
(2008) 04 GAU CK 0029
In the Gauhati High Court

Madan Chutia

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 24-04-2008

Acts Referred:

Citation : (2008) 2 GLT 539

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Amitava Roy, J.—The order dated 21.3.2007 passed by the Director of Secondary Education, Assam holding the Respondent No. 4 to be senior to the petitioner in Ghilamara Higher Secondary School, District Lakhimpur (hereafter referred to as the "School") is in challenge in the instant petition.

2. I have heard Mr. A. Sarma, learned Counsel for the petitioner, Mr. M. Dutta, learned Standing Counsel, Education Department, Govt. of Assam and Mr. A. Dutta, learned Counsel for the Respondent No. 4.

3. This is the second round of litigation by the petitioner. He was appointed as a Subject Teacher (Assamese) in Bordoloni Higher Secondary School on 26.12.79 and was thereafter on 23.2.1987, transferred to Ghilamara Higher Secondary School by order of the same date issued by the Director of Secondary Education, Assam. He accordingly joined Ghilamara Higher Secondary School on 1.3.1987. On the retirement of Sri Paramananda Gogoi, the Principal of Ghilamara Higher Secondary School, by the order dated 29.12.2006, the Respondent No. 4 was allowed to hold the charge of the said office pending finalization of the inter se seniority amongst five teachers including the petitioner.

The petitioner being aggrieved by the said order, approached this Court with WP (C) No. 290/2007 which was disposed of on 22.01.2007 with a direction to the Director of Secondary Education, Assam to decide the question of seniority of the teachers of the school within a period of two months and thereafter allow the

senior most teacher amongst the Assistant Teachers to hold the charge of the office of the Principal till a regular incumbent was inducted. The impugned order was thereafter passed holding the respondent No. 4 to be senior to the petitioner principally, on the ground that he (petitioner) having been transferred to Ghilamara Higher Secondary School on his request and in the interest of public service, his seniority in the institution would be reckoned on and from 1.3.1987 i.e. the date of his joining. The seniority of the respondent No. 4 who had already serving the school was counted with effect from 1.5.85, the date of receipt of the graduate scale of pay by him.

4. The Director of Secondary Education, Assam in his affidavit, has defended the order impugned by pleading that, in absence of any mention in the order of the petitioner's transfer to Ghilamara Higher Secondary School that it was in public interest and the disallowance of the TA and DA there for demonstrated that the same was not in the interest of public service and therefore, his seniority in the school was rightly computed with effect from 1.3.1987. As per the criteria approved by the department in this regard as contained in the guidelines dated 30.8.2001, the answering respondent has asserted that the respondent No. 4 was rightly allowed to hold the charge of the office of the Principal of the school in compliance of the order dated 22.1.2007 passed by this Court in WP (C) No. 290/2007.

5. The respondent No. 4 in substance, has reiterated the pleaded stand of the aforementioned official respondent. He has further asserted that the petitioner's seniority was rightly determined on the basis of his date of joining the school in terms of the Assam Secondary (Provincialised) Service Rules, 2003 (hereafter referred to as the "Rules"). By an additional affidavit, the said respondent placed on record a certificate issued by the Principal, Bordoloni Higher Secondary School from where, the petitioner had been transferred, to the effect that he therefore had applied to the Director of Secondary Education, Assam through proper channel. The copy of the said certificate (Annexure-B to the additional affidavit) is countersigned by the Inspector of Schools, Dhemaji District Circle, Dhemaji.

6. The petitioner in his rejoinder has dubbed the certificate to be fraudulent contending that in response to his written query made to the Principal, Bordoloni Higher Secondary School, the latter had disowned the said document to have been issued by him. The respondent No. 4, in his additional pleading has sought to clarify that the matter having been brought to the notice of the Inspector of Schools, Dhemaji District Circle, Dhemaji, he has admitted to have countersigned the document (Annexure-B to the additional affidavit of the Respondent No. 4) and that the signature and seal appearing thereon are genuine. The respondent No. 4 therefore on the basis of the said certificate has endeavoured to ward off the allegation of fraud levelled by the petitioner. The petitioner bringing forth the same allegation has filed an interim application being Misc. Case No. 833/2008 praying for initiation of a proceeding for perjury against the respondent No. 4.

