

(2009) 07 GAU CK 0018
In the Gauhati High Court
Case No : C.R. No. 6137 of 1998

Ram Murti Roy

APPELLANT

Vs

Sainik School Society and Others

RESPONDENT

Date of Decision : 23-07-2009

Acts Referred:

Citation : (2010) 6 GLR 652

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Advocate : P.K. Tiwari, for the Appellant; H. Rahman, for the Respondent

Final Decision : Allowed

Judgement

Amitava Roy, J.—The order under challenge is dated 22.6.1998 passed by the Deputy Secretary (TRG) & Honorary Secretary, Sainik Schools Society promoting the Petitioner to the senior scale of Rs. 1640-2900 sanctioned for the post of Assistant Master lodged in the authorized academic cadre of the Sainik School, Goalpara ("School") with effect from 15.7.1993. Thereby the recovery of pay from his salary for the period of 1.1.1984 to 8.10.1991 earlier sought to be effected was revoked.

2. I have heard Mr. P.K. Tiwari, learned Counsel for the Petitioner and Mr. H. Rahman, Assistant Solicitor General of India, Gauhati High Court, Guwahati for the Respondents.

3. The unrefuted averments made in the writ petition in absence of any counter by the Respondents present the case of the writ Petitioner. The abridged version of the Petitioner is that, he is a Post Graduate in Geography and also holds B. Ed. Degree. Pursuant to an order dated 11.8.1982 of the Principal of the School, he was appointed as an Assistant Master thereof in the then existing scale of pay of Rs. 440-750. The said pay scale has since been revised following the Pay Commission's recommendations. He was duly confirmed in service in the said capacity on 17.9.1983 and was promoted to the post of Master in the school by

order dated 12.6.1984 of the Principal thereof with effect from 1.7.1984. The Petitioner claims that this promotion was in compliance of Clause 7.02 of the Rules and Regulations of the Sainik Schools Society uniformly applicable to all establishments akin to his school. Following his promotion, his inter se seniority was accordingly fixed in the promotional post of Master and his name figured at SI. No. (xxiii) in the list dated 10.11.1986 that was published. While the matter rested at that, by the communication dated 8.10.1991 issued on behalf of the Board of Governors, Sainik Schools Society, Ministry of Defence, New Delhi, the Petitioner and one Sri. S.N. Jha were reverted to the post of Assistant Master with retrospective effect and their pay scale of Rs. 1640-2900 stood lowered to that of Rs. 1400-2600. By the said communication, the difference in the amount of pay received by them consequential to their promotion was directed to be recovered from them. Being aggrieved, the Petitioner and Shri. S.N. Jha approached this Court with Civil Rule No. 209/1992 which, after hearing the parties was disposed of on 7.4.1997 by setting aside the decision impugned. Thereby the Respondent authorities were left at liberty to re-examine the matter and pass necessary reasoned order in accordance with law and after affording reasonable opportunity of hearing to the Petitioner and Sri S.N. Jha who teamed with him in the challenge in the aforementioned proceeding. The impugned order has since followed the above adjudication of this Court.

4. Mr. Tiwari has urged that a plain reading of the order impugned would reveal that the same is not in accordance with the letter and spirit of the decision of this Court and on this count alone, the same is liable to be interfered with. According to the learned Counsel, as in the earlier proceeding, the decision to revert the Petitioner had been questioned, it was incumbent on the part of the Respondent authorities to take a decision thereon after affording a reasonable opportunity of hearing to him. As neither such an opportunity had been extended nor the determination has been made on that issue, the order dated 22.6.1998 is on the face of the record non est in law and is liable to be set aside. Referring to the various provisions of the Regulations of the Sainik Schools Society ("Regulations"), which admittedly are applicable to the Petitioner, Mr. Tiwari has argued that it would be apparent therefrom that his promotion having been effected in terms of Clause 7.02 thereof, it is valid in law. As the Petitioner at the relevant point of time was possessed of the qualifications laid down by the Central Board of Secondary Education to be eligible to be considered for the post of Master which admittedly was integrated in the authorized academic cadre of the school, he could not have been reverted in the manner so done. Further, as in terms of Clause 7.02 of the Rules, seniority is not the decisive factor for promotion, which instead is admittedly guided by the criterion of merit, the purported considerations manifested by the order impugned are wholly irrelevant, even if assuming that those were taken note of to justify his demotion to the post of Assistant Master. Mr. Tiwari was particularly critical about the denial of reasonable opportunity of hearing to the Petitioner, which according to him, ipso facto has vitiated the impugned order. On being queried by this Court,

Mr. Tiwari has submitted that it has been the practice of the school to effect promotion to the post of Master and that the process of direct recruitment to that post has never been resorted to as on date.

