

(1995) 08 GAU CK 0021
In the Gauhati High Court
Case No : Civil Rule No. 2129 of 1994

Puspendra Nath Bora

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 02-08-1995

Acts Referred:

Citation : (1995) 2 GLJ 97

Hon'ble Judges : D.N.Baruah, J

Bench : Single Bench

Advocate : B.Choudhary, P.J.Saikia, K.K.Mahanta, C.Barua, D.C.Bora, Advocates appearing for Parties

Judgement

1. In this application under Article 226 of the Constitution the petitioner has prayed for issuance of appropriate writ or direction.

2. The facts of the case as stated by the petitioner may be narrated as follows: The petitioner was appointed Assistant Teacher on 13.11.88 when the school was only a venture school. The petitioner continued to serve as such till the school was provincialised by Annexure C order dated 27.1.92 with effect from 19.11.91. At the time of provincialisation the petitioner and other teachers had been serving. At that time the school had 5 sections in 3 classes. As per Rule 4 of the Assam Secondary (Middle English Schools and High Schools) Provincialisation Rules, 1979 (for short, the Rules) the Government ought to have provincialised 5 teachers including the Headmaster and excluding the Hindi teacher. However, by Annexure C order the services of the following teachers had been provincialised:

Sri Upendra Nath Saikia, Head Master. Sri Nila Kanta Borah, Assistant Teacher. Smti Rina Devi, Assistant Teacher. Sri Ratneswar Borah, Hindi Teacher. Sri Kusal Chandra Kalita, Chowkidar.

3. In total 5 posts were provincialised. Though the petitioner had been working at the time of provincialisation his service had not been provincialised. In spite of representations and reminders the authorities have not considered the case of

the petitioner. On the other hand, the authority, namely, the District Elementary Education Officer, Nagaon respondent No.3 by Annexure E order dated 11.3.94 appointed Smti Gita Borah respondent No.4 on ad hoc basis and her period of appointment expired in the month of June, 1994 i.e. after filing of the Civil Rule. Hence the present petition.

4. I have heard Mr.C. Baruah, learned counsel for the petitioner, Mr.B.Choudhury, learned Government Advocate, Assam and Mr.KK Mahanta, learned counsel appearing on behalf of respondent No.4.

5. Mr."C.Baruah, learned counsel for the petitioner submits that though the petitioner had been working to the satisfaction of the authorities concerned, his case has not been considered for provincialisation. On the other hand, 4th respondent who was a stranger to Town Panigaon ME School was inducted in the said school. Mr.Baruah draws my attention to Rule 4 of the Rules and submits that services of minimum 5 teachers excluding the Hindi teacher ought to have been provincialised. But in the present case the services of 3 teachers were provincialised leaving 2. The petitioner had a legitimate expectation that his service would be provincialised in one of the remaining posts. But this was not done. On the other hand, without any reason 4th respondent was appointed.

6. Mr.B.Choudhury, learned Government Advocate, Assam, on the other hand, attempts to justify the action of the respondents. Mr.Choudhury submits that pursuant to the order of this Court respondent No.4's service has not been extended and now she is out of employment.

7. On hearing the counsel for parties it is to be seen whether the petitioner has a claim to provincialisation of his service.

Rule 4 (iii) of the Rules reads thus : ? (iii) Every such school must have

(a) a Headmaster who is a Graduate relaxable up to Intermediate, PU (two years) by the Government in exceptional cases;

(b) Assistant teachers who are either Normal Matric or Intermediate passed;

(c) Minimum one teacher (including Headmaster) for each section;

(d) One Hindi teacher having qualification in Hindi equivalent to Intermediate Examination.

Provided that the Government may relax any of the minimum requirements in the public interest in the areas prescribed in the Sixth Schedule of the Constitution.?

8. As per the said Rule service of at least 5 teachers ought to have been provincialised. But this was not done. The petitioner having served the said school since 1988 definitely he has a legitimate expectation that his case would be considered. In the present case nothing has been shown that the petitioner was disqualified. From Annexure B Inspection Report submitted by the Additional

Deputy Inspector, Nagaon, there were 5 sections as on 22.9.90. The sections by now might have increased. Under the provisions of Rule 4 at least one teacher for each section ought to have been provincialised. But in the instant case services of three teachers were provincialised excluding the Hindi teacher. Later one more post was provincialised in which petitioner was not taken in. On the other hand one Smti Gita Borah was appointed on ad hoc basis. However, after filing of the Civil Rule her services were not extended. Mr. Baruah submits that later services of Nripen Chandra Kalita were also provincialised. The petitioner having served for such a long time definitely he had legitimate expectation that his services would be provincialised in accordance with the provisions of law if there was nothing against the petitioner.

9. The concept of legitimate expectation operates and provides locus standi for judicial review. Its denial is a ground for challenging the action. But denial can be justified by showing some overriding public interest. It is also true a mere reasonable or legitimate expectation of a citizen may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render a decision arbitrary and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of nonarbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decisionmaking process.

It appears from the record that there were 5 sections in 3 classes and on the date of provincialisation i.e. on 27.1.92 6 teachers had been serving. Petitioner's position was fifth and Nripen Chandra Kalita whose date of appointment was 10.4.87 was in the fourth position. Admittedly Nripen Chandra Kalita is senior to the petitioner. He is also better qualified. Therefore, before provincialisation of the services of the petitioner, the services of Nripen Chandra Kalita should be provincialised. Mr. Baruah submits that services of Nripen Chandra Kalita have already been provincialised. If that be so, the case of the petitioner definitely requires consideration.

10. In view of the above, I dispose of this petition with a direction to the 3rd respondent i.e. District Elementary Education Officer, Nagaon to examine the entire matter keeping in mind the provisions of Rule and if on enquiry it is found that Shri Nripen Chandra Kalita's service has already been provincialised, services of petitioner shall be provincialised within a period of 2 (two) months from the date of receipt of this order. If it is found that service of Nripen Chandra Kalita is yet to be provincialised, he shall make arrangement to provincialise the services of Nripen Chandra Kalita if Nripen Kalita so desires, Thereafter, provincialisation of the services of the petitioner may also be considered within the period mentioned above. The case of respondent No.4 may be considered after consideration of the case of the petitioner.