
(1984) 04 GAU CK 0005
In the Gauhati High Court
Case No : Civil Revision No. 181 of 1983

Mrs. Maya Dutta

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision : 05-04-1984

Acts Referred:

Assam Administrative Tribunal Act, 1977 — Section 4, 5, 9, 9(2)
Assam Secondary Education (Provincialisation) Act, 1977 — Section 3, 5, 6
Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1(3), Order 7 Rule 10, 80(2)

Citation : (1984) 2 GLR 101

Hon'ble Judges : T.C. Das, J

Bench : Single Bench

Advocate : S.K. Senapati, for the Appellant; M.K. Sarma and B.C. Das, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

T.C. Das, J.—The revision Petitioner herein had challenged the order dated 1.8.83 passed by the learned Asstt. District Judge, Karimganj in Misc. Appeal No. 55 of 1982 arising out of Title Suit No. 131 of 1982 in the Court of Munsiff No. 3 at Karimganj. By the impugned order, the learned first appellate Court dismissed the appeal preferred by the Petitioner against the order of the learned Munsiff dismissing the suit on the ground of non-maintainability of the suit itself. The prayer for injunction—was also rejected by the learned Munsiff in the appellate Court, the order was challenged on both the counts, namely, on the point of maintainability as well as for not granting the injunction.

2. I have heard Mr. S.K. Senapati, the learned Counsel for the Petitioner and. Mr. Das, the learned Government Advocate and also Dr. M.K. Sarma, the learned Counsel representing the opposite party No. 7 at length. It would not be necessary to put in detail the facts of the case. It would be sufficient if the contentions of the parties may be noted to appreciate the submission made by the learned Counsel of the parties.

3. The Plaintiff who is the Petitioner herein filed a suit being Title Suit No. 131/82 in the Court of Munsiff No. 3 Karimganj for a declaration to the effect that she is entitled to be appointed as a Principal of the M.M.M.C. Girls Higher Secondary School, Karimganj. The case of the Petitioner is that she joined the School as teacher in the year 1953 and she was promoted to Asstt. Head Mistress (Vice-Principal) in the year 1963 and she has acquired sufficient experience for appointment to the post of a Principal. On attaining superannuation of the Principal of the said School, the Petitioner was holding charge as Principal incharge md from 13.4.82. The Petitioner was directed to take over charge of the Print by the order of the Inspector of Schools dated 12.4.82.

4. Thereafter on 13.4.82 an order was passed by the Addl. Director of Public Instruction appointing the opposite party No. 6 as Principal of the M.M.M.C. Girls Higher Secondary School, Kirimganj. The Petitioner being aggrieved by this order filed the suit in the Court of Munsiff for a declaration and for issuance of a permanent injunction against the opposite parties. The main reason for the Petitioner to institute this suit was that she made a representation earlier stating her grievances and claiming that, she was eligible to be appointed as Principal of the said School, but that representation was not disposed of by the authority before passing the impugned order dated 13.4.82. However, she did, not make any further representation in this regard. On the prayer of the Plaintiff for issuance of a temporary injunction, the learned Munsiff granted an ad-interims injunction restraining the Defendants not to implement the impugned order dated 13.4.82. On receipt of notice of such in-junction, the opposite parties who were impleaded as Defendant in the suit, appeared and contested the order of injunction on various grounds. The Defendants also raised the plea that the suit was not maintainable as the Civil Court has no jurisdiction to try the suit in view of the provisions as laid down in Assam. Administrative Tribunal Act, 1977 as well as in view of the provision u/s 6 of the Assam Secondary Education (Provincialisation) Act, 1977, Such objection being raised, the learned trial Court framed a preliminary Issue which runs as follows:

"Is this suit maintainable in its present form?" Accordingly, the issue on the ground of maintainability of the suit along with the injunction matter was heard by the learned trial Court. A further objection was raised by the Defendants that the issuance of ad-interim injunction was liable to be vacated on the ground of non-compliance of the provisions of Section 80(2) of the CPC read with Order 39 Rule 1 Sub-rule (3) of the Code. The learned Munsiff on hearing the rival contentions of the parties, held that the suit was not maintainable as because the Civil Court has no jurisdiction to try this present nature of the suit as per relief claimed by the Plaintiff. Consequently, it was further held that the Plaintiff was not entitled to an injunction. The learned Munsiff, on both the counts, dismissed the suit and also rejected the prayer for injunction. The Plaintiff thereafter carried an appeal to the Court of Asstt. District Judge, Karimganj, against the order of the learned Munsiff. The learned Asstt. District Judge gave a concurrent finding and did not disturb the findings which was arrived at by the

learned Munsiff. Therefore, on such concurrent findings, the appeal was dismissed. This is how the Plaintiff has preferred this revision petition in this Court.

