
(2007) 10 GAU CK 0017
In the Gauhati High Court

Pradip Kr. Pathak

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 15-10-2007

Acts Referred:

Income Tax Act, 1961 — Section 80C, 80U

Citation : (2007) 4 GLT 864

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Judgement

Amitava Roy, J.—Aggrieved by the resolution dated 28.6.2007 of the Governing Body of the Bilasipara College, Dhubri (hereafter referred to as the College) deciding to handover the charge of the Office of the Principal thereof to the respondent No. 4, the petitioner has projected this challenge thereto seeking redress. This Court while issuing notice on 20.7.2007 in the interim restrained the Director of Higher Education, Assam, from according approval to the said resolution.

2. I have heard Mr. T.C. Chutia, learned Counsel for the petitioner, Ms. Mary Gogoi, learned Standing Counsel, Education Department, Mr. A.K. Goswami, Sr. Advocate, assisted by Mr. S. Banik, Advocate for the respondent No. 3 and Mr. A.K. Sharma, learned Counsel for the respondent No. 4.

3. The pleaded facts forming the factual background are essential. The petitioner's version is that he is a Lecturer in the Department of Mathematics in the College since 2.3.1976 and in recognition of his seniority in service, competence and ability, he has in the meantime been entrusted with the charge of the Office of the Principal thereof for short stints as and when called for. His services have also been requisitioned by the Higher Secondary Education Council and Gauhati University from time to time as Supervisory Officer etc. in different examinations conducted by them. The petitioner has stated that the Principal-in-Charge and Secretary of the College Mr. M.R. Sheikh was scheduled to retire on superannuating on 30.6.2007, the Governing Body held a meeting on 28.6.2007

and adopted two resolutions being Resolution No. 8(a) and 8(b). While by the first, Mr. M.R. Sheikh's retirement on superannuation was recorded, by the second, the Governing Body noticed that the next senior most Lecturer Mrs. B. Patgiri, Head of Department, Philosophy, had expressed her disinclination to assume the charge of the Office of the Principal. In course of the discussion to select the next senior most Lecturer it decided against the petitioner on the grounds enumerated therein. The Governing Body instead recommended the name of respondent No. 4 to be the Principal-in-Charge and Secretary of the College.

4. Seriously contending that the grounds mentioned in the impugned resolution are unfounded and untenable, the petitioner has pleaded that the said decision tantamounts to his supercession in service. It has been averred that some of the office bearers of the students union of the College had on 29.6.2007 submitted a representation before the Director of Higher Education, Assam, apprising the said authority of the forgery perpetrated by the President and Working President of the Union of facilitate the induction of the respondent No. 4 in the Office of the Principal by depriving the petitioner. By the said representation, the aforementioned authority was requested to make an enquiry into the attendant facts. A FIR was also lodged by the office bearers of the Students Union on 1.7.2007 with the Bilasipara Police Station with the same allegations.

5. According to the petitioner, the teaching staff of the College also being aggrieved by the sequence of events on 1.7.2007 submitted a representation before the Director of Higher Education, Assam, urging the said authority to take necessary action on the issue. The representationists therein clarified that they had not opposed the petitioner's candidacy as the Principal of the College. The petitioner in particular has refuted the allegation vis-a-vis the alleged deficiencies in service as referred to in the impugned resolution. The petitioner has also asserted that the impugned resolution so far as it relates to him was not unanimous. The petitioner has mentioned as well the demand of some Students Union's with the concerned State Authorities to appoint him as the Principal-in-Charge of the College in due regard to his seniority. The petitioner has contended that though the Director of Higher Education, Assam, had assured to take necessary decision in the matter, he has omitted to do so and that the approval to the impugned resolution has not yet been provided.

6. The Director of Higher Education, Assam, in his counter in essence has affirmed that the approval to the impugned resolution has not yet been granted.

