
(2010) 02 GAU CK 0072
In the Gauhati High Court
Case No : Writ Petition (C) No. 773 of 2008

Md. Abdul Matin Sarkar

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 18-02-2010

Acts Referred:

Assam Secondary Education (Provincialised) Service Rules, 2003 — Rule 24(2)

Citation : (2011) 1 GLR 1

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Advocate : U. Bhuyan, for the Appellant; U.K. Goswami and M.A. Sheikh, for the Respondent

Final Decision : Dismissed

Judgement

Amitava Roy, J.—The order dated 13.6.2007 of the Commissioner and Secretary, Government of Assam, Education (Secondary) Department adjudging the Respondent No. 5 to be senior to the Petitioner constitutes the subject-matter of challenge in the instant proceeding.

2. I have heard Mr. U. Bhuyan, learned Counsel for the Petitioner and Mr. U.K. Goswami, learned Standing Counsel for the official Respondents. Also heard Mr. M.A. Sheikh, learned Counsel for Respondent No. 5.

3. The Petitioner has staked his claim to the post of Headmaster of Ismail Hussain High School ("the School"), which had fallen vacant on 28.2.2006. By the order dated 27.2.2006 of the Inspector of Schools, Kamrup, District Circle, Guwahati, the then Assistant Inspector of Schools, Kamrup District Circle, Guwahati was allowed to hold the same pending final arrangements. While the matter rested at that, by an order dated 23.3.2006 of the Director of Secondary Education, Assam, Respondent No. 5, the Assistant Headmaster of the said School was allowed to hold the charge of the said office. This Respondent initially had been the Headmaster of the Rangapani Islamia M.E. Madrassa, which got

amalgamated with the Ismail Hussain High School on 7.9.1999 and in terms of the prevalent norms started functioning as the Assistant Headmaster of the High School.

4. Being aggrieved by the above order, the Petitioner approached this Court with WHO No. 2017/2006 which was disposed of on 7.4.2006 leaving him at liberty to approach the concerned departmental authority with a representation to be considered and disposed of within the time frame as fixed thereby. It was provided that till the exercise ordered by the court was completed, the arrangement effected by the order dated 27.2.2006 of Inspector of Schools, K.D.C. Guwahati would continue. In other words, the Assistant Inspector of Schools, K.D.C. Guwahati was permitted to administer the affairs of the Office of the Headmaster of the School.

The Commissioner and Secretary, Government of Assam Education(s) Department by his order dated 4.10.2006 adjudged the Petitioner to be more deserving for the post, having declared him to be senior over the Respondent No. 5 computed on the basis of the dates of receipt of the graduate scale of pay by them. It was recorded in the said order that whereas, the Petitioner had started receiving the graduate scale of pay with effect from 19.11.1991, the Respondent did so from 1.1.1996. On the said measure, the Petitioner was declared to be senior over the said Respondent. Pursuant to the said determination, the Petitioner by the order dated 2.11.2006 of the Director of Secondary Education, Assam was allowed to hold the charge of the Headmaster of the School dislodging the Respondent therefrom.

5. In turn, the Respondent carried the fight to this Court with WP(C) No. 5463/2006 challenging the order dated 4.10.2006 and 2.11.2006. Vide order dated 10.11.2006, this Court remanded the matter back to the aforementioned authority by positively responding to his grievance that he had not been heard prior to the disposal of the representation in favour of the Petitioner. Pending consideration of the representation a fresh in terms of the above order of this Court, by the order dated 17.11.2006 of the Director of Secondary Education, Assam, the order dated 2.11.2006 permitting the Petitioner to hold the charge of the Office of the Headmaster of the School was withdrawn. The impugned order followed. The State Respondents, however, have not filed their counter.

6. The Respondent No. 5, in his detailed affidavit, in essence, has pleaded that as he has been accorded graduate scale of pay with effect from 1.1.1984, by the order dated 18.3.2004 of the Director of Elementary Education, Assam and that too in compliance, inter alia of the judgment and order dated 6.7.1994 rendered by this Court in Shri Keshab Barman and State of Assam and Ors. Civil Rule No. 1550/1991 and Shri Dhaneswar Deka v. State of Assam and Ors. Civil Rule No. 1393/1991 as well as the order dated 27.10.1992 passed in Civil Rule No. 1550/1991, conferment of seniority on him over the Petitioner as made by the impugned order is unassailable in law and, therefore, the challenge so made ought to be negated in limine. As the determination to the contrary made by the

order dated 4.10.2006, was de hors the records, it was rightly superseded by the order impugned.

7. Mr. Bhuyan, has urged that the impugned order besides being perverse, is also vitiated by the violation of principles of natural justice, as neither a copy of the enquiry report on which it is based nor any opportunity of hearing had been accorded to the Petitioner. According to him, the relevant order of this Court on the basis of which the Respondent No. 4 has been ascertained to have received the graduate scale of pay with effect from 1.1.1984 is referred to have been passed in Civil Rule No. 1753/1996, an impossibility, on that ground alone, the impugned order is liable to be annulled. Moreover, as the findings recorded are not based on original documents and/or records, the authenticity and acceptability thereof are in serious doubt. Mr. Goswami, the learned Standing Counsel relying on the relevant official records, however, has endorsed the findings recorded in the impugned order.

