
(1998) 11 GAU CK 0023
In the Gauhati High Court
Case No : Civil Rule No. 4163 of 1997

Mahabubur Rahman Choudhury	Vs	APPELLANT
State of Assam and Others		RESPONDENT

Date of Decision : 13-11-1998

Acts Referred:

Citation : (1998) 4 GLT 469

Hon'ble Judges : D.N. Chowdhury, J

Bench : Single Bench

Advocate : H.R.A. Choudhury and K.A. Mazumdar, for the Appellant; H.N. Sarma, Addl, Sr. G.A and P.C. Dey, for the Respondent

Judgement

D.N. Chowdhury, J.—The present proceeding pertains to legality and validity of the order dated 19.8.97, issued by the Deputy Director of Elementary Education, Assam, communicated vide No. EMA 8/97/75 dated 19.8.97, directing continuance of the officiating arrangement of Md. Fakhrul Islam of Hizim M.E. Madrassa to hold the post of Head Master of the Madrassa.

2. On the transfer of Md. Siddique Ali, the permanent Headmaster of the Hizim M.E. Madrassa, Respondent No. 5, Md. Fakhrul Islam, an Asstt. Teacher of the Madrassa, was allowed to officiate as the Head master in the scale of pay admissible under the rules for a period of four months with immediate effect or till posting of a permanent Headmaster against the vacant post whichever is earlier. By an order dated 21.7.97, the said order was further extended for further four months or till clarification from the Director of Elementary Education, Assam, was received, whichever was earlier. By a letter dated 23rd July, 1997, the Director of Elementary Education, Assam, in response to the communication of the district Elementary Education, Officer, Karimganj dated 21.5.97, directed that the Petitioner, Md Mahabur Rahman Choudhury, may be allowed to hold the charge of the Headmaster of the Madrassa in addition to his own duties as Asstt. Teacher. Hie District Elementary Education Officer, Karimganj, by his order dated 1.8.97, cancelled the order dated 21.7.97 (i.e., the extension order) and the

Respondent No. 5, Md. Fakhrul Islam, was directed to handover charge of the Madrassa to the Petitioner. After taking the follow-up action as per the communication of the Director of Elementary Education, Assam, the District Elementary Education Officer, Karimganj, submitted a report vide No. K-DEO/97-98/A-9(Pt 1). 12552 dated 2.8.97(Annexure-VI to the Misc. Case No. 222/98) which reads as follows:

In inviting a reference to the subject dtd above, I have the honour to state that Md. Mahabur Rahman Choudhury and Md. Faldmil Islam both are the A.T. of Hizim ME Madrassa Md. Siddique Ali, Headmaster of the Madrassa was transferred to Ghoamara M.E. School vide this office Memo No. K-DEO/96-97/A-9(pt)/ 7389-98 dated 1.3.97 with a direction to handover the charge of the Headmaster to Sr. most A.T. of the institution. The Headmaster who was transferred handed over the Charge of the Headmaster to Md. Fakhrul Islam, B.A. md. Sr. qualified Asstt. Teacher of the school on 3.3.97 as Md. M.R. Choudhury is only Metric and untrained teacher. Though his name was enlisted in the Gradation list issued vide this office Memo No "K-DEO/92-93/G/2444- 672 dt. 25.8.92 against S.I. No. 117. But Mr. N.C. Pegu, the then DEEO. Karimganj issued an order for deleting the name of simple Matric teacher from the Gradation list vide this office letter under Memo No. K-DEO/92-93/318.562 dt 3-5-93(copy enclosed). As such the then DEEO, Karimganj allowed to officiate Md. Fakhrul Islam, B.A. who have completed 27 (twenty seven) years service, as Headmaster for a period of 4(four) months vide this office Memo No. K-DEO/96-97/7467-70 dt. 10.3.97 (Copy enclosed) on the other hand Md. M.R. Choudhury did not claim for his promotion till the officiating arrangement is given to Md. Fakhrul Islam.