7. In its counter, the respondent No. 3 has maintained that following the superannuation of Mr. M.R. Sheikh, the previous Principal of the College on 30.6.2007, Smt. Bharati Patgiri, Head of Department, Philosophy Department, the next senior most Lecturer, when offered the Office, expressed her unwillingness to accept the same. It categorically denied the allegations levelled by the petitioner against it. While contending that no case had been registered by the Police on the FIR said to have been filed on 1.7.2007, the answering

respondent reiterated that the Bilasipara College Teachers Unit submitted a copy of its resolution before the President of the Governing Body on 23.5.2007 requesting it (Governing Body) not to impose the additional burden of Principalship on the petitioner considering his ill health. The respondent insisted that the petitioner in fact could not take the allotted classes properly since he was involved in an accident in the year 2002. It, therefore, resolved to entrust the Office to the next senior most Lecturer in the greater interest of the institution. The answering respondent also in this regard referred to a letter dated 12.2.2007 of the earlier Principal mentioning the petitioner had not attended his classes regularly for the sessions 2005-06 and 2006-07 with a request to take necessary steps to streamline the affairs of the Mathematics Department. The Governing Body, however, on humanitarian considerations in the background of the ill health of the petitioner did not decide adversely against him. The respondent pleaded that the petitioner had from the year 1997 availed the benefit of income tax deduction u/s 80C of the Income Tax Act, 1961, grantable to a person suffering from permanent physical disability which clearly demonstrated his fragile frame of health. The respondent clarified that the impugned resolution was adopted without any dissension. It denied that as the resolution has not been approved by the Director of Higher Education, Assam, the respondent No. 4 is not functioning as the Principal-in-Charge of the Institution. The allegation of malafide and arbitrariness has been specifically denied.

8. Reasserting his averments in the writ petition, the petitioner in his reply affidavit highlighted that the grounds referred to in the impugned resolution repudiating his candidature are purported being not based on facts. He referred to the representations of the Bilasipara College Students Union, the FIR lodged by it as well as the resolution dated 23.5.2007 of the Teachers Unit of the College contending that thereby his installation as the in-Charge Principal had not been discountenanced. He also denied the allegation of not attending classes regularly for the sessions 2005-06 and 2006-2007 asserting that his visual impairment notwithstanding, he had completed his academic pursuit without any hindrance and in recognition of his meritorious service had been awarded Selection Grade by the authorities concerned. That he has been discharging his duties with sincerity and dedication is testified by the fact that he had been allowed to be in-Charge of the Office of the Principal on various occasions in absence of the regular Principal of the College. He has maintained that availing the benefit of income tax deduction u/s 80U as a physically handicapped person no way demonstrates his unsuitability in service or for the Office of the Principal.

9. Mr. Chutia has emphatically urged that the impugned resolution being founded on non-existent facts is patently illegal, arbitrary and discriminatory and is liable to be interfered with. The petitioner being admittedly the senior most Lecturer of the College following Mrs. B. Patgiri, the latter having declined the Office of the Principal of the Institution, the petitioner ought to have been inducted therein, he urged. The learned Counsel, referred to the representations submitted by the

Bilasipara College Students Union and the Teachers Unit of the College as well as the FIR, the memoranda addressed by the various other Students Union to the Director of Higher Education, Assam, as well as the resolution dated 23.5.2007 of the Bilasipara College Teachers Unit has assertively argued that it is apparent therefrom that the grounds recorded against the petitioner's suitability for the office involved are unfounded. Mr. Chutia, on instructions, has submitted that the impugned resolution in the facts and circumstances of the case is motivated and being vitiated by malafide ought to be set aside in the interest of justice.

10. Mr. Goswami as against this has submitted that though as a general proposition the competence, efficiency and ability of a person physically challenged cannot thereby ipso facto be undermined, the petitioner as a matter of fact on account of his falling health could not take all his allotted classes. In this regard, the learned Sr. Counsel referred to the letter of the in-Charge Principal of the College to the effect that the petitioner would not attend his regular classes properly for the sessions 2005-06 and 2006-07. While admitting that the petitioner at times had been allowed to hold the charge of the Office of the Principal during the temporary absence of the regular incumbent thereof, Mr. Goswami has urged that the Governing Body of the College really did not intend to overburden the petitioner with the additional responsibility in these circumstances. Mr. Goswami has produced the proceeding book of the Governing Body of the College.

11. Mr. Sharma appearing for the respondent No. 4, while endorsing the decision of the Governing Body has submitted that as the approval thereto has not yet been extended by the Director of Higher Education, Assam, he has been rendered unable to assume the charge of the Office.