8. Mr. Sheikh has urged that as evidently the date of receipt of the graduate scale of pay by his Respondent is much ahead of that of the Petitioner, having regard to the criteria contemplated in Rule 24(2) of the Assam Secondary Education (Provincialised) Service Rules, 2003 ("the Rules"), he has been rightly determined to be senior and, therefore, the impugned order cannot be faulted with.

The pleaded versions and arguments as above have been carefully considered.

9. Considering the fact that the debate centres around entries in the original records as well as in the service book of the Respondent No. 5, it has been considered expedient to peruse the same to resolve the controversy.

10. The impugned order, in clear terms, is based on the fact that the Respondent had been sanctioned graduate scale of pay w.e.f. 1.1.1984 by the order No. EMA/11/1993/42 dated 18.3.1994 of the Director of Elementary Education, Assam. Evidently at that point of time, the Respondent had been serving as the Headmaster of the Rangapani Islamia M.E. Madrassa. This order dated 18.3.1994 was said to have been passed pursuant to the order passed by this Court in Shri Dhaneswar Deka v. State of Assam Civil Rule No. 1753/1996 and entered in his service book. The Respondent, in terms of the impugned order has received revised graduate scale of pay of Rs. 1,375 to 3,375 with arrear salary w.e.f. 1.1.1989 vide the Notification No. EPC. 17/83/103 dated 26.4.1995. This was in contradistinction to 19.11.1991 on and from which the Petitioner had been receiving the graduate scale of pay.

11. The order dated 18.3.1994 of the Director of Elementary Education, Assam as referred to hereinabove finds place in the original records bearing No. ASE.229/2006 of the Education (Secondary) Department, Government of Assam. Thereby, the concerned District Elementary Education Officer had been required by the Joint Director of Elementary Education, Assam to take necessary action in compliance of the order dated 27.10.1992 passed by this Court in Civil Rule No.

1550/1991.

The said writ petition was instituted by one Shri Keshab Barman seeking an appropriate writ for grant of revised graduate scale of pay to the Headmasters of M.E. Schools of the State together with arrear salary on the basis thereof. The Petitioner therein at the relevant time was the Headmaster of the Brajalaxmi Vidyapith Middle English School, Nalbari. This Court by order dated 27.10.1992 in the interim directed, thus "In the interim, it is directed that the Respondents shall allow the Petitioner to draw the Graduate Headmasters' revised scale and the Petitioner shall give undertaking that if he is found not entitled to draw the revised pay scale, the excess amount shall be refunded". As alluded hereinabove, the order dated 18.3.1994 of the Joint Director of Elementary Education, Assam was passed in this backdrop of facts.

12. The service book of the Respondent No. 5 which accompanies the official records contains an entry dated 12.1.1998 made by the Block Elementary Education Officer, Chamaria Block regarding the grant of scale of pay Rs. 620-1315 per month to him with effect from 1.1.1984 in terms of the aforementioned order dated 18.3.1994 and one passed in Civil Rule No. 1753/1996.

13. There is no wrangle at the Bar that at the relevant point of time, the graduate scale of pay for the post of Headmaster of M.E. School of the State was Rs. 620-1315 which has since been revised to 1375-3375 per month. As a matter of fact, by another entry in the service book of the Respondent No. 5 he was allowed to draw the revised scale of pay as above on and from 1.1.1989. These two entries, therefore, per se substantiate the findings of the Commissioner and Secretary to the Government of Assam Education(s) Department as recorded in the impugned order.

14. Meanwhile, one Shri Hitram Deka, General Secretary, All Assam Middle English Schools Teachers Association, Guwahati instituted C.R. No. 1325/1993 representing interested Headmasters/Headmistress of M.E., M.E. Madrassa schools who though graduate had been denied the Graduate Scale of Pay. Thereby, a writ of mandamus was sought for directing the State authorities to prescribe a uniform scale of pay to all the Headmasters/Headmistress of M.E. Schools and M.E. Madrassa. The alleged discrimination, in otherwise homogeneous class of headmasters on the ground of the cut off year of their appointments was contended as impermissible.

15. This Court after hearing the parties by the judgment and order dated 10.6.1994 sustained the challenge holding the classification on the basis of the cut off year of appointment to be illegal. While allowing the writ petition, this Court directed the departmental authorities to consider the case of the Petitioners and to fix their pay scale at Rs. 1375-3375 or a higher scale as may be deemed fit by them. This determination, which in absence of any material to the contrary is to be construed as final, in the estimate of this Court endorses

the interim arrangement envisaged by its order dated 27.10.1992 in pursuant whereof, the Director of Elementary Education, Assam had issued the order dated 18.3.1994. This in turn, has a decisive bearing on determining the date on and from which the Respondent No. 5 had been accorded the graduate scale of pay, i.e., 1.1.1984.

16. In view of the above disclosures, the Petitioner's challenge to the impugned order on the ground of perversity, thus, cannot be sustained. The finding to the above effect being borne out by the contemporaneous official records, in absence of any overwhelming material to counter the same, cannot be discarded.

17. On a totality of the considerations as hereinabove, this Court is, therefore, of the unhesitant opinion that that challenge to the impugned order dated 13.6.2007 lacks merit. The petition is, therefore, dismissed. No costs.