
(2014) 01 GAU CK 0015
In the Gauhati High Court
Case No : Writ Petition (C) No. 3475 of 2008

Md. Islam Uddain Laskar

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 30-01-2014

Acts Referred:

Citation : (2014) 01 GAU CK 0015

Hon'ble Judges : Hrishikesh Roy, J

Bench : Single Bench

Advocate : N. Dhar, Mr. B.K. Sen, Mr. S. Chakraborty and Mr. B. Malakar, for the Appellant; U.K. Goswami, SC, Education, for the Respondent

Final Decision : Disposed Off

Judgement

Hrishikesh Roy, J.—Heard Mr. N. Dhar, the learned Counsel appearing for the petitioner in all the 4 cases and the respondents are represented by Mr. U.K. Goswami, the learned Government Advocate, Education Department. Since common argument is advanced based on similar facts, this following order will cover all 4 cases. For the sake of convenience, the narrated facts are taken from the WP(C) 3475/2008 filed by Md. Islam Uddin Laskar.

2. The petitioner is a graduate and was appointed as teacher in Assamese in the Gonirgram Senior Madrasa through the order dated 31st May 1976 (Annexure-1) issued by the Secretary of the said Madrasa. Through the order dated 28.6.1986 (Annexure-2) the Deputy Director of Madrasa Education ordered confirmation of the petitioner's service w.e.f. 1.4.1978. Although a graduate, the petitioner was serving as a teacher in the intermediate scale of pay and on the recommendation of the Secretary of his Senior Madrasa, the petitioner was upgraded to the vacant post of Graduate Assistant Teacher, through the order dated 21.6.2003 (Annexure-4) issued by the Deputy Director of Madrasa Education. But finding subsequently that upgradation was unjustified, the Director of the Madrasa Education through the impugned order dated 11.7.2008 (Annexure-7) has cancelled petitioner's upgradation ordered on 21.6.2003 and declared that the

graduate post to which the petitioner upgraded would now be a vacant post.

3.1 Assailing the legality of his reversion to intermediate scale, Mr. N. Dhar, the learned Counsel submits that the Gonirgram Senior Madrasa is imparting education at the High/Higher Secondary School Level and accordingly they are entitled to be upgraded from intermediate to graduate scale of pay in terms of the Notification dated 30.12.1993 (Annexure-3).

3.2 Referring to the long service rendered by the petitioner in the intermediate scale of pay since 1.4.1978 without any promotional avenue, the petitioner argues that the employer is obliged to provide promotional avenues for the stagnant employees and accordingly by placing reliance in State of Tripura and Others Vs. K.K. Roy, Mr. N. Dhar argues that Assured Career Progression (ACP) Scheme should be made available for the stagnating teachers in the intermediate scale of pay.

3.3 Interpreting to the Notification dated 30.12.1993 issued by the Secretary to the Education (Secondary) Department of Assam Government, Mr. Dhar submits that since his clients impart education at higher secondary, the said notification of 30.12.1993 must be held to be applicable for the Madrasa employees and accordingly it is argued that the benefit of upgradation to the graduate scale should be allowed to continue.

3.4 The petitioner alleges discrimination, since intermediate teachers of Senior Madrasa in Silchar circle who were upgraded to the graduate scale through the order dated 18.12.2004 by the Inspector of Schools, Cachar have not been downgraded like the petitioners.

3.5 The learned Counsel for the petitioner refers to the recommendation at paragraph 3.2.20(b) of the Assam Pay Commission Report, 2008 to project that once the employee acquires higher qualification, the department should place him in a suitable position where adequate utilization of the increased expertise can be made.

4.1 In his turn, the respondents contend that a Senior Madrasa by no stretch of imagination, can be considered to be a provincialized High/Higher Secondary School. Projecting that the Notification of 30.12.1993 applies to only the incumbents in provincialized High/Higher Secondary Schools, Mr. U.K. Goswami, the learned Government Advocate argues that the petitioners as serving teachers of a Senior Madrasa are not the intended beneficiary of the Notification dated 30.12.1993.

