

(2018) 03 GAU CK 0017
In the Gauhati High Court
Case No : Review.Pet. 174 of 2017

MD ABDULLAH and 7 ORS

APPELLANT

Vs

THE STATE OF ASSAM, and 46 ORS

RESPONDENT

Date of Decision : 06-03-2018

Acts Referred:

Code of Civil Procedure, 1908 — Order 47 Rule 1
Constitution of India, 1950 — Article 14, 16

Citation : (2018) 03 GAU CK 0017

Hon'ble Judges : HRISHIKESH ROY, UJJAL BHUYAN

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard Mr. M. Dutta, learned counsel for the review petitioners and Mr. A. Deka, learned Standing Counsel, Elementary Education Department,

Government of Assam.

2. This petition seeks review of judgment and order dated 10.03.2016 passed by the writ Court in WP(C) No.6715/2015.

3. Be it stated that WP(C) No.6715/2015 was placed before the Division Bench following a reference made by the learned Single Judge dated

29.01.2016.

4. Matter relates to selection and appointment of Assistant Teacher in Lower Primary (LP) Schools in 10 districts of the State of Assam following

advertisement dated 30.10.2014 issued by the Director of Elementary Education, Assam.

5. As per the advertisement, Teachers Eligibility Test (TET) qualified candidates were called upon to submit online applications to fill up 8193

vacancies in the post of Assistant Teacher in selected Government/provincialised

LP Schools under the Directorate of Elementary Education, Assam

in 10 districts of the State including in the then composite district of Dhubri. It was mentioned that online applications would be received from

04.11.2014 to midnight of 13.11.2014. Essential qualifications prescribed were 50% marks in Higher Secondary or its equivalent and TET passed or

graduate degree from UGC recognized university and TET passed with 5% relaxation for the reserved category. It was also mentioned that

preference would be given to those having two years diploma in Elementary Education or two years diploma in Elementary Education (Special

Education) from recognized institutes.

6. By a subsequent corrigendum dated 14.08.2015, it was mentioned that notified vacancies were 7236 because it was against these vacancies only

that Director of Elementary Education could obtain approval from Finance (SIU) department.

7. WP(C) No.6827/2014 came to be filed by a group of candidates belonging to South Salmara-Mancachar Sub-Division of Dhubri district with the

grievance that the two years diploma course in Elementary Education was started for contractual appointees of the State in the year 2012 to enable

them to attain eligibility for the post of Assistant Teacher. But in the case of the petitioners, who were contractual teachers, the diploma course started

only in the year 2013 and would be over by the end of the year 2015. Therefore, no candidate from the said Sub-Division would have the benefit of

â??preferenceâ?? in terms of the advertisement, dated 30.10.2014. With similar grievance, another group of candidates, hailing from Karimganj

district, filed WP(C) No.6315/2014. They were also Assistant Teachers working on contractual basis. At this stage, it may be stated that petitioners of

both the cases were appointed as Assistant Teachers on contract basis under the Sarba Siksha Abhiyan (SSA). Both the cases were heard together

and were disposed of by a common order, dated 12.03.2015.

8. Learned Single Judge took the view that it was the inability of the State to provide the petitioners with approved institutes to undergo the diploma

course. Thus, petitioners were prejudiced and denied a level playing field to compete with those who were fortunate to complete the diploma course.

After holding that denial of such level playing field violated Articles 14 and 16 of the Constitution, learned Single Judge disposed of the writ petitions by

issuing the following directions:

9. In the premises set forth above, this writ petition is disposed of with the following directions:

(a) The ongoing recruitment process for 745 vacant posts of Assistant Teachers meant for South Salmara Mankachar Sub-Division and 753 posts of

Assistant Teachers for Karimganj District in terms of the impugned advertisement shall not be initiated or completed till the result of the two years

course of Diploma in Elementary Education undergone by the petitioners are declared.

(b) If the petitioners, or any of the petitioners, are declared to have passed the said Diploma course within 2015, they shall be allowed to participate in

such recruitment together with the already qualified candidates, if necessary by re-advertising the posts.

(c) Any or all of the petitioners, who does/do not successfully complete the Diploma course, shall stand disqualified for this recruitment process.

(d) It is, however, made clear that if any of the petitioners in both the writ petitions were offered the approved study centre by the State-respondents

for undergoing the Diploma course, but had refused or declined or omitted to do so, this judgment shall not ensure to their benefit. 10.

It appears that a petition was filed for deletion of the expression "if necessary by re-advertising the posts" as appearing in direction (b) in the

order dated 12.03.2015. The said petition was registered as Review Petition No.85/2015. By order dated 22.06.2015, learned Single Judge allowed the

review petition by deleting the aforesaid expression. Consequently, direction (b) read as follows:

(b). if the petitioners or any of the petitioners are declared to have passed the said diploma course within 2015, they shall be allowed to participate

in such recruitment together with the already qualified candidates.