However, in pursuance of your letter under reference, officiating arrangement made with Md. Fakhrul Islam of Hizim M.E. Madrassa has been cancelled with immediate effect vide this office Memo No. K-DEO/97-98/A-9(pt-1)/11976-82 dt. 1.8.97 and Md. M.R. Choudhury has been allowed to hold the charges of Headmaster with immediate effect vide this office Memo No. K-DEO Rs. 97-98/A-9(pt-1)/11988-94 dt.1.8.97(Copy enclosed).

Further, the service Book, Education qualification Certificate gradation list of both teachers are enclosed herewith for and Favour of your kind information and necessary action.

3. Thereafter the Deputy Director, Elementary Education, Assam, communicated the following order dated 19.8.97, which is impugned in this proceeding:

With reference to the above, I am directed to inform you that the officiating arrangement of Md. Fakhrul Islam, B.A. of Hizim M.E. Madrasa to the post of Headmaster is allowed to continue.

In this regard this office previous letter No. EMA-A/97/55 dtd. 23.7.97 is hereby cancelled.

4. Mr. H.R.A. Choudhury, learned Counsel for the Petitioner, raised the following contentions:

Firstly, the learned counsel for the Petitioner contended that the Deputy Director was not the competent authority to pass the impugned order. Mr Choudhury submitted that it is the Director and the Director alone who is the only competent authority to initiate action for promotion or allowing a person to hold a post. Mr. Choudhury, the learned Counsel for the Petitioner, thereafter submitted that since the Petitioner was a senior person and had the necessary qualification as per the existing Rules, the Petitioner was entitled to hold the post, Mr. Choudhury further submitted that the impugned order was passed behind the back of the Petitioner without giving him any opportunity to defend his case .

5. Mr. P.C. Dey, learned counsel for the Respondent No. 5, on the other hand, supported the order and submitted that the aforesaid order was passed lawfully and on consideration of the materials available with the authority. Mr. Dey particularly emphasised on the points those were raised by the District Elementary Education Officer, Karimganj, vide his Report dated 2.8.97. Mr. Dey, the learned Counsel appearing on behalf of Respondent No. 5, further submitted that since Petitioner is only a simple Matriculate, he does not have the basic qualification to hold the post of Headmaster. Thereafter, the learned Counsel for the Respondent No. 5, drew my attention to the order dated 3.5.93, issued by the District Elementary Education Officer, Karimganj, whereby simple Matriculate teachers were deleted from the Gradation List.

6. Mr. H.R.A. Choudhury, the learned Counsel for the Petitioner, on the other hand, brought my attention to a Gradation List wherein the Petitioner was shown at serial No. 101 (vide Memo No. K-D Ep/97-984G/8958-14058 dt. 5.2.98). Mr. Choudhury, therefore, submitted that the order dated 3.5.93, issued by the District Elementary officer, Karimganj, deleting the names of the simple Matriculates from the Graduation list thus lost its force.

7. The order that is challenged in this proceeding is only an interim order. The Respondent No. 5 is allowed to hold the charge of Headmaster as an interim measure till a regular Headmaster is appointed or comes. The regular Headmaster will be appointed in due course and as such, the present arrangement is only as a stop gap arrangement. Looking to the facts and circumstances of the case, the impugned order passed by way of an interim arrangement cannot be faulted and the Deputy Director only communicated the order of the Director since the order itself shows that he was directed to inform the District Elementary Education Officer.

8. This is not the stage to decide inter-se seniority between these two persons and as to the eligibility of the Petitioner to hold the post of Headmaster of the Hizim M.E. Madrassa as per the Rules. These are matters which are to be decided by the competent authority following the prescribed procedure. For this reason, I have intentionally not adjudicated on the inter-se seniority and on the eligibility

of the present Petitioner, which left for the competent authority to decide.

9. In view of the above, the implied order dated 19.8.97, cannot be said to be arbitrary and discriminatory. It is expected that the Respondent/authorities shall take expeditious decisions for selecting a regular Headmaster and fill up the post in question as per law at the earliest.

With the aforesaid observation, the writ petition stands disposed, interim order, if any, passed by this court shall stand vacated.

No order as to costs.