
(2019) 05 GAU CK 0055
In the Gauhati High Court
Case No : Writ Petition (C) No. 3006 Of 2015

Ram Krishna Biswas

APPELLANT

Vs

State Of Assam And 2 Ors

RESPONDENT

Date of Decision : 15-05-2019

Acts Referred:

Citation : (2019) 05 GAU CK 0055

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : S A B Khabir

Final Decision : Disposed Off

Judgement

1. Heard Mr. I.H Saikia, learned counsel for the petitioner and Mr. SP Bhattacharjee, learned Standing Counsel for the Elementary Education Department.
2. The petitioner was appointed as an Assistant Teacher on 19.04.1983 at Kamargaon ME School in the district of Karimganj and since his appointment, he has been working till date without any break as Assistant Teacher. The petitioner makes a claim that otherwise he is qualified for being promoted to the post of Headmaster of a Middle English School.
3. The procedure for appointment to the post of Headmaster of ME.ME Madrassa/ MV and other Senior Basic Schools is provided in the notification dated 02.03.2010 of the Education (Elementary) Department of the Government of Assam. As per Clause-5 of the said notification of 02.03.2010, a teacher who had passed Matric/HSLC and Normal or had passed Intermediate or its equivalent qualification or above and have successfully undergone the necessary training as may be prescribed by the Department, shall only be eligible for promotion. Clause-5 also contains an exception that a teacher who had completed a minimum of 15 years of continuous service, but no facilities were provided to him/her for the prescribed training, may also be considered for promotion

provided there is nothing adverse against such teacher. Clause-5 of the notification of 02.03.2010 is as follows:-

"The Teacher who have passed at least Matric/HSLC, Normal or have at least intermediate or its equivalent qualification or above and have successfully undergone necessary training as may be prescribed by the Department shall only be considered for promotion. However, the teacher who have completed minimum 15 (fifteen) years of continuous service but no facilities have been provided to him/her for the prescribed training may also be considered for promotion provided there is nothing adverse against them."

4. Clause 5 apparently stipulates two situations under which a teacher would be considered for promotion to the post of Headmaster of ME/ME Madrassa/Senior Basic Schools. The first stipulation is that a teacher who had passed Matric/HSLC and also Normal would be eligible for consideration for such promotion as Headmaster. The second stipulation is that a teacher who have intermediate or its equivalent or above and have successfully undergone necessary training as may be prescribed by the Department shall also be eligible to be considered for such promotion.

5. It is taken note of that there is a difference between the training course that has to be undertaken by a teacher who has the qualification of Matric/HSLC and that of a teacher who has the qualification of intermediate or its equivalent or above. For a teacher having the qualification of Matric/HSLC, the requirement is that such teacher would also have to successfully complete the Normal training course, which is to be understood to be a specific well defined training course. On the other hand, for a teacher having the qualification of intermediate or its equivalent or above, such teachers would have to successfully undergo the training which may be prescribed by the Department, which in other words can be any kind of training that may be prescribed and it need not be that such training has to be the Normal training course as indicated above. It is further taken note of that Clause 5 also provides for an exception that a teacher who had completed 15 years of continuous service, but no facility was provided to him/her for the prescribed training, may also be considered for promotion provided that there is nothing adverse against such teacher.

6. Reading of the exception provided in Clause 5 does not give an indication that such exception is confined only to the teachers having the qualification of intermediate or its equivalent or above. In the absence of any such indication, it is to be understood that the exception is equally applicable to a teacher who has the qualification of Matric/HSLC as well as such teacher who may have the qualification of intermediate or its equivalent or above. It being so, the expression prescribed training provided in the exception to Clause-5 would have to be read to be the prescribed training as may be required under Clause-5 in respect of teacher having the qualification of Matric/ HSLC and also in respect of teachers having the qualification of intermediate or its equivalent or above.

7. Accordingly, as indicated above, a teacher having the qualification of Matric/HSLC is mandatorily required to have the Normal training course whereas the teacher having the qualification of intermediate or its equivalent or above is required to have any such training as may be prescribed by the Department. Therefore, the expression prescribed training in the exception would have to be read to be the Normal training course for a teacher having the qualification of Matric/HSLC or the necessary training as may be prescribed by the Department for teachers having the qualification of intermediate or its equivalent or above.

8. Having said so, in the instant case, it is the stand of the petitioner that during his entire tenure as an Assistant Teacher from 19.04.1983, the petitioner was never given the facility to undergo the Normal training course. On the other hand, an order dated 19.09.2006 of the District Elementary Education Officer, Karimganj is produced, which shows that the petitioner was given the facility to undergo a Upper Primary Teacher Training Course at the relevant DIET and that such course is of a period of 09(nine) months comprising of six months of Class work and three months of assigned work at this own school. Materials have also been produced that the petitioner had successfully undergone the aforesaid course as per the certificate dated 10.12.2007 of the Principal, DIET, Karimganj.

9. As the facility given to the petitioner for undergoing the Upper Primary Teacher Training Course at DIET, Karimganj cannot be construed to be a facility provided to him for undergoing the Normal Training Course, which, as already noted is a specific and well defined course provided by the Department, prima-facie on the basis of the materials produced, the Court is unable to convince itself that the petitioner was given the facility to undergo the Normal Training Course. If the petitioner was not given the facility to undergo the Normal Training Course, the Court is of the view that the claim of the petitioner for being considered for promotion to the post of Headmaster of ME/ME Madrassa/Senior Basic School would be covered by the exception provided in Clause-5 of the notification dated 02.03.2010.

10. On the other hand, if on record, the petitioner was given the facility or was actually deputed for undergoing Normal Training Course, but on his own volition he had not undergone such course, obviously the petitioner would not be covered by the exception to Clause-5 of the notification dated 02.03.2010.

11. In the circumstance, this petition is disposed of by directing the petitioner to make an application before the Director of Elementary Education, Assam stating that he was not given any facility during his entire service tenure to undergo the Normal Training Course and therefore his case be considered for promotion under the exception to Clause-5 of the Notification dated 02.03.2010.

12. Upon such representation being made, the Director shall examine from the records as to whether the petitioner was given any such facility to undergo the Normal Training Course and if the record reveals that he was not given any such facility, appropriate orders be passed that the claim of the petitioner for

promotion as Headmaster be covered by the exception to Clause-5 of the Notification dated 02.03.2010. On the other hand, if the record reveals that he was given such opportunity, the order of the Director shall contain the same and the petitioner be informed accordingly.

In terms of the above, the writ petition stands disposed of.