10. An addendum was issued by the Director of Elementary Education, Assam, on 20.06.2015. By the said addendum, candidates who had applied

pursuant to the advertisement dated 30.10.2014 and had appeared before the District Level Selection Committee (DLSC) for screening of documents

but subsequently came out successful in two years diploma in Elementary Education or two years diploma in Elementary Education (Special

Education) from recognized institutes were asked to produce their certificates

and mark-sheets of the diploma before the respective District Elementary Education Officers within 25.06.2015.

11. At that stage, the related writ petition, i.e., WP(C) No.6715/2015 came to be filed by a group of candidates according to whom they had applied pursuant to the advertisement. They contended that they were TET qualified candidates following which they were appointed as Assistant Teacher in LP Schools on contractual basis under the Sarba Siksha Abhiyan (SSA). Though they were appointed in the year 2012, they were sent to undergo the diploma course only in the year 2013. Here also, results of the diploma course were declared only on 23.08.2015. A district-wise provisional select list was published on 29.10.2015 but from a perusal of the said provisional select list, it was evident that in the provisional select list, names of the petitioners were not included in respect of Barpeta district. While cut-off mark for Barpeta district was shown as 184, petitioners contended that if the marks secured by them in the diploma course were added, they would have secured marks above the cut-off mark. In the light of the above, prayer made was for addition of marks obtained by the petitioners in the diploma course while computing the total marks and thereafter to publish the final select list.

12. The writ petition was contested by the Director of Elementary Education, Assam by filing affidavit contending that those petitioners had acquired diploma only in the year 2015. On the date of advertisement as well as on the last date of submission of application, they did not possess the diploma.

13. After hearing the matter, learned Single Judge passed the order dated 29.01.2016 taking the view that since after 31.03.2015, there is no relaxation of the minimum qualification prescribed for appointment of teachers in L.P. schools, respondents have no other alternative but to appoint only those candidates having the prescribed qualification. The provisional select list dated 29.10.2015 was set aside and quashed. Respondents were directed to prepare final select list including for Karimganj district and South Salmara-Mancachar Sub-Division of Dhubri district by following the statutory provisions relating to eligibility and computation of marks in the selection. It was specifically directed that while preparing such select list, respondents should include the marks obtained by the petitioners in their diploma course results of which were declared on 23.08.2015.

14. Referring to the decisions rendered by a Co-ordinate Bench on 09.09.2015 in WP(C) No.5450/2015 and on 22.09.2015 passed in WP(C)

No.5878/2015, learned Single Judge observed that the Central Government notification relaxing the eligibility requirement up-to 31.03.2015 as well as

the common judgment dated 12.03.2015 passed in WP(C) Nos.6315/2014 and 6827/2014 were not brought to the notice of the Court while passing the

orders dated 09.09.2015 and 22.09.2015. Therefore, learned Single Judge held that his decision and conclusion somewhat differed from the decision

rendered by the Co-ordinate Bench dated 09.09.2015 and 22.09.2015. Accordingly, reference was made to the Honâ??ble the Chief Justice to

consider placement before a larger Bench.

15. The writ Court i.e., the Division Bench, on reference, thoroughly examined the matter and framed the fundamental issue which arose for

consideration as under:-

â??Whether the marks obtained by the candidates in the diploma course are required to be added while computing the total marks of the respective

candidates in the selection having regard to the preferential nature of the qualification?â??

16. The referral Court expressed its views in the following manner:-

â??51. At this stage, it may not be out of place to mention that the Government of Assam made arrangement for in-service professional training of

untrained teachers in collaboration with Krishna Kanta Handique State Open University. A two year diploma in Elementary Education through Open

and Distance Learning (ODL) mode was prepared which was approved by the NCTE. The ODL mode was adopted so that teacher position in the

schools remains intact and that the selected teachers can continue their classes while pursuing the diploma course. By letter dated 16.07.2012, Mission

Director, SSA, had informed the District Mission Coordinators of the districts that the first batch of the two year diploma course through ODL mode

would commence in August, 2012. The District Mission Coordinators were directed to nominate the teachers against the Study Centers as per

descending order of merit. The list of teachers mentioned district-wise for the first batch included 900 candidates from Dhubri district and 400 from

Karimganj district. Therefore, contention advanced on behalf of some of the candidates belonging to South Salmara Mancachar Sub-Division of

Dhubri district and Karimganj district in WP(C) Nos.6827/2014 and 6315/2014 regarding non-availability of institutes to undergo the diploma course

appears to be without any basis.

