

(2010) 04 GAU CK 0065

In the Gauhati High Court

Case No : Writ Petition (C) No. 59 (SH) of 2008

Moshidur Rahman Prodhani

APPELLANT

Vs

State of Meghalaya and Others

RESPONDENT

Date of Decision : 29-04-2010

Acts Referred:

Assam Aided High and Higher Secondary Schools Employees (Amendment) Rules,
1965 — Rule 4, 4(3)
Constitution of India, 1950 — Article 226

Citation : (2010) 4 GLT 278

Hon'ble Judges : P.K. Musahary, J

Bench : Single Bench

Advocate : K. Khan, for the Appellant; N.D. Chullai and K. Paul, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Musahary, J.—Heard Mr. K. Khan, learned Counsel for the Petitioner. Also heard Mr. N. D. Chullai, learned senior Government Advocate for the State Respondents No. 1, 2 and 3 and Mr. K. Paul, learned Counsel appearing for the Respondents No. 4 and 5. None appears for Respondents No. 6 and 7.

2. This writ petition has been filed under Article 226 of the Constitution of India with the following prayers:

It is therefore prayed that your Lordship be pleased to admit the petition and issue Rule calling upon the Respondents to show cause as to why the fresh advertisement for appointment in the post of Assistant Teacher (Arts) as per advertisement, date 18.03.2008 should not be cancelled and suspended for operation. And after hearing the parties your lordship may be pleased to suspend the operation of the said advertisement dated 18.03.2008. Further, be pleased to give direction to the Respondents to appoint the writ Petitioner as per selection dated 26.08.2004 and subsequent recommendation as per Memo No. CG I. CC/7/2004/78,. Dated 09.01.2007 and also to make rule absolute and pass such

other Order/Direction directing the Respondent No. 1 to 5 to appoint the Petitioner on regular basis for the Post of Assistant Teacher (Arts) in Bhaitbhari Higher Secondary School, as per the result of the Selection Committee as done for the post of Assistant Teacher (Science) for the Respondent No. 7. And/or to pass such other Order/Direction as your Lordships may deem fit and proper for equity justice and fair play.

3. The above prayers have been made on the basis of selection made by the Selection Committee on 26.09.2004 for recruitment of 2 (two) posts of Assistant Teacher in Arts stream in Bhaitbhari Higher Secondary School, New Bhaitbhari, West Garo Hills in which his name appears at serial No. 1. The Petitioner in spite of being topper was not appointed to the post of Assistant Teacher (Arts). There is no dispute that the Petitioner was placed at serial No. 1 in the aforesaid select list. Having denied the appointment, he demanded justice from the Respondent authorities and when he failed to get his grievances redressed, he approached this Court by filing a writ petition viz. WP(C) No. 307 (SH) 2004 which was disposed of on 08.02.2006 with a direction to the Respondent Nos. 1 - 5 to the effect that in the event they decide to fill up the post of Assistant Teacher in the Arts stream, they should go for appointment strictly in accordance with the merit position of the candidates. In compliance with the aforesaid order of this Court, the Petitioner was appointed temporarily as Assistant Teacher in the aforesaid school for a period of 89 (eighty nine) days from the date of his joining vide order dated 26.06.2006 issued by the Inspector of Schools, West Garo Hills, Tura (Annexure IX to writ petition) and the said appointment was extended for a further period of 89 (eighty nine) days w.e.f. 28.09.2006 to 25.12.2006 vide order dated 24.10.2006 (Annexure XI to writ petition). No further extension to the aforesaid appointment was made by the authorities concerned. Thereafter, the Petitioner made a representation dated before Respondent-Director for regularization of his service. On the basis of the aforesaid representation, the Joint Director of Higher and Technical Education, Meghalaya, Shillong vide letter dated directed the Respondent-Inspector of Schools to take up the matter with the Managing Committee concerned for regularization of Petitioner's services. As nothing was done in spite of such direction from the Joint Director, Higher and Technical Education, Meghalaya, Shillong, the Petitioner again approached this Court by filing WP(C) No. 175 (SH) 2007 which was disposed of vide order dated 27.07.2007 with direction to the Respondent, particularly, Respondent No. 4, to consider the above representation and prayer of the Petitioner regarding release of arrear salary, before initiating steps for filling up the present vacancy of Assistant Teacher (Arts) in pursuance of the earlier order dated 08.02.2006 passed in WP(C) No. 307 (SH) 2004. The aforesaid order of this Court having not been complied, the Petitioner also filed the contempt petition vide COP No. 3 (SH) 2007 which was rejected as premature with liberty to approach this Court if, the orders of this Court passed in earlier writ petitions are ignored and disobeyed.

4. Mr. N.D. Chullai, learned senior Government Advocate drawing the attention of this Court to a communication dated 14.05.2008 (Annexure M to the counter

affidavit filed by Respondent Nos. 4 and 5) submits that the representation dated 14.12.2006 has already been considered and disposed of by the Secretary of the School concerned by a speaking order and as such, there should not be any more grievances from the Petitioner on that count.

