
(2011) 03 GAU CK 0096
In the Gauhati High Court
Case No : Writ Appeal No 7 of 2011

Md Mosaid Ali Laskar

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision : 01-03-2011

Acts Referred:

Citation : (2011) 6 GLR 794

Hon'ble Judges : Iqbal Ahmed Ansari, J; Arup Kumar Goswami, J

Bench : Division Bench

Advocate : B.C. Das, A. Hussain, T.U. Laskar and A. Ahmed, for the Appellant;
V.M. Thomas, SC, Education Department, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Goswami, J.—The Appellant along with 2 others had approached this Court by filing WP(C) No 252/2009 with the prayer to direct the Respondent Nos 1 and 2 to re-examine / cancel the gradation list for promotion to the post of Headmaster and/or to issue a direction to prepare school-wise gradation list by placing their seniority on the basis of their original appointments. Since similar issues were involved in some other writ petitions, all these writ petitions were heard together, and vide judgment and order dated 23.11.2010, the learned single Judge dismissed the writ petitions. Hence, this appeal.

2. The brief facts leading to filing of the writ petition are that the Appellant joined SC Girls' Senior Basic School as Assistant Teacher on 20.7.1984. Though not very clear at what point of time, it would appear that he was subsequently serving in GC MV School. According to him, being the senior most teacher in the school, he was allowed to continue as in-charge Headmaster after the death of the earlier incumbent in GC MV School. The Appellant along with others had submitted representation dated 28.11.2007 pointing out the anomalies and the infraction to Rule 2 of the notification dated 30.8.86 while preparing the provisional gradation list dated 21.11.2007 circulated by the District Elementary Education Officer, Hailakandi. However, without taking into consideration his

original date of appointment, his name was wrongly placed at serial No 46 in the final gradation list dated 10.6.08. It was also the contention of the Appellant in the writ petition that the senior teachers of the school had submitted their "No Objection Certificate" for allowing the Appellant to continue as the Headmaster of the school. In spite of such ""No Objection Certificate" furnished by the teachers of the school, one Md Manjur Ali Laskar was appointed as the Headmaster of the school. The writ petition was structured broadly on the aforesaid factual matrix praying for directions as aforesaid.

3. As the other 2 writ Petitioners had chosen not to prefer an appeal, this Court does not consider it necessary to recite the material particulars with regard to said 2 writ Petitioners.

4. The Respondent No 2 in the writ petition had filed an affidavit stating that the Director of Elementary Education, Assam, vide communication dated 28.6.2006 issued directions to initiate the process of selection for promotion to the post of Headmaster of ME / MV / MEM following the government norms as per government notification dated 30.8.96 read with notification dated 20.8.1990. In terms of the aforesaid communication, the District Level Selection Committee is to prepare Sub-Divisionwise gradation list of teachers on the basis of seniority cum efficiency and the selection of teachers for the post of Headmaster is to be made on the basis of district wise seniority instead of schoolwise seniority. It was also brought on record that the seniority of the incumbents would be considered only from the date of their regular appointments / regularization / receiving time scale of pay and whose services have been regularized with effect from 1986. It is also stated that on the basis of gradation list dated 10.6.08, the District Level Selection Committee had finalized the selection list and submitted the same to the office of the Director of Elementary Education, Assam vide letter dated 10.6.08 issued by the District Elementary Education Officer, Hailakandi. Thereafter, the Director of Elementary Education, Assam, vide order dated 6.12.08 had promoted the senior most teachers to the post of Headmaster against the existing vacancies.

5. The learned single Judge on consideration of the submissions made by the learned Counsel for the parties and upon perusal of the materials available on records, observed that the records had revealed that the objections received from the teachers in respect of gradation list in question were duly considered and the District Level Selection Committee had duly followed the procedure for promotion to the post of Headmaster and the Petitioners including the Appellant having duly participated in the entire selection process, they cannot now turn around to claim that the gradation list did not correctly reflect their position due to omission and commission in the preparation of the gradation list.

6. We have heard Mr B C Das, learned senior counsel for the Appellant and Mr VM Thomas, learned Standing Counsel for the Education Department.

