

(2014) 05 GAU CK 0068
In the Gauhati High Court
Case No : Writ Petition (C) No. 2803 of 2013

Latifar Rahman Choudhury

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 02-05-2014

Acts Referred:

Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 —
Section 3, 4, 4(1), 4(2)

Citation : (2015) 2 GLT 226

Hon'ble Judges : Tinlianhang Vaiphei, J.

Bench : Single Bench

Advocate : D.N. Bhattacharya, Advocate, for the Appellant; J. Abedin, SC and R.C. Saikia, for the Respondent

Final Decision : Dismissed

Judgement

Tinlianhang Vaiphei, J.—With the consent of the learned counsel appearing for all the parties, this writ petition is being disposed at the admission stage. As prayed for, the respondent No. 6 is allowed to treat the application for vacation of the interim order passed by this Court on 27.5.2013 as his pleadings in the writ petition. In this writ petition, the petitioner is seeking the direction of this Court for provincialization of his service against the post of Second Assistant Teacher (B.Sc.) in the Baramboi Girls' High School ("the School" for short). The petitioner is a graduate in Science with the subject combination of Physics, Chemistry and Mathematics (Major). The Managing Committee of the School by the resolution No. 1 dated 23.5.1998 appointed him as an Assistant Teacher (B.Sc.) and the respondent No. 6, who is also a graduate in Science with the subject combination of Mathematics, Chemistry and Geology, was appointed as Assistant Teacher in Advance Mathematics on 20.3.1995. According to the petitioner, since the subject combination of the First Science Teacher of the School is Chemistry, Botany and Zoology, it became imperative to appoint a Second Science Teacher with the subject combination of Physics, Chemistry and Mathematics to satisfy the conditions for recognition of the School by the Board

of Secondary Education, Assam (SEBA). To satisfy this condition, he was appointed as Assistant Science Teacher. Ever since his appointment in 1998, he has been taking as much as 6 classes a day in Physics, Chemistry and Mathematics regularly. The Inspector of Schools, Kamrup District Circle (respondent 3) by the order dated 23.1.2004 approved the said resolution of the Managing Committee appointing him as Assistant Teacher (B.Sc.) showing his position in Serial No. 9 of the order. The Managing Committee, while submitting the proposal for recognition of the School in accordance with the Regulation for Recognition of High School and High Madrassa, 1988 to the SEBA, showed the petitioner as Assistant Teacher (Science) with the subjects of Physics, Chemistry and Mathematics (Major) in B.Sc. and the services of the respondent No. 6 with the subjects of Geology, Chemistry and Mathematics as the Second Assistant Teacher (Science) in Advanced Mathematics.

2. It is also the case of the petitioner that there are three Science Teachers in the School. The First Teacher, namely, Md. Gias Ali Talukdar, has the subject combination of Botany, Zoology and Chemistry in B.Sc. Therefore, the service of the petitioner became essential for taking up the classes for Physics and Mathematics for getting recognition from the SEBA. The School was finally recognized by the SEBA on 1.1.1998 vide the letter dated 20.12.1998 of the SEBA. However, much to his consternation, the respondent No. 2, while publishing the Notice dated 5.3.2013 with respect to the list of institutions eligible for provincialization, showed the name of the petitioner as excess teacher. The Managing Committee of the School in its extended meeting held on 19.4.2013, however, resolved to show the name of the petitioner as Assistant Teacher (Science) and the name of the respondent No. 6 as Assistant Teacher (Advanced Mathematics) by clarifying the resolution dated 23.5.1998 and accordingly directed the Headmistress and Secretary of the School to take up the matter with the concerned authority. The respondent No. 2 was informed about the anomaly taking place in showing the name of the petitioner as excess Assistant Teacher (Science) instead of Second Assistant Teacher (Science) in accordance with the resolution dated 23.5.1998 of the Managing Committee and was asked to rectify the error accordingly. Thereafter, an application for re-examination and review of the case of the petitioner was submitted to the respondent No. 2 as per the prescribed format and by depositing Rs. 25/- in the Treasury.

3. It is the further case of the petitioner that with a view to provincialize the services of the employees of the Venture Educational Institutions in Assam and restrict further establishment of such educational institutions, the State Legislature enacted "The Assam Venture Educational Institutions (Provincialization of Services) Act, 2011 ("the Act" for short). Under Section 4(1) of this Act, the employees who have completed ten years of continuous service in the venture educational institution without any break from the date of recognition of the Venture Educational Institution as on the date of the coming into force of the Act shall be deemed to have been provincialized and they shall

become the employees of the State Government with effect from that date. According to the petitioner, by the operation of the afore-mentioned provision, his service in the post of Second Assistant Teacher (Science) should have been provincialized. It is, therefore, contended by the petitioner that the action of the respondent authorities showing him as excess Assistant Teacher is illegal and arbitrary, and is the result of non-application of mind. This prompted him to file this writ petition.

