
(2021) 03 GAU CK 0001

In the Gauhati High Court

Case No : Writ Petition (C) No. 4620 Of 2020

Ranjan Kumar Chakravarty

APPELLANT

Vs

State Of Assam And 4 Ors

RESPONDENT

Date of Decision : 01-03-2021

Acts Referred:

Citation : (2021) 03 GAU CK 0001

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : K N Choudhury

Final Decision : Disposed Off

Judgement

1. Heard Mr. K.N. Choudhury, learned senior counsel assisted by Mr. J. Patowary, learned counsel for the petitioner. Also heard Mr. N. Dutta, learned senior counsel assisted by Mr. B.D. Goswami, learned counsel for the respondent no. 5 and Mr. R. Mazumdar, learned counsel for the Secondary Education Department of the Government of Assam.

2. The petitioner Sri Ranjan Kumar Chakravarty was appointed as Assistant Teacher in Paka Higher Secondary School on 28.03.1992 whereas the respondent no. 5 Sri Sanjib Kumar Talukdar was appointed as Assistant Teacher in Bajali Higher Secondary School on 27.04.1994. Both the teachers were drawing graduate scale of pay from their respective dates of joining and both of them have the qualification of B.Ed. degree.

3. On 27.04.2005, the petitioner Sri Ranjan Kumar Chakravarty was transferred to the Bajali Higher Secondary School. The dispute between the petitioner and the respondent no. 5 now is who between the two would be senior so as to become the In-Charge Principal of the Bajali Higher Secondary School. By the order impugned dated 31.10.2020, the Commissioner and Secretary to the Government of Assam in the Secondary Education Department had noted the aforesaid facts and arrived at his conclusion that considering the matter in its

entirety and the station wise seniority, the respondent no. 5 Sri Sanjib Kumar Talukdar was found to be senior to the petitioner Sri Ranjan Kumar Chakravarty.

4. Mr. K.N. Choudhury, learned senior counsel for the petitioner refers to an order dated 26.04.2015 of the Inspector of Schools of Barpeta district which is extracted as below:

"It appears from the report of Supervising Officer, HSLC Exam Centre Pathsala -

1. Addressed to the Principal, i/c Bajali Higher Secondary School cum Officer in charge of Examination that Sri Tapan Kakati, Asstt. Teacher of the school who was entrusted with the duties of invigilation did not perform his duty with due honesty.

The Supervising Officer, in his report has clearly mentioned that Sri Tapan Kakati Asstt. Teacher should be debarred from examination duties in future.

An enquiry on the spot was conducted and it was ascertained that Sri Tapan Kakati was actually involved in malpractices in HSLC examination. Hence he was exempted from the duties of evaluation as Examiner.

As such it is considered undesirable to entrust Sri Tapan Kakati with examination related duties.

Accordingly Head of the Institution/Examination in-charge is Instructed not be entrust Sri Tapan Kakati with any responsibility of Examination in future.

On the other hand Sri Tapan Kakati, Asstt teacher of Bajali H.S. School misbehaved the principal of the Scholl for bringing the report of Supervising officer to the notice of the authority which is a clear instance of insubordination to the Head of the institution. Steps as considered appropriate will be initiated in due course.

Sd/- M.A. Kasem

Inspector of Schools, B.D.C.

Barpeta"

5. By refereeing to the said order Mr. K.N. Choudhury goes to submit that another Assistant Teacher of Bajali Higher Secondary School Sri Tapan Kakati was involved in some kind of incident with the Principal of the School as regards his conduct in conducting the HSLC examination. According to Mr. K.N. Choudhury, learned senior counsel, the order by which the writ petitioner Sri Ranjan Kumar Chakravarty was transferred to the Bajali Higher Secondary School dated 27.04.2005 is related to such incident involving the other teacher Sri Tapan Kakati and therefore, in the order of transfer, it had been specifically provided that Sri Ranjan Kumar Chakravarty was transferred in the interest of public service.

6. Mr. N. Dutta, learned senior counsel for the respondent no. 5 on the other

hand refers to an application dated 13.04.2005 of the petitioner Sri Ranjan Kumar Chakravarty addressed to the Inspector of Schools Barpeta which is extracted as below:

"Sir,

With reference to the subject cited above that I Sri Ranjan Kumar Chakravarty has been serving as an Asstt. Teacher in Paka H.S.S. (Fingua) but I have settled to live at Pathsala Town, Ward No. 2 (Rupnagar) in my own house. I have to do my duty in Paka H.S.S.(Fingua) which is far away from my house due to poor communication. Hence I request you (my hon'ble sir) to transfer me to Bajali H.S.S. (Pathsala) which will be nearest from my house Rupnagar, Ward No. 2 at Pathsala Town.

