
(2014) 01 GAU CK 0008
In the Gauhati High Court
Case No : Writ Petition (C) No. 4813/2007

Md. Abdul Motin

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision : 30-01-2014

Acts Referred:

Citation : (2014) 01 GAU CK 0008

Hon'ble Judges : Hrishikesh Roy, J

Bench : Single Bench

Advocate : A. Sharif, Mr. A.R. Bhuiyan, Mrs. S. Bora and Mrs. F. Begum, Advocate for the Appellant; N. Sarma, Standing Counsel, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Hrishikesh Roy, J.—Heard Mr. A.R. Bhuiyan, the learned counsel representing the petitioner. The respondents are represented by Mr. N. Sarma, the standing counsel for the Education Department.

2. The issue here is whether the service of the petitioner should have been provincialised as the Superintendent of the Hazrat Azan Peer Arabic College, Jorhat (hereinafter referred to as the HAP Arabic College"), because he secured the required Mumtajul Muhaddisin (M.M.) degree only on 21.12.1995 (Annexure-E) whereas the services of the employees were provincialised on 15.3.1996 at a stage when the petitioner was downgraded from the post of Superintendent as an under qualified incumbent, giving him two years time to qualify for the post by the Director of Secondary Education (DSE), Assam.

3. While the HAP Arabic College was still at the Khariji Madrasa stage, imparting education only for theological subjects, the petitioner joined the Khariji Madrasa on 2.3.1979. But after the Khariji Madrasa transformed into a Arabic College, the petitioner was appointed as the Superintendent of the HAP Arabic College through the order dated 3.11.1991 (Annexure-A).

4. The Govt. of Assam took over this Arabic College alongwith 25 other institutions under the grants in aid system w.e.f. 1.10.1992 through the order dated 30.3.1993 (Annexure-B). The departmental approval for appointment of the petitioner was granted on 19.6.1993 (Annexure-C) by earmarking the required posts for the HAP Arabic College, from the total 463 posts sanctioned by the Government through the notification 30.3.1993.

5. But as the petitioner did not have the requisite M.M. qualification, the Managing Committee through their resolution dated 2.7.1995 downgraded the petitioner from the post of Superintendent and allowed him two years time to qualify himself. This resolution of the Managing Committee was approved by the DSE, Assam through her order dated 29.7.1995 (Annexure-D).

6. The petitioner appeared in the Assam Madrasa Title Examination in 1994 under the State Madrasa Education Board and on 21.12.1995 (Annexure-E), he was certified to have passed in the examination. Consequently he secured the qualification for being appointed as the Superintendent of the Arabic College.

7. The Assam Madrasa Education (Provincialisation) Act, 1995 (hereinafter referred to as "the Provincialisation Act ") received the Governor's assent on 27.10.1995 and it was retrospectively brought into effect from 15.8.1994. Section 7 of the Provincialisation Act permits the Government to provincialise the services of employees of the Madrasa institution and in exercise of the said power, the eligible employees of 74 Madrasa institutions covered by the deficit grant in aid scheme was retrospectively declared to be Government employees through the notification dated 15.3.1996 (Annexure-G). The HAP Arabic College of Jorhat was shown at serial No. 73 in the notification dated 15.3.1996.

8. But while the services of his other colleagues in the Arabic College was provincialised under the notification dated 15.3.1996, despite securing the M.M. qualification on 21.12.1995 (prior to the provincialisation notification dated 15.3.1996), the petitioner's service was in his downgraded post of Assistant Teacher of the Arabic College and not as the Superintendent of the institute.

9. The petitioner submits that he is serving in the college from the Khariji Madrasa stage since 2.3.1979 and has also served as the founder Superintendent w.e.f. 3.11.1991 of the Arabic College. Although initially under qualified, the Superintendent secured the M.M. degree on 21.12.2995, a few months before the service of the employees were provincialised through the notification dated 15.3.1996 (Annexure-G). Accordingly it is argued that the petitioner deserves to be provincialised in the post of Superintendent, as his downgrading to the lower post was only to enable him to qualify for the M.M. course.

10. For the respondent, Mr. N Sarma, the learned standing counsel submits that at the stage when the provincialisation notification was issued on 15.3.1996, the authorities were not informed of the petitioner qualifying himself in the M.M. examination on 21.12.1995. Therefore on the date of the notification, the petitioner was considered to be serving as the Assistant Teacher of the Arabic

College on the strength of the downgrading order dated 29.7.1995 of the DSE, Assam. Therefore it is argued that without knowledge of acquisition of qualification the petitioner was rightly not considered for provincialisation in the post of Superintendent which prescribes the M.M. qualification.

11. As can be gathered from the above narration of facts that the petitioner was granted two years time to qualify himself for the post of Superintendent through the order dated 29.7.1995, issued by the DSE, Assam. During interregnum, he was downgraded temporarily from the post of Superintendent. Obviously this was meant to be a stop gap arrangement subject to the petitioner qualifying himself. Consequently his upgradation should have been automatic, when the petitioner qualified himself within the permitted time. At that stage of the process, the petitioner had already appeared in the Assam Madrasa Title Examination in the year 1994 and was waiting for his examination result and eventually his result was declared on 21.12.1995 of having qualified in the Assam Madrasa Title Examination. The passing of the petitioner ought to have led to his reinstatement to the post of Superintendent, but unfortunately this formality was not done and accordingly his service was provincialised in the lower post of Assistant Teacher of the Arabic College.

12. However as the provincialisation notification was issued on 15.3.1996 and the petitioner had secured the necessary qualification, earlier on 21.12.1995, I'm of the view that he deserves consideration in the post of Superintendent of the Arabic College, from where he was temporarily downgraded on 29.7.1995 to enable him to qualify himself for the M.M. degree.

13. In view of the above conclusion, the Commissioner & Secretary to the Govt. of Assam, Department of Secondary Education is directed to consider the petitioner's grievances. To facilitate the consideration, the petitioner will furnish this order and his representation and the Commissioner should then pass a speaking order on the merit of the representation. This exercise should be carried out expeditiously and preferably within 4 months from receipt of intimation from the petitioner's side.

14. The case stands disposed of with the above direction, without any order on cost.