53. Therefore, on due consideration, we are inclined to take the view that those eligible candidates who had responded to the advertisement dated

30.10.2014 and who possessed the minimum qualifications prescribed by the NCTE in its notification dated 23.08.2010 as on the last date of

submission of application, i.e., 13.11.2014, would get "priority" and therefore the expression "preference" as finding place in the

advertisement would mean "priority" in the case of such category of candidates who possessed the minimum qualifications as prescribed by the

NCTE as on 13.11.2014. If they are to be given "priority", the marks secured by them in the diploma course would have to be counted while

determining their merit. Stand taken by the State in this regard appears to be correct. It is the admitted position that result of the two year diploma

course of the first batch, i.e., batch of 2012, was declared on 10.11.2014 before last date of submission of application. Therefore, in their case, they

would be entitled to benefit of marks obtained by them in the diploma course. In so far petitioners or for that matter candidates belonging to the second

group of diploma course is concerned, i.e., batch of 2013, it is the admitted position that result of the said diploma course was declared on 23.08.2015.

In other words, as on 13.11.2014, i.e., the last date of submission of application as per advertisement, they did not have the diploma. To that extent,

decision of the learned Single Judge in the orders dated 09.09.2015 passed in WP(C) No.5450/2015 and 22.09.2015 passed in WP(C) No.5878/2015

reflects the correct view that marks obtained by such candidates in the diploma course would be taken into account only when there is equality of

marks with other candidates not having diploma. This position has also been clarified by the Director of Elementary Education, Assam, in his affidavit

that marks obtained by the petitioners in the diploma course would be added only if they secure equal marks with other candidates, which we are

inclined to accept as the correct proposition in the facts and circumstances of the case. In so far candidates belonging to South Salmara Mancachar

Sub-Division of Dhubri district and Karimganj district are concerned, having regard to the methodology adopted for undergoing the diploma course and

nomination of candidates, there would be no justification for stalling the recruitment process in respect of the above two areas till declaration of result

of the diploma course. To that extent, learned Single Judge in the present case was justified in directing the State to complete the recruitment process

in terms of the advertisement dated 30.10.2014 in respect of Karimganj district and South Salmara Mancachar Sub-Division of Dhubri district.â??

17. The writ petition was disposed of vide the judgment and order dated 10.03.2016 by issuing the following directions:-

â??54. That being the position, we deem it appropriate to issue the following directions:

(i) Candidates who obtained two years diploma in Elementary Education/ Elementary Education (Special Education) prior to 13.11.2014 would be

entitled to computation of marks obtained in such diploma course while determining their merit in the selection pursuant to the advertisement, dated

30.10.2014;

(ii) Those candidates who obtained two years diploma in Elementary Education/ Elementary Education (Special Education) after 13.11.2014, they

would not be entitled to computation of marks obtained in such course while determining their merit. Only when marks secured by them, excluding the

marks earmarked for the diploma course, are at par with the other eligible candidates not having diploma, they would be given â??preferenceâ?? by

taking into account the marks obtained in the diploma;

(iii) Any candidate selected and appointed with the relaxed qualification, i.e., not having two years diploma shall be required to acquire the minimum

qualification as specified by the NCTE within a period of two years from the date of appointment;

(iv) Recruitment process pursuant to the advertisement dated 30.10.2014 for all the 10 districts including South Salmara Mancachar Sub-Division of

Dhubri district and Karimganj district should now be completed expeditiously and in accordance with law.â??

18. Review has been sought for on the ground that the selection process pursuant to the advertisement dated 30.10.2014 was stalled in the South

Salmara-Mancachar Sub-Division of Dhubri district by a Single Bench of this Court vide order dated 12.03.2015 passed in WP(C) No.6827/2014

considering the different and difficult circumstances prevailing in the said Sub-

Division as compared to other parts of the State. Petitioners could not participate in the proceeding of WP(C) No.6715/2015 which resulted in an adverse decision against them. Therefore, judgment and order dated 10.03.2016 should be reviewed.

19. We are afraid; we can entertain such contention of the review petitioners. The referral Court had summed up the issue as alluded to above and thereafter had decided the referred writ petition, i.e., WP(C) No.6715/2015 by issuing the above directions. In the referral order, learned Single Judge had categorically stated that he had differed from the view taken in the order dated 12.03.2015 passed in WP(C) No.6827/2014. All these facets were gone into while finally deciding the related writ petition. On careful scrutiny of the grounds urged by the review petitioners, we feel that in the garb of review, what the review petitioners really seek is a re-hearing of the concluded writ petition which is not the purport and object of review jurisdiction.

We do not find any error apparent on the face of the record or any of the conditions provided under Order XLVII Rule 1 of the Code of Civil

Procedure, 1908 to enable us to invoke our review jurisdiction.

20. Consequently, we do not find any merit in the review petition which is accordingly dismissed but without any order as to cost.