

**(2002) 09 GAU CK 0004**

**In the Gauhati High Court**

**Case No :** Civil Rule No. 6572 of 1998 and W.P. (C) No. 1869 and 3327 of 1999

Ramananda Baruah and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

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**Date of Decision :** 03-09-2002

**Acts Referred:**

**Citation :** (2003) 1 GLT 132

**Hon'ble Judges :** B. Biswas, J

**Bench :** Single Bench

**Advocate :** B.K. Sharma, D.K. Das, K.N. Choudhury and A.J. Atia, for the Appellant; M. Bhagawati, B.P. Katakey and R. Sarma, for the Respondent

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## **Judgement**

D. Biswas, J.—Petitioners in all the above three writ Petitioners have prayed for appropriate directions for regularisation of their services as Lecturers in Nowboicha College, North Lakhimpur by relaxation of educational qualifications required as per UGC norms. It is needless to say that the Petitioners do not possess the qualifications as prescribed by the University Grants Commissioner. They were appointed by this erstwhile venture college since taken over by the State. The Petitioners claim for regularisation rest on Government Circular dated 3.6.1997 by which the services of the lecturer similarly situated have been regularised.

2. The Nowboicha College have been brought under Deficit Grant-in-Aid Scheme of the Government since 1998 and all the Petitioners claim to be rendering service in the said College without any break from the very day of their appointment. Some of them by now have completed 10 years of service. In this context, it is necessary to examine the government circular dated 3.6.1997 relied by the Petitioners. The Circular (Annexure-B) reads as follows:

With reference to the subject cited above, I am directed to say that the Govt. in the Education Deptt. After careful examination, have directed to approve the services of underqualified Lecturers (as per list attached herewith) in the scale of

pay of Rs. 1785/- (fixed) plus other allowances as admissible as per Rule w.e.f. 11.1.96 on humanitarian ground and in the interest of public service subject to the following conditions-

1) All the teachers will be entitled to enjoy the incremental benefit in the scale of pay of Rs. 1785-4200/- P.M. only after obtaining of M. Phil, or Ph.D. Degree within eight years failing which their services will be terminated automatically.

3. The Circular was issued on humanitarian ground approving the services of underqualified lecturers named in the list attached therewith. The list contains names of 15 Lecturers who were appointed prior to 15.12.1988. The Circular, as it appears, do not embody or convey any Government Policy that all the underqualified teachers serving in different Colleges will be regularised as Lecturers with effect from 11.1.1996 on consolidated pay. This circular was issued on humanitarian ground as well as in the interest of public service regularising the services of 15 underqualified Lecturers working in different Colleges. It is not an omnibus circular to cover the cases of all underqualified teachers working in different Colleges.

4. The Principal of Nowboicha College submitted an affidavit in W.P.(C) No. 6572/98 opposing the claim of the writ Petitioners raising the issue of deficiency in qualification. It is averred that the Petitioner No. 1, 2 and 3 were appointed temporarily without any pay by the Governing Body in Nowboicha Junior College which is purely a different institution and not permitted by the Dibrugarh University to start three years Degree Classes in any faculty. The State in their affidavit also reiterated the same and submitted that question of regularisation of the services of the Petitioners does not arise. The Government stand is clear from their statements in paragraphs 2 and 3 filed in W.P.(C) No. 1869/99. The relevant paragraphs are quoted below:

2. That, in response to the statement of facts made in paragraphs No. 1, 2 and 3 of the writ petition the answering Respondent begs to state that the Petitioner, Shri Jiban Chandra Bora, is not serving in Nowboicha College. In fact, the Petitioner is serving in Nowboicha Jr. College which is a separate institution. The Petitioner is a regular lecturer in Nowboicha Junior College and his name and particulars along with other teachers have already been submitted to the Director of Secondary Education, Assam, Kahilipara, Guwahati by the Inspector of Schools, Lakhimpur District Circle, North Lakhimpur vide his letter No. PB/NC/96-99/0/1461 dated 12.11.98, in connection with provincialisation of the Jr. College.

