on the number of vacancies available. The Selection Committee, on the basis of such list of teachers to be furnished, is to prepare the list as contemplated in clause 2 of the 1986 Notification.

12. In the instant case, it appears from the records produced by the learned Standing Counsel, Education Department that there was no determination of inter-se-seniority of the teachers in Morigaon District insofar as the M.E. Schools are concerned. In the absence of any such determination, the authority ought not to proceed further as the criteria for promotion is seniority-cum-efficiency. It also appears from the records that whoever filed the application before the District Elementary Education Officer seeking consideration of his case for promotion to the post of Headmaster, the District Elementary Education Officer

has prepared a list of such teachers and forwarded the particulars to the Selection Committee without, however, undertaking any exercise whatsoever for determination of inter se seniority or to ascertain as to whether there were other teachers, apart from the teachers who had filed their applications and who were eligible for consideration and came within the zone of consideration. The records further reveal that on the basis of such information furnished by the District Elementary Education Officer, a list was initially prepared on 14th December, 2007 by the Committee, which was forwarded by the District Elementary Education Officer on 4th February, 2008 to the Director, which list, however, was not accepted by the Director, as it appears from the communication dated 6th November, 2008 issued by the District Elementary Education Officer to the Director of Elementary Education, by which a fresh list containing the names of 34 (thirty four) teachers were forwarded. As discussed above, the list was prepared containing the particulars of such teachers, who filed their applications for the purpose of consideration and without verifying as to whether there were any other teachers eligible for such consideration and who come within the zone of consideration.

The requirement of 1981 Rules and 1986 Notification for the purpose of promotion to the post of Headmaster being the seniority-cum-efficiency, the process of selection of candidate for promotion to the post of Headmaster without preparation of seniority list cannot be undertaken, as has been done in the instant case.

14. That being the position, the selection process initiated by the respondent authorities for the purpose of selecting the teachers for promotion to the post of Headmaster in M.E. Schools in Morigaon District is set aside. The respondent authorities are directed to initiate the selection process afresh after determining the inter-se-seniority of the teachers in terms of the observation made herein above. After such determination, the Commissioner and Secretary in Education Department shall determine the zone of consideration and constitute the Selection Committee for the purpose of selection of the teachers for promotion to the post of Headmaster of M.E. Schools in Morigaon District. Such process shall be completed as early as possible and in any case within a period of 6 (six) months from today, keeping in view the necessity of having a regular Headmaster in those schools.

15. The writ petition being WP(C) No.2826/2008; WP(C) No.2827/2008; WP(C) No.2828/2008 WP(C) No.2829/2008; WP(C) No.2830/2008; WP(C) No.2831/2008 and WP(C) No.2832/2008 are accordingly allowed to the extent indicated above. The writ petition No. 5341/2008 stands dismissed. Keeping in view the facts and circumstances involved in the case, the parties are directed to bear their own cost.

16. A copy of this judgment and order be furnished to Mr. Pathak, the learned Standing Counsel, Education Department for compliance.