
(2002) 05 GAU CK 0017
In the Gauhati High Court
Case No : WP (C) No. 256 of 2000

Rama Kanta Das	Vs	APPELLANT
State of Assam and Others		RESPONDENT

Date of Decision : 30-05-2002

Acts Referred:

Citation : (2003) 96 FLR 88 : (2002) 2 GLT 148

Hon'ble Judges : P.G. Agarwal, J

Bench : Single Bench

Advocate : B.C. Das, P.C. Dey and A. Das, for the Appellant; G.A. and J. Singh, for the Respondent

Final Decision : Dismissed

Judgement

P.G. Agarwal, J.—Heard Mr. B. C. Das, learned counsel for the petitioner and Mr. J. Singh, learned counsel for the respondent No. 5. Also heard Mr. Thakur, learned Government Advocate for the respondent Nos. 1 to 4.

2. The petitioner Sri Rama Kanta Das was appointed as an assistant teacher in Kachua Govt. Aided M.E. School by the Managing Committee of the said school with effect from 1.8.1977. Respondent No. 5 Tarun Chandra Bora was also appointed as assistant teacher of Singimari Govt. Aided M.E. School by the Managing Committee of the said school with effect from 1.5.1977. The petitioner was appointed temporarily by the Inspector of Schools vide order dated 19.1.1979 with effect from 1.10.1977 and on the other hand, the private respondent was also appointed as assistant teacher with effect from 1.10.1977. Subsequently the gradation list of M.E. School teachers for Nagaon was published in the year 1994 wherein the name of the petitioner was shown at serial No. 100 and the name of the private respondent was shown at serial No. 116. The respondent challenged the said order stating that he has been placed at serial No. 116 on the wrong premises that he joined the service on 1.10.1977 whereas in case of the petitioner, he has been shown to have joined on 1.8.1977, that is, date of initial appointment. According to the private respondent, his date

of initial appointment on 1.5.1977 should have been reckoned. The grievance of the respondent was accepted and a fresh gradation list was published in the year 1997 (Annexure-J) wherein the respondent has been placed at serial No. 97 showing the date of joining and appointment as 1.5.1977 and the petitioner was placed at serial No. 103 showing the date of joining on 1.8.1977.

3. In this case, there is no dispute at the Bar regarding the respective date joining in the school. The case of the petitioner is that although they were appointed by the Inspector of Schools with effect from 1.10.1977, their date of birth should be considered for the purpose of fixing the seniority. When there is no merit list as regards the selection process of two persons joining on the same date, admittedly, the date of birth is relevant. But the question is whether the appointment order issued subsequently by the Inspector of Schools appointing both the persons against substantive vacancy on 1.10.1977 will be relevant for the purpose of fixing the seniority or not. The petitioner and the respondent were appointed on 1.10.1977 and they are rendering services in the school and their services are regularised or confirmed subsequently. Therefore, the appointment with effect from 1.10.1977 and rendering of service by the petitioner and the respondent can not be said to be de hors the rules. In the Government Aided School, the Managing Committee had power to appoint teachers according to their requirement and the services of such teachers were regularised subsequently against the available vacancy. This is not a case of the petitioner that the appointment of the private respondent was not made by following the procedure as laid down as because both the persons were initially appointed by adopting similar procedure. Moreover, on perusal of the gradation list, it is seen that the date of initial appointment has been taken for the purpose of fixation of seniority. At this stage, we may refer to the following observations of the Apex Court in the case of *The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others*, wherein the Apex Court observed as follows :-

"(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stopgap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted."

Both the petitioner and the respondent are continuing their services since the date of initial appointment. Hence, fixation of seniority on the basis of initial appointment is rational and justifiable.

4. The learned counsel for the respondent further submits that as many as services of 16 teachers were regularised with effect from 1.10.1977 and if the criteria proposed by the petitioner is accepted, in that case the date of birth of all the 16 persons are required to be examined and the seniority is to be fixed that way.

5. In view of what has been stated above, it is held that the fixation of seniority on the basis of initial appointment is in accordance with law and no interference is called for. There is no merit in this writ petition and the same is accordingly dismissed. No costs.