
(2021) 11 GAU CK 0059

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 3816 Of 2021

Ramen Kr Sarma And 41 Ors

APPELLANT

Vs

State Of Assam And 2 Ors

RESPONDENT

Date of Decision : 17-11-2021

Acts Referred:

Citation : (2021) 11 GAU CK 0059

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Division Bench

Advocate : B Choudhury

Final Decision : Allowed

Judgement

1. Heard Mr. B Choudhury, learned counsel for the petitioners. Also heard Mr. R Mazumdar, learned counsel for the respondents no. 1 and 2 being the authorities under the Secondary Education Department, Government of Assam and Mr. A Chaliha, learned counsel for the respondent no. 3 being the authorities under the Finance Department, Government of Assam.

2. Without going into the details of the factual narration made in this writ petition, we take note that the present petitioners are Lecturers in various Junior Colleges in the State of Assam and the services of teaching staff of such Junior Colleges were provincialised under the Assam Junior College (Provincialisation) Act, 1996 (in short, the Act of 1996). But in doing so, these petitioners who claims to be similarly situated, were left out and they happen to be called dropped teachers.

3. A cabinet memorandum under Rule 17 of the Assam Rules of Executive Business was circulated on the subject regularization of services of dropped teachers in 53 (fifty three) Junior Colleges in Assam and the petitioners herein are also included in the list of such dropped teachers in respect of the 53 (fifty three) Junior Colleges.

4. The cabinet memorandum has raised a proposal which is extracted as below:

"11. In view of above and in consideration of all aspects it has been decided that the teachers (Lecturer) who were appointed before the College came under deficit Grant-in-aid and also received Government concurrence (subsequently provincialised under the Assam Junior College Provincialisation Act, 2012) shall be regularized on the following conditions:

(i) Equal nos of personal posts shall be created.

(ii) The regularization shall be prospective i.e. from the date of issue of regularization order after creation of personal posts.

(iii) The post stand abolished as soon as the incumbent relinquish the post for either reason.

(iv) In case of regularization against 2nd post, there has to be more than 50 students in the concerned subject, in each class.

(v) In case of regularization against 1st post, there has to be least 15 students in the concerned subject, in each class."

5. Accordingly, the approval of the cabinet was sought for regularizing the Lecturers of the 53 (fifty three) Junior Colleges, who were appointed prior to the respective Colleges being approved under the deficit-grants-in-aid. It is stated that the State Cabinet in its meeting held on 28.02.2016 had approved the proposal contained in the cabinet memorandum referred above.

6. Upon the cabinet having approved the proposal, the office memorandum dated 02.03.2016 was issued by the Principal Secretary to the Government of Assam in the Secondary Education Department and in the office memorandum of the Principal Secretary the terms of regularization of the Lecturers who were appointed prior to 01.02.2001 in respect of 48 (forty eight) Junior Colleges and 29.11.2010 in respect of 5 (five) Junior Colleges were specified, which again is peri-materia to what was provided in paragraph 11 of the cabinet memorandum.

7. Accordingly, it is a policy decision of the Government of Assam in the Secondary Education Department to regularize the service of such Lecturers as indicated above. It is an admitted position that the present petitioners are also included in the list of Lectures whose respective cases for regularization were approved by the cabinet as indicated.

8. But subsequent thereto there is an undated notification under the signature of the Commissioner and Secretary to the Government of Assam in the Secondary Education Department. By the said notification, the Commissioner and Secretary again takes up the issue of regularizing the services of dropped teachers of the Junior Colleges, which as noted above, had already been decided by the State Cabinet in its meeting of 28.02.2016.

9. The purport of the notification is that the Commissioner and Secretary is of

the view that the category of teachers whose regularization was approved by the State Cabinet would now be subjected to be provincialised under the Assam Secondary Education (provincialisation of Services of teachers and Re-organization of Education Institutions) Act, 2017 (in short, the Act of 2017).

10. We are unable to find anything on record as to why the Commissioner and Secretary was of such view. It is to be noted that a cabinet decision cannot be deviated or overturned by the Commissioner and Secretary through a notification.

11. In the hierarchy of the authorities under the Constitution of India, the State Cabinet finds its place much higher than the Commissioner and Secretary to the Government of Assam in the Secondary Education Department and any decision of the State Cabinet is binding on the Commissioner and Secretary and under the scheme of the Constitution, the Commissioner and Secretary has no jurisdiction of its own to deviate from a cabinet decision and take a different view. It is also noted that the claim of the petitioners is for regularization in services being dropped teachers when the other similarly situated teachers were provincialised under the Act of 1996 whereas the Act of 2017 is for provincializing the services of the teaching and non-teaching staff of the Venture Educational Institutions. As the respective Junior Colleges had been provincialised under the Act of 1996, it cannot be understood that they still retain the status of a Venture Education Institute so as to be subjected to the provisions of the Act of 2017.

12. From both points of view, the undated notification of the Commissioner and Secretary to the Government of Assam in the Secondary Education Department which finds place at page-120, Annexure-L, to the writ petition is unsustainable in law. Accordingly, the same is set aside as there is already a cabinet decision dated 28.02.2016 for regularizing the services of the petitioners and for the purpose the office memorandum dated 02.03.2016 had been issued by the Principal Secretary to the Government of Assam in the Secondary Education Department. The respondents are now directed to carry forward and bring the said process to its logical end at the earliest.

13. We have taken note that in the meantime some of the petitioners are approaching the date of retirement in the month of December, 2021.

14. From such point of view, the requirement of bringing the process to its logical end be done positively within November, 2021 so that, if any benefits accrue to the petitioners, even the person who would retire by December, 2021, may have the benefit of regularization, at least for a few days prior to their retirement.

15. We have also taken note that apprehensions are being raised by the respondents regarding the information relating to the petitioners being not captured in the DISE Code for the given year. The same by itself would be irrelevant inasmuch the information to be captured in the DISE Code for the given year is a requirement under the provisions of the Act of 2017, whereas in the instant case, the regularization of petitioners would be pursuant to the cabinet decision of 2016 which was made even before the enactment of the Act

of 2017.

16. All further notifications of the similar nature like the undated notification of the Commissioner and Secretary which has been interfered also stands set aside.

17. Writ petition stands allowed as indicated above.