It is submitted for favourable consideration.

Yours faithfully

Sd/- Sri Ranjan Kumar Chakravarty

Asstt. Teacher, Paka H.S.S. (Fingua)"

7. By referring to the said application Mr. Dutta submits that the transfer dated 27.04.2005 was effected on the personal request of the petitioner Sri Ranjan Kumar Chakravarty as requested in the application dated 13.04.2005. In response thereof, Mr. K.N. Choudhury, learned senior counsel for the petitioner refers to another application of the petitioner Sri Ranjan Kumar Chakravarty dated 18.04.2005 by which he had informed the Inspector of Schools that he withdraws his earlier application of 13.04.2005. Mr. Dutta, learned senior counsel on the other hand refers to a hand written version of the application dated 13.04.2005 and points out that there is an endorsement of the Inspector of Schools which indicates that the application was received in the office of Inspector whereas in the other application of 18.04.2005 such endorsement is not there and therefore, it cannot be understood that it was received in the office of the Inspector of Schools. As it cannot be understood that it was received in the Inspector of Schools, therefore, it has to be understood that the order of transfer was in furtherance of the application dated 13.04.2005 of the petitioner Sri Ranjan Kumar Chakravarty which apparently was for his own personal reason.

8. We have gone through the records produced by Mr. R. Mazumdar, learned counsel for the Secondary Education Department of Government of Assam. The records reveal that on 13.04.2005, as indicated above, an application was made by the petitioner Sri Ranjan Kumar Chakravarty seeking a transfer on personal interest. The records do not reveal whether the subsequent application for withdrawal of the earlier application by the petitioner Sri Ranjan Kumar Chakravarty was received in the office of the Inspector of Schools but the note-sheet contains an order dated 25.04.2005 by which the application of the petitioner Sri Ranjan Kumar Chakravarty dated 13.04.2005 was rejected on the ground of unavailability of any vacant post in the Bajali Higher Secondary School.

The note-sheet further reveals that by an order dated 27.04.2005 Sri Ranjan Kumar Chakravarty was transferred to Bajali Higher Secondary School in place of Sri Tapan Kakati.

9. From a reading of the note-sheet it is not discernable whether the decision to transfer the petitioner Sri Ranjan Kumar Chakravarty to Bajali Higher Secondary School in place of Sri Tapan Kakati was in continuation of the consideration of the application dated 13.04.2005 or it was a fresh consideration in the public interest which was unconnected with his application dated 13.04.2005.

10. The note-sheet also does not make it discernable whether the consideration of the application dated 13.04.2005 of Sri Ranjan Kumar Chakravarty came to an end as per the order dated 25.04.2005 or on 25.04.2005 the matter was kept pending and subsequently on 26.04.2005 when the occasion arose for a requirement of transfer of Sri Tapan Kakati the authorities in furtherance of his earlier application dated 13.04.2005 had transferred Sri Ranjan Kumar Chakravarty.

11. As the materials on record would be insufficient to arrive at a definite conclusion by this Court on the aforesaid two possibilities, we remand the matter back to the Commissioner and Secretary in the Secondary Education Department of Government of Assam to take a fresh decision on the matter without being influenced by any of the earlier conclusions that he may have arrived and in doing so, the Commissioner and Secretary shall confer with the Inspector of Schools of Barpeta as well as take into consideration all the records, so as to arrive at an appropriate conclusion as to whether the transfer of the petitioner Sri Ranjan Kumar Chakravarty on 27.04.2005 was pursuant to his application dated 13.04.2005 or whether the consideration of the said application came to an end on 25.04.2005 when it was rejected for want of vacant post or whether the process for considering the application dated 13.04.2005 continued till the availability of a vacant post which had occasioned on 26.04.2005 on the requirement to transfer Sri Tapan Kakati.

12. The reasoned order be passed by the Commissioner & Secretary within a period of one month from the date of receiving the certified copy of the order and in doing so, the writ petitioner Sri Ranjan Kumar Chakravarty and the respondent no. 5 Sri Sanjib Kumar Talukdar be given a personal hearing to substantiate their own respective cases.

13. Both the petitioner and the respondent no. 5 would be at liberty to produce any material in furtherance of their respective stands at the time of hearing before the Commissioner and Secretary.

14. Any order to be passed by the Commissioner and Secretary pursuant to this order shall prevail over the earlier order dated 31.10.2020 which was impugned in this writ petition.

15. Writ petition stands disposed of in the above terms.