4.2 The departmental lawyers submits that the Deputy Director of Madrasa Education has nothing to do with the Directorate of Higher Education and accordingly the upgradation benefits was unauthorizedly granted by the Deputy Director of Madrasa Education wholly without jurisdiction and authority.

4.3 On the submission of the petitioner for upgradation for ACP benefit for stagnate employees, the departmental lawyer submits that this is not the

pleaded case of the petitioner and his case is not to be equated with a claim for Assured Career Progression benefits following 12 years of service in the same scale/grade.

5. Before proceeding any further with the matter it is necessary to analyze at the first instance as to whether the Government Notification dated 30.12.1993 (Annexure-3) applies to the teachers of the Senior Madrasa where the petitioners were serving. The benefit of upgradation was provided only to the incumbents serving in provincialized High/Higher Secondary Schools and it must be noted that on the date of the Notification i.e. 30.12.1993, none of the Madrasa institutions in the State were provincialized. In fact the Assam Madrasa Education (Provincialization) Act, 1995 (hereinafter referred to as the Provincialization Act) received the assent of the Governor on 27.10.1995 and it was deemed to come to effect retrospectively from 15.8.1994. Even if the retrospective operation date of the Provincialization Act is taken into account, on the date of the notification i.e. 30.12.1993, the Madrasa weren't provincialized institutions.

6. Merely because education at the secondary level is imparted by the Senior Madrasa, this ipso facto can't bring them under the Notification dated 30.12.1993 as the benefit was intended to be given only for the incumbents in provincialized High/Higher Secondary Schools. If the Government intended to give the benefit for the intermediate scale teachers in the Senior Madrasa, it could have easily mentioned the Senior Madrasa in the Notification dated 30.12.1993 and since this was not done, the upgradation benefit can't be claimed by the petitioner on the basis of applicability of the Government Notification of 30.12.1993.

7. As the Court has now decided that the upgradation benefit wasn't intended for the intermediate teachers of Senior Madrasa, the petitioners plea of discrimination vis-?-vis the beneficiaries of upgradation ordered by the Inspector of Schools, Cachar District, Silchar is required to be considered. As declared hereinbefore, the benefit of the Government Notification of 30.12.1993 can't be granted to the incumbents in Senior Madrasa and accordingly if the benefit is being enjoyed by the Assistant Teachers of Senior Madrasa in Cachar District, such upgradation to graduate scale is declared to be contrary to the conclusion reached in this order. Therefore since an undeserved benefit can't be made the basis for a relief for which the petitioners are ineligible, their claim ought not to be granted. Of course it is for the Government to take appropriate steps on the upgradation granted by the I.S., Silchar through the order dated 18.12.2004 (Annexure-6) but that order can't be made the basis for similar relief claimed by the petitioners.

8. In so far as the Clause 3.2.20(b) of the report of the Assam Pay Commission 2008, assuming that the said report is applicable for the incumbents in the Senior Madrasa, it must be borne in mind that when the petitioner was appointed in the intermediate scale he was already a graduate and these are not cases where the concerned incumbent acquired higher qualification in course of

employment. Therefore the benefits of Clause 3.2.20(b) of the report of the Assam Pay Commission can't confer any additional right on the petitioners as they joined service in intermediate scale with graduate qualification.

9. Since the benefit of pay upgradation to the graduate scale from the intermediate scale was intended only for the teachers in provincialized High/Higher Secondary Schools, it is declared that the teachers of Senior Madrasa are not entitled to the benefits of the Government Notification dated 30.12.2013 (Annexure-3) and dated 27.2.2004, which applies only teachers of provincialized High/Higher Secondary Schools.

10. In view of the above discussion, I find no merit to the challenge to the reversion of the petitioners to the intermediate scale and consequently the cases are dismissed. However if the petitioners were paid higher salary on the strength of the upgradation order, the recovery of the differential salary should not be made from the petitioners. It is ordered accordingly. With the above order, these cases are disposed of without any order on cost.