7. Mr. Sarma has argued that as the petitioner had been transferred to Ghilamara

Higher Secondary School in the interest of public service, his seniority has to be counted on and from 26.12.1979, the date of his initial appointment. Therefore, he being apparently senior to the respondent No. 4, the finding to the contrary is palpably illegal and unsustainable in law. There being nothing in the order of the petitioner's transfer to indicate that the same had been passed on his request, the inference to that effect is wholly baseless. As by the order of transfer dated 23.2.2007 the petitioner's existing service benefits have been preserved, there is no room to assume that the same was on his request, he urged. Referring to F.R. 107 Mr. Sarma argued that as the petitioner has been granted the pay for the joining time referred to therein, it would by no means be construed that his transfer to Ghilamara Higher Secondary School was not in the interest of public service. He urged that as the department was obliged in law as required under S.R. 109 to register the necessary entry in the petitioner's Service Book indicating the nature of the transfer during his service tenure, the same would conclusively demonstrate as to whether his transfer to Ghilamara Higher Secondary School had been in the interest of public service or otherwise. Drawing the attention of this Court to the certificates issued by the Principal of Bordoloni Higher Secondary School, one produced by the respondent No. 4 and the other by the petitioner, the learned Counsel argued that it is apparent therefrom that the document, Annexure-B to the additional affidavit of the respondent No. 4 has been framed upto mislead this Court. He also referred to the letter dated 5.3.2008 of the Principal, Bordoloni Higher Secondary School, Bordoloni addressed to the Inspector of Schools, Dhemaji District Circle, Dhemaji clarifying that the certificate issued by him on 25.1.2008 to the respondent No. 4 is not the same as the one produced by him in court. Mr. Sarma therefore, insisted that a proceeding be initiated against the respondent No. 4 for perjury.

8. The learned Standing counsel, Education Department has argued that inspite of his best efforts, the record contending the process leading to the transfer of the petitioner is reported to be untraceable. However, the relevant entry in the Service Book does not indicate as to whether the same was in the interest of public service or on his own request. Underlining that the related order of transfer does not disclose that the same was in the interest of public service, the learned Standing counsel indicated that the stipulation of not granting TA and DA was decisively significant inasmuch as in terms of SR 241, the transfer allowance is not allowable if the transfer is at the request of the incumbent concerned.

9. The learned Counsel for the respondent No. 4 while reiterating his pleaded stand argued that the petitioner having failed to discharge his burden to establish that his transfer to Ghilamara Higher Secondary School had been in the interest of public service, the impugned order is unassailable in law. Referring to Rule 24(1)(v) of the Rules, he urged that the petitioner had been rightly held to be junior to the respondent No. 4. He further argued that a plain reading of the two certificates issued by the Principal, Bordoloni Higher Secondary School, would reveal that the contents thereof are overwhelmingly the same and that in the face of the unambiguous stand of the Inspector of Schools, Dhemaji District

Circle, Dhemaji that he had countersigned the certificate produced by the respondent No. 4 in Court, the plea of forgery is misconceived.

10. I have extended my thoughtful consideration to the pleadings of the parties and the arguments advanced. A bare reading of the order dated 2.3.1987 does not disclose that the same had been occasioned in the interest of public service. It does not mention either that it had been at the request of the petitioner. It is however, apparent that thereby it was made clear that he would not be entitled to transfer TA or DA. The failure to produce the relevant official records bearing the process of transfer is distressingly inexplicable. It is inconceivable as to how a public record required to be maintained in the official course of the administration of a department can become untraceable so much so that inspite of several opportunities granted to the State respondents, the same could not be produced in Court. The Commissioner and Secretary to the Govt. of Assam, Education Department, Dispur, Guwahati would cause an immediate enquiry to be made as to the location of the records and fix the responsibility on the officer (s) concerned for their failure to produce the same in Court. The report of this enquiry should be submitted before this Court within a period of one month herefrom. The said authority if deemed necessary, depending on the revelations in the enquiry would take appropriate disciplinary action against the erring officials and apprise this Court thereof.