5. Mr. Rahman has replied with reference to the official records. He has pleaded that it would appear from the relevant official correspondences that at the relevant time there was no vacancy in the post of Master in Social Studies, a subject taught by the Petitioner. According to him, the Petitioner was promoted to the post of Master even before the completion of the mandatory period of probation and the procedure adopted therefore was also not regular. The learned Assistant Solicitor General has drawn the attention of this Court to the correspondences inter alia to contend that the Petitioner's promotion was not considered to be in accordance with the Regulations of the Sainik Schools Society. Mr. Rahman has, therefore, justified the impugned order on these considerations.

6. The pleadings available along with the documents annexed to the writ petition and the records produced, have received the due consideration of this Court. The fact that the Petitioner was promoted to the post of Master in the School with effect from 1.7.1984 on being approved, by the Principal thereof is a matter of record. He admittedly continued in that capacity discharging his duties relatable to the said post thereafter without any hitch or hassle till 8.10.1991. In absence of any counter by the Respondents, his categorical plea on oath that his promotion was based on the considerations as contemplated by Clause 7.02 of the Rules stand uncontroverted in pleadings.

Clause 7.01 of the Regulations mandates that all posts on the authorized establishment of the school, except those of Headmaster and Registrar, shall be filled by the Principal by promotion or by direct recruitment with the approval of the Local Board of Administration. These promotions as Clause 7.02 evidence shall be made on merit subject to the suitability of the candidates and fulfillment of prescribed qualifications. There is no material on record to indicate that on the date of the Petitioner's promotion he had lacked in merit therefore or was wanting in the prescribed qualifications meant for the post of Master. Though passing references of Rules and By-laws of the Central Board of Secondary Education are decipherable from the correspondences on which the Respondents seek to rely, nothing tangible has been brought to the notice of this Court to supersede this provision of the Regulations, otherwise applicable to the school. Clause 5.26 of the Rules which deals with the method of recruitment, however, cannot be lost sight of in view of the stipulation to the effect that the post against which the promotion or direct recruitment is to be effected must be an existing one. This assumes some significance in view of the stand taken by the Respondent authorities in the correspondences contained in the official records that at the relevant point of time there was no post of Master in Social Studies to, accommodate the Petitioner on promotion. The fact, however, remains that the Petitioner in spite of the above had been allowed to continue in that capacity

from 1.7.84 to 8.10.1991. The plea of non-existence of post, thus, is not convincing to repudiate the Petitioner's promotion as invalid on that count.

7. The contentions raised on behalf of the Respondents which prima facie are borne out by the handful of official communications as available in the records produced, however, do not establish in unequivocal terms that the ground which had weighed them to purportedly revert the Petitioner had ever been communicated with necessary clarity to him so as to enable him to reply against the same. Though in one of the letters being dated 8.9.1997 of the Principal of the School, there is a reference of some correspondences with the Petitioner and Sri. S.N. Jha, this, does not per se substantiate that in conformity with the directions of this Court contained in its order dated 7.4.1997 passed in Civil Rule No. 209/1992, he had been duly apprised of the adverse materials against him and sought to be acted upon, while undertaking a scrutiny of the issue pertaining to his reversion. This is more so, in the face of the Petitioner's categorical pleaded contention, that the impugned order is in violation of the order dated 7.4.1997 of this Court passed in Civil Rule No. 209/1992.

8. This Court having left the Respondents at liberty to take a fresh decision in the matter after re-examination of the same on affording a reasonable opportunity of hearing to the Petitioners, it was incumbent on them (Respondent authorities) to establish that an appropriate exercise in compliance therewith had preceded the order impugned herein. The official records produced on behalf of the Respondent authorities fail to unequivocally demonstrate the same.

9. The order impugned is not better either. It does not wear a semblance of the consideration of the issue of reversion of the Petitioner to the Post of Assistant Master. The concerned authority has confined itself to the criterion of seniority to decide as to the pay scale to which the Petitioner on the basis thereof would be entitled. This, in the opinion of this Court, is a determination wholly unmindful of the essence of the order dated 7.4.1997 of this Court in Civil Rule No. 209/1992.

10. In any view of the matter, the impugned order in the comprehension of this Court is not in alignment with the letter and spirit of the order dated 7.4.1997 passed in Civil Rule No. 209/1992. It is, therefore, quashed. The Petitioner would be entitled to all consequential benefits in terms of the regulations of the school as is due to him in law.

11. The petition stands allowed in the above terms. No costs.