It is also clarified by the Registrar of Dibrugarh University, vide their letter dated 16.1.99 and 18.3.99 that Nowboicha Jr. College is not accorded any permission to start 3 year degree college classes in any faculty by the Dibrugarh University.

As because the Petitioner is not a lecturer of Nowboicha (Degree) College, the question of regularisation of his service does not arise at all.

3. That in response to the statements made in paragraph Nos. 4, 5, 6 and 7 of the writ petition the deponent begs to state that as he is not a lecturer in Nowboicha (Degree) College, granting of Deficit grants to that college will not effect the Petitioner.

The Petitioner, as the lecturer in Nowboicha Jr. College, is drawing his salary. The said fact is clear from the letter from the Principal, Nowboicha Jr. College to the Secretary, Governing Body, Nowboicha Jr. College in his letter dated 22.5.99. The letter is affixed with a salary statement of Nowboicha Jr. College where the name of the Petitioner appears to be in serial No. 4.

5. The Petitioners in their affidavit-in-reply controverting the dispute raised by the Principal and denied to have been appointed in Nowboicha Junior College. According to them, the Principal Incharge submitted a false statement to the Director of Secondary Education.

6. It appears that there is a dispute as to the question whether the writ Petitioners are working in the 3 year Degree College or not. The list of underqualified lecturer appointed prior to 15.12.88 and annexed with the Circular dated 3rd June, 1997 do not show that any Lecturer from Nowboicha Junior College has been considered for regularisation.

7. Learned Counsel appearing for the writ Petitioners submitted that the controversy raised in this petition has been settled by this Court in Saiful Islam Vs. State of Assam and Others, and urged the Court to issue similar direction commanding the Respondents to regularise the services of the Petitioners.

8. The case in Safiul Islam (supra) is distinguishable on factual grounds. There was no dispute that the Petitioner in that case was working in a Degree College. The Petitioner's name was forwarded to the Director of Higher Education for regularisation. The Director did not approve the Petitioner's case as he was appointed after 15.12.1988. The Director took 15.12.1988 as the cut-off date when the Government accepted the UGC norms whereunder candidates having 55% marks in Masters Degree Course could be appointed as Lecturers. The Petitioner of that case was appointed on 20.3.1989 i.e. after the cut-off date as mentioned above. The learned Single judge overruled that decision on the ground that the order dated 15.12.1988 issued by the Government to introduce the UGC norms came to be applicable in respect of Moirabari College where the Petitioner has been working after it was brought under Deficit system of Grant-in-Aid on 11.1.1996. The learned Single Judge also noticed discrimination between the Petitioner and other similarly situated teachers. Hence, the Petitioner was declared entitled to the benefit of fixed pay with effect from 11.1.1996. The ratio available in this decision is not applicable in the instant case since the Petitioner's status as lecturer of Degree College is not disputed.

9. It is thus clear that the regularisation of the services of the writ Petitioners in all the three writ petitions at hand cannot be directed relying on the Government Circular dated 3rd June, 1997, quoted hereinbefore. The dispute as to whether

they are serving in Nowboicha Degree College or Nowboicha Junior College has to be settled first. The Petitioners will be entitled to get the benefit of regularisation and fixed pay as has been given in the said circular if it is found that they are working in Degree College and not in the Junior College from the date when the Nowboicha Degree College has been brought under Deficit Grant-in-Aid. The decision in this regard has to be taken by the Respondent Authority after a thorough enquiry as to whether the writ Petitioners are working in Nowboicha Degree College, as alleged. If they are so working in the Degree College, as claimed, appropriate orders will be passed by the authority giving them the benefit of the circular dated 3rd June, 1997.

10. In the result, the writ petitions are disposed of with a direction to the Respondent authorities to consider whether the writ Petitioners are working in Nowboicha Degree College and, if so, orders may be passed regularising their services at the admissible fixed pay with similar terms and conditions as has been mentioned in the Government Circular dated 3.6.1997 with effect from the date when their College is brought under the Deficit Grant-in-Aid System. The exercise in this behalf be undertaken and completed within a period of three months from today.

No costs.