
(1999) 08 GAU CK 0036
In the Gauhati High Court
Case No : Civil Rule No. 935 of 1996

Nazimiuddin Ahmed and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 02-08-1999

Acts Referred:

Assam Elementary Education (Provincialisation) Rules, 1997 — Rule 3

Citation : (1999) 3 GLR 281

Hon'ble Judges : P.G. Agarwal, J

Bench : Single Bench

Advocate : A.S Choudhary, F. Majumdur, I. Hussain and A. Maleque, for the Appellant; Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

P.G. Agarwal, J.—The 52 writ Petitioners before were appointed as Stipendary teachers on adhoc basis, for, a period of three months at a fixed pay of Rs. 900 per month. The appointments were made as a stop gap (sic)sure and on purely temporary basis by District, Elementary Education Office, Dhubi vide order dated 30.1.1996 On 3.2.1996 the Commissioner of Education, Assam sent the following W.T. Message:

WT. MESSAGE/CRASH

TO DEPCOM DHUBRI/DISTRICT ELEMENTARY EDUCATION OFFICER DHUBRI.

INFO INSPECTOR Of SCHOOL DHUBRI/SECRETARY ALL ASSAM PRIMARY TEACHERS ASSOCIATION DHUBRI.

FROM COMMSSIONER EDUCATION DISPUR

No. a(1) E 705/95/3 DATED 3.2.96

DISTINCT ELEMENTARY EDUCATION OFFICER DHUBRI IS REPORTED TO HAVE APPOINNNED AS MANY AS ONE HUNDRED THIRTY THREE ASSTT, TEACHERS

INVARIOUS L.P. SCHOOL IN DHUBRI SUBDIVISION ON 31.1.96(,) THE DEEO HAS NO POWER TO ISSUE SUCH APPOINTMENT LETTERS(,) THE VERY ACTION OF THE DEEO DHUBRI IS ULTRAVIRUS AND CONTRAY TO THE PROVISION OF ESTABLISHED PROCEDURE (,) DEEO MAY BE ASKED TO CANCECALL THE APPOINTMENT LETTER ISSUED BY HIM EFFECTIVE FROM, THE DATE OF ISSUE AND REPORT COMBLIANCE (,) PARA (,) FOR DEEO DHUBRI ONLY (.) CANCEL ALL APPOINTMENT LETTERAS AS ASKED FOR(.) INSTRUCT THE HEADMASTER OF PRIMARY SCHOOLS NOT TO PERMIT THREE CANDIDATES TO JOIN IN THE SCHOOLS(,)

Copy to:

1. Officer-in-charge, APRO, Dispur for immediate transmission of the above message.
2. P.S. to Minister, Education.
3. P.S. to Minister of State.

Sd/-P.C. Sharma, Commissioner of Secetary to the Education.

2. Thereafter the District Elementary Education Officer, Dhubri passed the following order on 2.2.96:

GOVERNMENT OF ASSAM OFFICE OF THE DISTRICT EMENTARY EDUCATION OFFICER, DHUBRI;

ORDER

In pursuanc to the Commissioner Education Assam"s Order No. A(1)E 705/96/3 dated 3.2.96 all the appointments in L.P. Schools issued vide this office order under Memo No. EED-58/Pt-1/95/8167-8630 dated 30.1.96 are cancelled as the orders issued date ultravires, from the date issue, i.e. 30.1.1998.

Sd/-I. Hussain, District Elementary Education Officer, Dhubri.

Memo No. EED-50/Pt-1/95/8673-952 dated Dhubri the 2.2.96

Copy to:

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Sd/-I. Hussain, District Elementary Education Officer, Dhubri.

3. The writ Petitioners have therefore approached for setting aside the order of cancellation of their appointment. It is urged, that the order of appointment issued by the District Elementary Education Officer, Dhubri cannot be terminated without giving an opportunity of hearing to the teachers in violation of principle of natural justice.

4. Heard Mr. A.S. Choudhury, learned Counsel for the Petitioners and Mr. M.N.

Sarma, learned Additioial Senior Govt. Advocate for the State of Assam.

5. Learned Govt. Advocate has submitted that the appointment letters were void abinitio on the following two grounds:

(1) that the select list was not alid and proper select list as it was not approved by the Director Elementry Education as required under the rules:

(2) that the District Elementary Education Officer was not the competent person to issue the appointment letter under the Rule.

6. Para 3 of the Assam Elemenary education (Provincialisution) Rules, 1997. hereinafter referred to as "the Rules" provides for manner of the recruitment. Rule 3(vi) provides that after the list is approved by the Sub-Divisional level Advisory Board for Elementary Education, it shall be sent to the Direetor of Elemenary Education for his feral approval. The Rule further provides:

The Deputy Inspector of Schools will appoint the selected candidates in order of merit from the list approved by the Director of Elementary Education as and when required as per Government Rule Government instructions for the time being in force.