5. Mr. Senapati, the learned Counsel for the Petitioner has urged before me that the main relief as claimed by the Plaintiff in the suit could not be granted by the Administrative Tribunal as those relief can be granted only and exclusively by the Civil Court. On perusal of the contentions raised in the plaint as well as relief claimed, the learned Munsiff as the appellate Court concluded that the relief as claimed by the Plaintiff in the suit could be granted in appropriate manner by the Tribunal. Therefore, the learned Munsiff issued a direction for return of the plaint under Order 7 Rule 10 of the CPC for presentation of the plaint before the Tribunal. The said order was upheld by the learned first appellate Court. In this context, Mr. Senapati has drawn my attention to the relevant provisions of the Assam Administrative Tribunal Act, 1977 (in short the Act) and pinpointed the provisions as laid down in Sections 4 and 9 of the Act. The learned Counsel has also referred to me two decisions of this Court as reported in *Ranjit Chakravarty Vs. State of Assam and Others*, Relying on those two decisions the learned Counsel has submitted that there is no complete, ouster of, jurisdiction of the Civil Court and the same question has been decided in both the decisions more precisely on the point that the Civil Court has jurisdiction to try a suit of this nature and the Civil Court is competent to grant such relief. The first cited decision, as reported in AIR 1981 Gauhati also was rendered by a Full Bench of this Court. As per majority judgment it was held, "In our opinion the Administrative Tribunal does not have the jurisdiction to entertain the Plaintiff's appeal and the jurisdiction of the Civil Court to entertain the suit is not ousted". The facts of the above cited case appears to be quite distinct and different from the facts of the present case. The prayer for relief claimed were also not similar and identical as in the present case. Therefore, the case as cited above will not be of any aid to Mr. Senapati. In the next case, the decision was rendered by a common judgment covering three civil revision petitions where the question of jurisdiction of the Civil Court to entertain the suit was considered with reference to the provisions as laid down under Sections 4 and 9 of the Act. In all the three revision petitions, the moot point for consideration was as to the right of an employee to receive pay from his employer and also as regards the right of the Government Servant to receive pay from the Government which right was not conferred by the Rules. The facts of those cases are also not similar with the present case.

6. In reply to the various submissions made by Mr. Senapati, the learned Government Advocate and Dr. M.K. Sarrna who are representing different, sets of opposite parties, have submitted that the Civil Court has no jurisdiction to try such nature of the case in view of the provisions as laid down u/s 4 and 9 of the Act. That apart, my attention was drawn to the in provisions of Section 6 of the (SIC) Secondary Education (Provincialisatio) Act, 1977 which may be quotes herein below:

6. Suit and Proceedings.- No suit, prosecution or other legal proceedings shall lie for anything in good faith done under this Act except with the previous sanction of the State Government.

It is not disputed by the parties that the School in question was taken over by the Government under the provision of Assam Secondary Education (Provincialisation) Act, 1977 and by virtue of Section 3 of the Act, all employees of the school have become the Government employees of the State Government of Assam from the date of taking over the school by the Government. Section 5 of the Act prescribes the mode of function and management of the school. The provision is quoted herein below:

5. Functions of Managing Committees.- (1) The administration, management and control of all employees of all Secondary Schools coming within the purview of this Act shall vest in the State Government from the appointed day.

2....

Therefore, the management of the school has been vested in the State Government and the State Government is the only authority to manage the affairs of the school including the question of appointment of teachers, Headmaster etc, and other employees. It goes without saying that by virtue of the relevant provisions of the Act, the Government has been empowered as the controlling authority in all affairs of the school. Mr. Senapati, the learned Counsel for the Petitioner has lastly submitted that the grievance of the Petitioner is mainly for non-consideration of the representation to judge the eligibility of the Petitioner to be appointed as the Principal of the school. With out considering all relevant facts and also as to the eligibility of the Petitioner for such post, the impugned order was passed which has caused prejudice to the Petitioner. Therefore, according to Mr. Senapati, the Plaintiff has every right to establish her claim in the Court of law by way of the present suit. The learned Counsel has also further submitted that the provisions of Section 9 as well as Section 4 of the Tribunal Act are not at all attracted in the case of the Petitioner and the learned courts below could not have directed the Petitioner to take back the plaint for presentation before the Tribunal under Order 7 Rule 10 of the Code of Civil Procedure. Referring to the provisions of Section 6 of the Assam Secondary Education (Provincialisation) Act, 1977. Mr. Senapati has submitted that the provisions as bid down in that section would not stand as a bar to bring such a suit as because the impugned order was passed not in good faith. The learned Counsel has further explained that as the representation of the Petitioner was not considered by the authority the impugned order was passed without determining the right of the Plaintiff and her eligibility to be appointed is Principal of the school in question. Therefore, as submitted by the learned Counsel, it could not be said that the order was passed in good faith. I have perused the impugned order. I have noticed that the learned appellate Court, while concluded that a wrong forum has been chosen by the Plaintiff and as such no relief could be granted to her as the suit was not maintainable, gave a further direction which

