
(2021) 09 GAU CK 0028

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 4041 Of 2019

Parinita Bora

APPELLANT

Vs

State Of Assam And 5 Ors

RESPONDENT

Date of Decision : 10-09-2021

Acts Referred:

Citation : (2021) 09 GAU CK 0028

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : A C Borbora

Final Decision : Allowed

Judgement

1. Heard Mr. A C Borbora, learned senior counsel for the petitioner. Also heard Ms. D D Barman, learned Additional Senior Government Advocate for the respondent no. 1, Mr. K Gogoi, learned counsel for the respondents no. 2, 3 and 5 being the authorities under the Higher Education Department, Government of Assam, Mr. A Chaliha, learned counsel for the respondent no. 4 being the Finance Department, Government of Assam and Mr. H P Neog, learned counsel for the respondent no. 6 being the Harhi College, Lakhimpur.

2. The petitioner Parinita Borah was appointed as an Assistant Professor in the subject Assamese in the Harhi College, on 30.08.2003. The teaching and non-teaching staff pattern of the college as provided under the signature of the Principal of the Harhi College, Gobindapur, Lakhimpur shows that Sarat Kumar Chutia was appointed as an Assistant Professor in the Assamese subject in the college on 22.12.2002, Swapna Gogoi was appointed as an Assistant Professor in Assamese subject on 24.12.2020, Parinita Borah was appointed as an Assistant Professor in Assamese subject on 30.08.2003 and Pratima Chetia was appointed as an Assistant Professor in Assamese subject in the college on 15.11.2005.

3. Admittedly, in order of appointment, the petitioner would be third Assistant Professor in the subject Assamese in the college concerned.

4. Mr. K Gogoi, learned counsel for the Higher Education Department also makes a statement that on the basis of number of students in the subject Assamese in the college, the college is entitled to have four Assistant Professors for being provincialised under the Act of 2017 as amended in 2018.

5. The petitioner is aggrieved to the extent that against the first post in the Assamese subject, Sarat Kumar Chutia and in the second post, Swapna Gogoi were provincialised, who were appointed respectively on 20.12.20002 and 24.12.2002 and Pratima Chetia, who was appointed on 15.11.2005 had been provincialised against the third post. But the claim of the petitioner had been left out.

6. Irrespective of whether there would be four posts for provincialisation in the Assamese Department of Harhi College, it is noticed that the fourth person in order of their respective dates of appointment had been provincialised, ignoring the claim of the third person. The said act itself prima facie appears to be an act which is arbitrary and discriminatory.

7. Mr. K Gogoi, learned counsel for the Higher Education, Assam seeks to justify the same by making a statement that the petitioner did not have the relevant qualification but when we put a question as to what qualification the petitioner did not have, an effective answer is not forthcoming.

8. A stand is also taken that the petitioner was appointed against an excess post.

9. We are unable to understand the said stand of the respondents inasmuch as, as the petitioner was appointed on 30.08.2003 whereas Pratima Chetia was appointed on 15.11.2005, as to under what circumstance the petitioner can be said to have been appointed against an excess post when the fourth incumbent was appointed against a non-excess post. A further stand taken is that earlier the petitioner was considered to be an Assistant Professor against the Elective Assamese subject whereas the others were considered against the Assamese subject. The Dibrugarh University under Memo No: DU/DR-A/4-1/20/175 dated 13.02.2020, Annexure-D, page-7 to the additional affidavit of the petitioner had provided that the Assamese Elective subject and the Assamese subject are two different subjects. If it is so and the two subjects are different subjects, a right to be provincialised had accrued in favour of the petitioner to be provincialised as an Assistant Professor in the Assamese Elective subject, but even that was not done. In other words, the respondent authorities while proceeding with the process for provincialisation had not considered the Assamese and Assamese Elective to be separate subjects and both were considered to be a part of the Assamese department itself.

10. In view of the above, even the unsubstantiated stand that the petitioner was an Assistant Professor in the subject Assamese Elective cannot be a reason not to provincialise the service of the petitioner and on the other hand to give the benefit of provincialisation to an Assistant Professor who is appointed subsequently.

11. From the aforesaid, we conclude that a legal right had accrued in favour of the petitioner for provincialisation but such legal right had been refused by the respondents without any acceptable reason.

12. Accordingly, irrespective of the aspect whether four posts would be available for provincialising the service of the Assistant Professors in the Department of Assamese in Harhi College after the amendment of the Act of 2017 or whether still three posts would be available, the respondents being the Director of Higher Education, Assam to pass a consequential order for provincialisation of the petitioner in terms of the Act of 2017 within a period of four weeks from the date of receipt of the certified copy of the order. If in doing so, the Director is required to pass any further order which may have adverse consequence as regards any other Assistant Professors who may have been provincialised in the meantime, the Director may do so by following due procedures of law and giving appropriate notice to such persons who may be affected. But at the same time, if four posts are available and there are four Assistant Professors in the subject of Assamese as per the teaching and non-teaching staff pattern as provided by the Principal, we even see no reason for any adverse order to be required against anybody else for provincialising the service of the petitioner.

13. Writ petition stands allowed in the above terms.