7. Annexure-1 is the list of 133 candidate approved by the Sub-Divisional Level Advisory Board for Elementary Education, Dhubri. The stand of the Government is that this list, Annexure-1, was not sent to the Director of Elementary Education, Assam for his final approval and it was not a proper and valid selection list and as such no appointment could have been issued on the basis of such list. The learned Counsel for the Petitioners submits that the Government has not filed any affidavit in reply and an the original list has not been produced by the Respondents it cannot be said that the Annexure-1, the Selection list was not approved by the Director of Elementary Education. A bare perusal of the Annexure-1 is sufficient to negate the above submission, Annexure-1 shows that the approval was given by the Chairman and Members of the Sub-Divisional Level Advisory Board, Dhubri on 30.1.96, as the date is given below their signatures. The list is required to be sent to the Director of Elementary Education, Assam the office of which is situated at Guwahati which is at a distance of around 300 Kms. In this case, even the appointment letter, Anneure-1(a) was issued by the District Elementary Education Officer on 30.1.1996 itself, i.e., on the very day on which the list was approved by Advisory Board. Hence the. non-approval of the select list by the Director of Elementary Education, Assain, Guwahati is apparent on the face of the record.

8. The learned Addl. Sr. Govt. Advocate has further submitted that the Sub-Divisional level Advisory, Board for Elementary Education all over the Assam were disbanded vide Govt. order dated 30.1.96. Annexures-1 and 1(a) are the poor attempt by the Members of the District level Advisory Board of Elementary Education and DEEO, Dhubri to chent Government by their unlawful action.

9. Considering the submissions and on perusal of the document on record, it is

crystal clear that Annexure-1 is not a proper and valid select list as it was not approved by the Director of Elementary Education as required under the Rules, i.e., Rule 3(vi) of the Assam Elementary Education (Provincialisation) Rules, 1977 and as such no appointment letter could have been issued on the basis of Annexure-1.

10. As regards the next submission, there is no dispute at the bar that under the Rules the Deputy Inspector of Schools is the appointing authority and admittedly in the instant case the letter of appointment was issued by the DEEO. It is submitted on behalf of the Petitioner that the D.I. of Schools, Dhubri, the appointing authority under the Rules was not available at Dhubri for a long period and as such the appointment letters were issued by the DEEO, Dhubi who is a higher authority to D.I. of Schools, learned Govt. Advocate, on the other hand, submits that when an authority is given under the Rules to a particular person only that person can exercise that power. The DEEO was not the controlling authority of D.I. of Schools and DEEO had no power or jurisdiction to assume the work of D.I. of School. There was no Government notification or order allowing the DEEO to perform the work of D.I. of School. The Petitioners in support of their contention have referred to a decision of the Apex Court in the case of Shrawan Kumar Jha and others Vs. State of Bihar and others, I have perused the above judgment as reported and I find that there was a dispute regarding the validity of appointment. Moreover in the above case, the Apex Court did not lay down the law that any appointment made by any authority is valid or any legal rights accrued from such appointments. Considering the above facts and circumstances of the case, the Apex Court gave certain directions. The above decision is of not much help to the Petitioner in view of the foregoing discussion that there was no proper and valid selection list and that the appointments were made by an incompetent authority, that too, de hors the Rules. Considering the facts, the Apex Court in Suman Kumar Jha (Supra) afforded an opportunity to the appointees for hearing before cancellation of their order as there was a time gap of around six months in between the letter of appointment and cancellation. In the instant case, the letter of appointment was allegedly issued on 30.1.1996 and it was cancelled on 2.2.1996. that is, within three days, learned Counsel for the Petitioner submits that there is manipulation as regards the date given in Annexure-3, as the date is 2.2.1996 but the order is purported to have been passed in pursuance of a W.T. message of the Commissioner of Education, Assam dated 3.2.1996, It may be that the date 2.2.1996 as Annexure-3 was mentioned by mistake or due to error or that the DEEO has given the wrong date intentionally as he was a party to the promptness shown by him in issuing the appointment letters of 133 teachers on the basis of alleged selection made on the same day.

11. As the appointment was for a period of three months only no interim order was passed by this Court in favour of the writ Petitioners except for a provision for appointment outside the Select list without the leave of the Court. As the Select List was not a proper and valid Select list, there is no question of

appointment on the basis of the Select List. The appointment of the writ Petitioner was de hors the Rules and by incompetent person of the authority. I find no merit in this writ petition and accordingly the writ petition is dismissed. No order as to costs. The interim order stands vacated.