5. I have carefully considered the pleadings of the parties taken in the writ petition and the responses filed by the Respondents. There is an agreement at the Bar that the Assam Aided High and Higher Secondary School Employees Rules, 1965, as amended, has been adopted and followed by the Government of Meghalaya and the recruitment process in respect of appointment of Assistant Teacher in question, was initiated as per the aforesaid Rules. Rule 4 of the aforesaid Rules provides for the method of Recruitment. Rule 4(3) of the aforesaid Rules provides for recruitment/appointment of Assistant Teacher. This Rule is relevant for the purpose of disposal of the present writ petition and it is quoted below for better appreciation:

(3) Assistant Teacher : The Assistant Teachers holding Bachelor's or Higher Degrees shall be selected through a test and/or interview to be conducted either by the Director of Public Instruction or by the Board of Secondary Education as may be decided by the Government from time to time. The Director of Public Instruction shall prepare a list of selected candidates in order of preference and publish the list in the Assam Gazette and forward it to the Managing Committee. The Managing Committee shall make appointment from the special list after due verification and with the prior approval of the Inspector of School concerned. The list of candidates shall ordinarily remain valid for one year.

The Managing Committee shall have powers to fill up vacancies even from outside this list for a period not exceeding three months subject to the approval of the Inspector of Schools concerned.

6. There is also an agreement among the parties at the Bar that the School Managing Committee appointed a selection committee and the said selection committee conducted the interview and prepared the selection list on 26.09.2006, for recruitment to the post of Assistant Teacher, both Science and Arts sections and the said selection list was not approved by the Inspector of School concerned as required under Rule 4(3) of the aforesaid Rules. The Rule contemplates "prior approval" of the Inspector of Schools concerned to the selection list before making any appointment. As per the aforesaid rules, the selection list of candidates shall ordinarily remain valid for one year. On a specific query made by this Court, Mr. N.D. Chullai, learned Government Advocate, submits that no such prior approval was accorded by the authorities concerned and validity of the aforesaid list was not extended in any manner at any point of time by the Respondent authorities. This position is not disputed by Mr. K. Khan, learned Counsel for the Petitioner and Mr. K. Paul, learned Counsel for the Respondent Nos. 4 and 5.

7. Mr. K. Khan, learned Counsel for the Petitioner makes an endeavour to show

that by not extending his temporary appointment beyond 25.12.2006, the Respondent authorities have terminated the Petitioner from service without providing him due opportunities under the principle of natural justice and without prior approval of the competent authority and as such, he should be allowed to serve as Assistant Teacher in the said school. In this regard, he places the decision of this Court in *Wilbirthforth Momin Vs. State of Meghalaya and Others*, The benefit as granted in the aforesaid judgment, in my considered view, can not be granted to the present Petitioner inasmuch as, the Petitioner was never in regular service as his appointment was just in the nature of a stop-gap arrangement to meet the particular situation. Mr. K. Khan, learned Counsel for the Petitioner also refers to the Supreme Court decision in *Abani Mahato Vs. Kanchan K. Sinha and Others*, for the purpose that the Respondent authorities are cast with statutory duty to consider and dispose of the Petitioner's representation. In my considered view, the said case is not relevant to the present case inasmuch as, his representation has already been considered and disposed of by the Managing Committee concerned as already referred to by the learned senior Government Advocate.

8. By now, position has been made clear that the concerned Inspector of Schools never accorded any approval to the selection list dated 26.09.2004 prepared by the selection committee of the School Managing Committee. The said list, having not been approved as required under Rule 4(3) of the aforesaid Rules, in my considered view, it can not be acted upon and no candidate whose names appear therein, could be appointed. Moreover, the life of the said selection list, even if it is presumed that prior approval was obtained from the concerned Inspector of Schools, has already expired with the efflux of time and therefore, none from the aforesaid selection list could be appointed at this stage. The Petitioner has accrued no indefeasible right to claim appointment to the post of Assistant Teacher (Arts) on the basis of the aforesaid selection list which is no longer valid as it has expired due to lapse of time. The present writ petition is found devoid of any merit and as such the same is liable to be dismissed. It is accordingly dismissed. No order as to cost.

9. It has been submitted by the learned senior Government Advocate that a post of Assistant Teacher fell vacant due to retirement of an incumbent in the concerned School and the Managing Committee of the School has taken a resolution to fill up the same. According to him, no advertisement has been issued so far for recruitment of the said post. It appears that at present there are 2 (two) posts of Assistant Teachers (Arts) in the said School which are lying vacant. The Respondent authorities may take appropriate steps for recruitment of the said posts in accordance with the provision laid down under the Assam Aided High and Higher Secondary School Employees Rules, 1956, as amended, as expeditiously as possible, in the academic interest of the School.