11. The Service Book of the petitioner produced before this Court though records his transfer from Bordoloni Higher Secondary School on 28.2.1987 (A.N.), it does not divulge as to whether it was at his instance or in the interest of public service. The Service Book therefore is not of much avail to resolve the controversy. FR 107 essentially deals with the pay of a government servant to which he would be entitled in various eventualities of his transfer vis a vis the joining time allowed to comply with the same. This in the opinion of the Court is not of any determinative relevance in favour of the petitioner in the facts and circumstances of the case, On the other hand, in terms of SR 241, a transfer on the request of the government servant from one station to another is not considered to be a transfer for public convenience unless the authority sanctioning the transfer for special reasons to be recorded, otherwise directs. The said provision stipulates that travelling allowance may not be drawn by a government servant unless the transfer is made for public convenience. Though this provision of the Fundamental Rules may not in all cases per se be an unmistakable proof of the fact that travelling allowance always is not allowable if the transfer is at the instance of the government servant concerned, the non sanction of TA/DA in the present case in conjunction with the absence of any mention in the order of transfer that the same had been passed in the interest of public service when considered along with certificate issued by the Principal, Bordoloni Higher Secondary School tilts the balance in favour of the respondent No. 4. The contents of the two certificates deserve to be extracted:

Annexure-B to the Additional affidavit dated 27.2.2008 of the respondent No. 4.

This is to certify that, Sri Madan Chutia who was a Subject Teacher in the Subject Assamese of Bordoloni Higher Secondary School of Dhemaji District since 01.09.1979 to 28.02.1987 had applied to the Director of Secondary Education, Assam, Guwahati through proper channel for transfer to Ghilamara Higher Secondary School of Lakhimpur District vide Memo No. BHSS/AF-T/86/102 dtd. 18.12.1986.

Sd/- Illegible, 25.1.2008 Principal, Bordoloni Higher Secondary School Bordoloni

Countersigned Sd/- Illegible, 30.1.2008 Inspector of School Dhemaji District Circle, Dhemaji.

Annexure-C to the Affidavit-in-opposition of the writ petitioner dated 14.3.2008.

This is to certify that Sri Madan Chutia who was a Subject Teacher in the Subject Assamese of Bordoloni Higher Secondary School of Dhemaji District Since 01.09.1979 to 28.02.1987 had applied to the Director of Secondary Education, Assam, Guwahati through proper channel for transfer to Ghilamara Higher Secondary School of Lakhimpur District.

Sd/- Illegible, 25.1.2008 Principal, Bordoloni Higher Secondary School Bordoloni.

Reading between the lines, the contents of the two certificates are exactly the same except that the first contains the words "Vide Memo No. BHSS/AF-T/86/102 dtd.18.12.1986" in addition. The Principal, Bordoloni Higher Secondary School in his letter dated 5.3.2008 has admitted the issuance of the document, Annexure-C to the affidavit in opposition of the petitioner. The certificate dated 20.3.2008 of the Inspector of Schools, Dhemaji District Circle, Dhemaji, Annexure-G1 of the affidavit in reply of the respondent No. 4 dated 4.4.2008 confirms that the said authority had countersigned the document, Annexure-B to the additional affidavit of the respondent No. 4 on 30.1.2008 and that his signature and seal there on are genuine.

12. Having regard to the marked similarity in the text of the two documents and the certificate of the Inspector of Schools, Dhemaji District Circle, Dhemaji as referred to hereinabove, the imputation of forgery against the respondent No. 4 does not commend for acceptance. Both the documents however, in unison proclaim that the petitioner had applied to the Director of Secondary Education, Assam, Guwahati for his transfer from Bordoloni Higher Secondary School, Dhemaji to Ghilamara Higher Secondary School, Lakhimpur. The petitioner noticeably has not challenged the correctness of this statement in the certificate. The protection of his pay and grade as referred to in the order of transfer does not ipso facto establish in the above factual premise that his transfer to Ghilamara Higher Secondary School was not on his request. On a preponderance of the facts available on record, this Court therefore is constrained to sustain the finding of the Director of Secondary Education, Assam that the petitioner had been transferred to Ghilamara Secondary School on his request. The view taken is plausible on the materials on record and cannot be denounced as illogical or

absurd.

13. Rule 24(1)(v) of the Rules prescribes that a teacher, who has been transferred on his/her own request to any other school would have his/her seniority in that school counted with effect from the date of his/her joining in that school. This provision of the Rules amongst others is for determining the seniority of the eligible teachers for promotion to the post of Headmaster/ Superintendent/Assistant Headmaster/Assistant Superintendent in terms of Assam Secondary Education (Provincialised) Service Rules. In this view of the matter, the impugned order dated 21.3.2007 does not warrant any interference of this Court, the inter se seniority between the petitioner and the respondent No. 4 having been ascertained on the basis of the date of receipt of the graduate scale of pay by the latter in Ghilamara Higher Secondary School and the date of joining of the former therein on 1.3.1987. The writ petition as well as the Misc case are accordingly dismissed. No costs.