4. The case of the respondent No. 6, as projected in his application for vacation of the interim order, is that the Managing Committee of the School appointed him as Assistant Teacher (B.Sc.) of the School on temporary basis on 20.3.1995. He joined the post on 27.3.1995. In the order dated 13.1.2004 issued by the respondent No. 3 approving the appointment of teaching and non-teaching staff, his name is found at serial No. 7 with his date of joining the post being shown as 27.3.1995 whereas the name of the writ petitioner is found at Serial No. 9 with his date of appointment as 25.5.1998. Pursuant to the order dated 25.7.2013 of the Government of Assam in the Education Department, the respondent No. 2 issued the order dated 26.7.2013 whereby 870 post for teaching and non-teaching staff were created for Kamrup (Rural) District: 8 (eight) teaching and non-teaching staff were allotted to the School with effect from 1.1.2013. However, the name of the answering respondent did not appear in the order of provincialization. On making enquiry, he came to learn that his name could not be provincialized and was dropped due to the interim order dated 27.5.2013 passed by this Court in this case (against which the application for vacation was filed in the connected Misc. Case No. 2682/2013). It is the contention of the answering respondent that the seniority of the employees concerned is the determining factor for provincialization when the number of employees serving in such venture educational institutions exceeds the numbers specified in the Schedule to the Act and since he is three years senior to the petitioner, his service is entitled to be provincialized. According to the respondent No. 6, the petitioner has never challenged the order of approval dated 13.1.2004 making him senior to the petitioner. As the answering respondent is senior to the petitioner, contends the answering respondent, it is his service as an Assistant Teacher (Science), which should be provincialized and not that of the petitioner. He, therefore, submits that the action of the respondent authorities refusing to provincialize his service as Assistant Teacher (Science) is illegal, arbitrary and is liable to be interfered with.

5. The provisions dealing with provincialization of service of the employees of Venture Educational Institutions are adumbrated in Section 4 of the Act, which is reproduced herein below:

"4. Employees to be Government servant.-(1) The services of the employees of all eligible Venture Educational Institutions under Section 3 and who have already completed ten years of service in such Educational Institution without any break from the date of affiliation, recognition, concurrence or permission as the case

may be, of the concerned educational institutions as on the date of coming into force of this Act, shall be deemed to have been provincialized and they shall become employees of the State government with effect from that date.

(2) The service of all teaching and non-teaching employees, who have not yet completed ten years of continuous services without break in Venture Educational Institutional Institutions as under sub-section (1) shall be provincialized with effect from the date on which they complete the required ten years of service as stipulated under sub-section (1):

Provided that the numbers of employees in both teaching and non-teaching cadre in each of the institution, services of whom are provincialized under this Act, shall not exceed as specified in the Schedule appended to this Act:

Provided further that where the number of such employees serving in such Venture Educational Institutions exceeds the numbers as specified in the Schedule, the provincialization of the services of the employees shall be on the basis of seniority in the respective category in the concerned educational institution. The State Government shall have no liability whatsoever in regard to such employees.

* * *

6. The provisions reproduced above plainly indicate that the services of the teaching and non-teaching employees who have completed ten years of continuous service in Venture Educational Institutions without any break from the date of the recognition thereof and to the date of the coming into force of the Act shall be treated as provincialized with effect from that date. It further provides that in the case of those teaching and non-teaching employees who are yet to complete ten years without any break in such institution shall also be provincialized from the date on which they complete the required ten years. However, a restriction is placed by the first proviso thereto which says that the number of employees in both teaching and non-teaching cadre in each of the institution, whose services are to be provincialized shall not exceed the numbers specified in the Schedule appended to the Act. Then the second proviso thereto also provides that if the numbers of such employees serving in the institution exceeds the numbers specified in the said Schedule, provincialization of the services of the employees shall be done on the basis of the seniority in the respective category in the concerned educational institution: the State Government disowns any liability in respect of excess employees. Thus, the crucial words are "seniority in the category". For example, if the petitioner is senior to the respondent No. 6 in the category, in the absence of vacancy to accommodate both of them, he will have a superior claim in the matter of provincialization by virtue of his seniority.

7. What then is the term "category"? The term "category" is not expressly defined in the Act. In the instant case, we are concerned with the teaching staff of a High School. A clue to the meaning of the term "category" can, however, be

had from the Schedule appended to the Act. In the second column of Schedule, it is found that all the posts of Assistant Teacher (Science) are made to form one category of the teaching staff in a High School. Therefore, the term "seniority in the category" in the context of provincialization of employees of a High School under the Act can only mean seniority among the Assistant Teachers (Science) of the School. So read, the respondent No. 6, who joined the post of Assistant Teacher (Science) on 27.3.1995 in the School, is admittedly senior to the petitioner in the category of Assistant Teacher (Science) as the latter joined the School only on 23.5.1998.

8. It is, however, contended by the Mr. D.K. Bhattacharya, the learned counsel for the petitioner, that as out of the three Assistant Teachers (B.Sc), the First Assistant Teacher (Science), namely, Md. Gias Ali Talukdar, has the subject combination of Botany, Zoology and Chemistry in B.Sc., the service of the petitioner, who is a B.Sc. with the subject combination of Physics, Chemistry and Mathematics, became essential to take classes in Physics and Mathematics, which was why he was shown as Second Assistant Teacher (Science) at the time of applying for recognition of the School. In my opinion, this contention cannot be accepted for the simple reason that seniority cannot be determined on the basis of the need for the service of the petitioner to teach Physics and Mathematics: no such provision is made under the Act. There is no dispute at the bar that the respondent No. 7 is an Assistant Teacher (Science) even though he may be teaching only in Advanced Mathematics. Once it is held that he belongs to the category of Assistant Teachers (Science), his seniority vis-a-vis the petitioner must be determined in accordance with the 2nd Proviso to Section 4(2) of the Act. Since the respondent No. 7 is found to be senior to the petitioner and since there is no other post of Assistant Teacher (Science) to accommodate the petitioner, he has been rightly declared to be excess Assistant Teacher. No other issue, on the basis of the pleadings of the parties, survives for consideration. For the reasons stated in the foregoing, there is no merit in this writ petition, which is hereby dismissed. However, the parties are directed to bear their own costs. The interim order stands vacated.