
(2010) 11 GAU CK 0005
In the Gauhati High Court

Pradeep Gogoi, S/O.LT.Tarun Ch.Gogoi	APPELLANT
Vs	
State of Assam and Ors.	RESPONDENT

Date of Decision : 11-11-2010

Acts Referred:

Citation : (2010) 11 GAU CK 0005

Hon'ble Judges : B.K.Sharma, J

Bench : Single Bench

Judgement

1. Heard Mr. S.N. Sarma, learned Sr. Counsel for the petitioner as well as Mr. K. Konwar, learned counsel representing the respondent No. 4. I have also heard Ms. Baruah, learned Standing Counsel, Education Department.

2. This writ petition is directed against the order dated 17.1.2007 (AnnexureB) passed by the Director of Secondary Education, Assam, by which the respondent No. 4 was allowed to hold charge of the Headmaster of the school called Barhapjan High School in Tinsukia district. As per the said order, the respondent No. 4 is also allowed to exercise the financial power for drawl and disbursement of salaries etc. of teaching and nonteaching staff of the school until further order.

3. The aforesaid order is under challenge on the ground that the petitioner being senior to the respondent No. 4 ought to have been allowed to hold the charge of Headmaster instead of allowing the respondent No. 4.

4. The petitioner was appointed as Assistant Teacher with effect from 11.2.1974 under the scheme called Half a Million Job Programme. On the other hand, the respondent No. 4 was appointed as Assistant Teacher in the graduate scale of pay with effect from 9.8.1976. Be it stated here that the petitioner on being appointed against the Half a Million Job Programme also drew the graduate scale of pay with effect from 1.1.1975 upon regularization of service.

5. Upon a reference to Rule 24 of the Assam Secondary Education (Provincialisation) Service Rule, 2003, it is the case of the petitioner that the respondent No. 4 cannot count his seniority with effect from 1.1.1975, but he

should count his seniority from 1.3.1978 as per the provisions of Rule 24 (2) (iii). Relevant portion of Rule 24 is quoted below:

24. Seniority: (1) The interseniority of the teachers of Graduate cadre and PosGraduate cadre in a school shall be considered/determined for filling up the vacancies of VicePrincipal on the basis of

(i) The date of continuous service in the School irrespective of graduate or post graduate post on regular basis;

(ii) The date of joining;

(iii) The date of birth, position in the merit list recommended by the State Selection Board;

(iv) The date of birth in case of employees holding same position in the merit list.

(2) Seniority for promotion to the post of Headmaster/Superintendent/Assistant Head Master/Assistant Superintendent shall be determined on the following basis

(i)

(ii)

(iii) regarding seniority in respect of H.M., J.P. (Stipendary) teacher, seniority shall be counted from the date of regularization in Graduate cadre with effect from 1.3.78 vide Govt. letter No. ESS/0/72/468, dated 10.1.78.

6. The aforesaid provisions of the Rules came to be interpreted by the Division Bench of this Court in W.A. No. 98/2002 (Sri Arun Ch. Neog Vs. the State of Assam & Ors.). It was contended that the aforesaid Rule of 2003 being prospective, seniority accrued to the incumbent prior to 2003 could not have been taken away by the provision of the above quoted Rules.

7. In the said case, the Division Bench held that the date of regularization in the graduate cadre with effect from 1.1.1975 pertaining to the graduate teachers appointed under Half a Million Job Programme would be a decisive factor towards counting of seniority. In that case, the Division Bench held that the respondent involved therein, who was so appointed under the said Half a Million Job Programme would get his seniority from the date of regular appointment in the graduate cadre i.e. 1.1.1975.

8. In the instant case also, the petitioner was initially appointed under the said Programme on 11.2.1974 and thereafter his service was regularized as graduate teacher with effect from 1.1.1975. Thus the aforesaid Division Bench Judgment squarely covers the case of the petitioner and he is entitled to count his seniority with effect from 1.1.1975.

9. The aforesaid decision has been followed by this Court in the judgment reported in 2004 Supp GLT 808 (Satya Charan Biswas Vs. State of Assam) and the judgment reported in 2007 (3) GLT 644 (Bhagaban Ch. Deka Vs. State of

Assam). Learned counsel for the respondent No. 4 has placed reliance on the decision reported in (2009) 2 GLR 70 (Hemchandra Dutta Vs. State of Assam) so as to contend that as per the aforesaid provisions of the Rules, the petitioner is entitled to count his seniority only with effect from 1.7.1978.

10. Apart from the fact that the fact situation involved in the case in Hemchandra Dutta (supra) is not applicable to the present case, I am also bound by the decision of the Division Bench referred to above.

11. In the aforesaid judgment, it has been held that the aforesaid Rules of 2003 cannot have any retrospective application and thus the seniority accrued to the incumbents although initially appointed under the aforesaid Programme, but whose services were regularized with effect from 1.1.1975 will get seniority from the said date i.e. 1.1.1975. Thus counting the regular date of appointment between the petitioner and the respondent No. 4 i.e. 1.1.1975 and 9.8.1976 respectively, the petitioner is undoubtedly senior to the respondent No. 4.

12. Above being the position, the impugned order, by which the respondent No. 4 was allowed to hold the charge of the Headmaster is not sustainable in law and accordingly the same is set aside and quashed. Be it stated here that the said order is under stay vide order dated 2.3.2007. By now almost 4 years have passed.

13. Writ petition is allowed to the extent indicated above. If the post of Headmaster has not been filled up on regular basis, the authority shall allow the seniormost teacher of the School to hold the charge of Headmaster, who is otherwise eligible for the post.

14. Writ petition is disposed of.