12. The recorded averments of the parties and the arguments advanced on their behalf have been duly noted. The petitioner's seniority in service is not in dispute. That he had been allowed to hold the charge of the office of the Principal of the College on various occasions during the absence of the regular incumbent is also a matter of record. The respondents have not denied that the petitioner had in the meantime been appointed as External Officer and Supervisory Office for various examinations conducted by the Assam Higher Secondary Education Council and the Gauhati University respectively. The impugned resolution enumerates the following grounds to prefer the respondent No. 4 over the petitioner.

(a) The unanimous resolution of the teacher's unit of the Bilasipara College opposing his appointment as principal in charge.

(b) The Students Union also opposes his appointment as Principal in-charge.

(c) As reported by the present principal in-charge and teacher representatives to G.B., Mr. P.K. Pathak is very irregular, insincere and shows gross negligence to discharge his duties.

(d) Moreover the G.B. has seriously noted the lack of integrity of Mr. P.K. Pathak in connection with the other co-related activities.

13. The impugned resolution demonstrates that the request of Mrs. B. Patgiri to relieve her of the responsibility of the office of the Principal as proposed is pending consideration by the Director of Higher Education, Assam. It is also apparent on the face of the records that the said authority has not yet approved the impugned resolution. Noticeably some of the office bearer of the Bilasipara College Students Union have in their representation before the Director of Higher Education, Assam, as well as in their FIR with the Bilasipara Police Station alleged that the applications submitted on behalf of the Union promoting the candidature of the respondent No. 4 contain forged signatures. Some of the teachers of the College in their representation dated 1.7.2007 also addressed to the same authority while disassociating themselves from the resolution opposing the petitioner's appointment as the in-charge Principal of the College have clarified that they have no objection to his induction as such. The representation dated 2.7.2007 of some Student Union as referred to therein also underlines their request to appoint the senior most Lectures as the Principal in-charge of the Institution. Mr. Chutia in course of the arguments has also produced a copy of the resolution dated 11.6.2007 of the Bilasipara College Teachers Unit entreating the Governing Body to act in conformity with the tradition maintained in the institution.

14. As against this, the respondents have sought to rely on a resolution dated 23.5.2007 of the Bilasipara College Teachers Unit resolving to request the Governing Body not to impose the additional burden on principalship on the petitioner considering his ill health. The resolution also recorded the petitioner's omission to take the petitioner's allotted classes properly in view of his physical failings. The Governing Body was requested to entrust the responsibility to the next senior most teacher for the greater interest of the institution. The letter dated 12.2.2007 (Annexure C to the counter of the respondent No. 3) is one by the Principal in-charge of the College informing the Governing Body that the petitioner had not attended his regular classes properly for the sessions 2005-06 and 2006-07 with a request to take necessary steps to streamline the affairs of the Mathematics Department.

15. The pre-eminence and significance of the office of the Principal of any academic institution need not be over emphasized. The Head of the Institution not only ought to be competent but should also unreservedly deserve the veneration and esteem of all concerned. He has to be an epitome of probity and demonstrate an exemplary presence emulable for others. The interest of the institution and of the students in general are contingent on him. There, therefore, cannot be a compromise on these essentialities by any means.

16. Having regard to the conflicting facts and the contemporaneous documents projecting incompatible versions in my view a thorough and investigative enquiry is warranted to arrive at an appropriate decision on the issue. This Court in the

exercise of its writ jurisdiction, having regard to the disputed questions of facts, is not inclined to embark on that exercise. As the issue presently lies with the Director of Higher Education, Assam, it would be in fitness of things, if the process desired is entrusted to the said authority, Ordered accordingly. The Director of Higher Education, Assam, would issue notices to the parties concerned and after a discrete and exhaustive enquiry and analysis of the facts would take a decision in the matter of in-charge principalship of the College. It would be in his discretion to summon any person whom, he considers relevant for determination of any fact or any document on record.

17. As it has been represented before this Court that the College is without a Principal in charge, the exercise ordered should be completed within a period of one month from the date of receipt of certified copy of this order. For the intervening period, the interim order shall continue. The petition stands disposed in the above terms. It is made clear that this Court has not offered any comments on the merits of the rights and contentions of the parties. No costs.