may be quoted herein below

Considering that the Plaintiff has all the qualifications for selection of Principal, it is ordered that her present position as in charge Principal shall not be disturbed till 19.8.83 within which date she may move the learned Administrative Tribunal and obtain necessary orders, failing which she shall hand over charge of the Office of Principal of M.M.M.C. Higher Secondary School to Sri. Ashotosh Shome, Defendant No. 7 on 20.8.83 or on the date of her superannuation which ever is earlier. In default Inspector of Schools, Cachar (Defendant No. 5) shall install Sri. Ashutosh Shome as Principal of M.M.M.C. Higher Secondary School, Karimganj with effect from 20.8.83 or on the date of Plaintiff's superannuation, which ever is earlier.

The above direction could not have been rendered by the learned appellate Court below. While it was held by the learned Court below that the Civil Court had no jurisdiction to try the suit and the suit was not maintainable on that score, such further directions should not have been rendered in this regard. Therefore, this portion of the impugned order cannot stand and is liable to be quashed.

7. Coming to the main point as to the non-maintainability of the suit, and as regards issuance of injunction. I am of the opinion that the learned appellate Court below was correct in holding that the Plaintiff was not entitled to any relief as the suit was not maintainable in view of the provisions as laid down u/s 6 of the Assam Secondary Education (Provincialisation) Act, 1977. Mr. Senapati, the learned Counsel for the Petitioner has further submitted that the provisions of Assam Administrative Tribunal Act is not attracted as because the Tribunal has limited jurisdiction to decide a matter as envisaged u/s 4 as well as Sub-section (2) of Section 9 of the Act. This aspect of the matter is not necessary to be considered further. In my opinion, the learned appellate Court below was correct in holding that the writ was barred in view of the provisions as laid down u/s 5 of the Assam Secondary Education (Provincialisation) Act, 1977. Therefore, there is nothing to interfere with the impugned order so far it relates to the point as regard non-maintainability of the suit of this nature in the Civil Court. Therefore, the Plaintiff is not entitled to any interim relief what so-ever. While considering the later portion of the order, I quash that portion of the order of the learned appellate Court below as quoted above as the same is without jurisdiction. In my opinion, the appellate Court below was not competent to issue such direction to the authority concerned after holding that the suit was not maintainable in that forum. No other point is raised.

8. In the result, I do not find any substance in this petition and as such the petition is dismissed, On the facts and circumstances of the case, I make no order as to cost. The stay order granted by this Court stands vacated. Mr. Senapati, the learned Counsel at the close of the judgment has submitted that though the present revision petition has not been accepted by this Court yet, a grievance may be considered which has been raised by the Petitioner to this effect only that her representation was not considered by the authority

concerned to judge the eligibility to be appointed as the Principal before passing the impugned order appointing the opposite party No. 6 as Principal of the school. However, in any event, an opportunity ought to have been given to the Petitioner to place her representation. before passing the impugned order as the Petitioner became the employee of the State Government by virtue of the provisions of Section 3 of Assam Secondary Education (Provincialisation) Act, 1977. In this context, Mr. Senapati has further submitted that this being the position, there has been a clear violation of the principles of natural justice and therefore, the Petitioner should get some remedy in this regard. I have heard Mr. B.C. Das, the learned Government Advocate in this regard who has very fairly stated that as the State Government is the controlling authority, the State Govt. may surely consider the representation of the Petitioner if it has not yet been disposed of. If the representation of the Petitioner has been disposed of by the authority of the State Government, a copy of the reasoned order passed therein will be sent to the Petitioner. In case the representation has not been disposed of, as submitted by the learned Government Advocate, the authority concerned of the State Government shall dispose of the representation of Petitioner within a period of six weeks from today and shall send a copy of the order to the Petitioner.

9. I appreciate the stand taken by the learned Government Advocate. He has fairly agreed that the authority concerned of the State Government will consider the representation of the Petitioner in the manner as stated above. There cannot be any doubt that the State Government shall surely consider the case of the Petitioner and shall further consider as to whether the Petitioner should further continue to discharge the duty of Principal in charge till the representation of the Petitioner is disposed of. It is agreed by all concerned that the decision of the State Government be sincerely and properly followed and shall be carried out by all parties. However, the above observations should not be treated as a direction issued to the State Government. The State Government shall be at liberty to dispose of the representation of the Petitioner on merits and. it should not be understood that this is a direction by this Court to the State Government.