7. At the hearing, Mr Das, learned senior counsel for the Appellant has submitted

that the name of one Md Manjir Ali Laskar has been wrongly placed at Sl 13 of the gradation list dated 10.6.08 and he is not senior to the Appellant. He draws our attention to the Block / District Level seniority cum merit list of the teachers with particular reference to Katlichara Education Block to impress upon us that the name of the said Manjir Ali Laskar did not appear in the said list. He also draws the attention of the Court to a letter dated 19.1.2007 addressed to the District Elementary Education Officer, Hailakandi, by the aforesaid Md Manjir Ali Laskar and two others stating that, they being the senior most teachers of GC MV School, have no objection, if Appellant was allowed to take over charge of the Headmaster of the school as well as if he is promoted to the post of Headmaster. The learned senior counsel has submitted that though urged, the "No Objection Certificate" furnished by the aforesaid senior most teachers were not taken into consideration by the learned single Judge and, as such, the impugned judgment is vitiated.

8. Mr Thomas, learned Standing Counsel for Education Department, on the other hand, has submitted that in view of categorical finding recorded by the learned single Judge, there is no infirmity in the preparation of the gradation list in question and no interference is called for by the writ appellate Court.

9. Admittedly, when the Appellant had approached this Court, Md Manjir Ali Laskar was already given appointment to the post of Headmaster. In the writ petition, although number of prayers seeking relief, as indicated above had been made, there was no challenge to the appointment / promotion order of Md Manjir Ali Laskar to the post of Headmaster. Further, he was also not made party Respondent to the writ proceeding, though granting of relief, as prayed for, had the potential to cause prejudice to the said Md Manjir Ali Laskar. We have noticed that Md Manjir Ali Laskar has been arrayed as party Respondent No 6 in this appeal, that too, without any application to bring him on record. We are not considering the permissibility or otherwise in arraying someone as party Respondent who was omitted to be made a party Respondent in the writ proceeding as the same is not considered essential for the purpose of disposal of this appeal.

10. The reliance placed by the learned senior counsel on the "No Objection Certificate", would, on the contrary, go against the case of the Appellant, inasmuch as, it was stated that the signatories including Md Manjir Ali Laskar are senior most teachers of the school. This "No Objection Certificate", to the extent, belies the claim of the Appellant that Md Manjir Ali Laskar is not senior to the Appellant. In fact, the thrust of the argument of Mr Das is that Md Manjir Ali Laskar having given "No Objection Certificate" to enable the Appellant to become the Headmaster of the school, the promotion / appointment given to Md Manjir Ali Laskar, was, per se, illegal. The plea of the Appellant that he is the senior most Assistant Teacher in the school and the plea that in view of "No Objection Certificate" given by Md Manjir Ali Laskar, he is legally entitled to be promoted as Headmaster, are mutually inconsistent and cannot go together.

11. It has been noticed that the promotion is to be effected on the basis of district wise seniority instead of schoolwise seniority. If that be so, grant of "No Objection Certificate" by senior persons in the school to allow their junior to function as Headmaster in the school, pales into insignificance. As noted above, Md Manjir Ali Laskar figures in the gradation list of MV school teachers for promotion to the post of Headmaster in the district of Hailakandi at SI 13 whereas the name of Appellant figures at SI 46. No right accrues to the Appellant, in the facts and circumstances of the case, to claim promotion, on the basis of such "No Objection Certificate" and, therefore, the authorities are at liberty to proceed in the matter of promotion on the basis of district wise seniority.

12. We also do not find merit in the contention of the Appellant that the name of Md Manjir Ali Laskar having not been reflected in the Block Level Seniority cum Merit list of teachers, placing him at SI

13 in the gradation list dated 10.6.08 is arbitrary and irrational. According to the Appellant himself, the said list was not the final gradation list. We do not know the circumstances in which his name had not figured in the said list. It is quite possible that his name had been dropped inadvertently and subsequently, the mistake was corrected. The fact that Md Manjir Ali Laskar was working in the school of the Appellant is not in dispute in view of the reliance placed by the Appellant on the "No Objection Certificate". It is stated at the Bar that Md Manjir Ali Laskar had already assumed charge of the Headmaster of GC MV school. 13. In view of what has been stated above, we see no reason to interfere with the findings of the learned single Judge. Consequently, the appeal being devoid of any merit, the same is dismissed.

14. No costs.