
(2016) 11 GAU CK 0069
In the Gauhati High Court
Case No : WP(C) No. 6218 of 2010

Ranjana Roy Talukdar

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 24-11-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 6 GauLJ 743 : (2016) 5 GauLT 227

Hon'ble Judges : A.M. Bujor Barua, J.

Bench : Single Bench

Advocate : Mr. A.R. Sikdar, Mr. M. Ahmed and Mr. M.H. Talukdar, Advocates, for the Petitioner; Mr. R. Mazumdar, Advocate, Mr. J. Abedin, S.C, Education Department, for the Respondents

Final Decision : Disposed Off

Judgement

A.M. Bujor Barua, J. (Oral) - Heard Mr. A.R. Sikdar, learned counsel for the petitioner and Mr. J. Abedin, learned Standing Counsel, Education Department, Assam appearing on behalf of the respondent Nos. 1 and 2. As per office note dated 06.09.2013, the notices had been issued upon the respondent Nos. 3 and 4 by registered post, which had been received back, and as such, the order provides that the matter is ready as regards service. In spite of such service of notice, no one has appeared on behalf of the respondent Nos. 3 and 4.

2. The petitioner having passed her B.A. Examination in the year 1985 and the B.Ed examination in the year 1992, was initially appointed on 19.10.1993 as Normal Instructor, Basic Training Centre, Diphu on ad-hoc basis in the pay scale of Rs. 1185/- Rs. 2395/- per month and other allowances, initially for a period of four months against the vacant post of Sri Deben Dutta. The appointment of the petitioner was extended from time to time by various orders and by the order dated 07.10.1994, issued by the Director, SCERT, Assam, the petitioner was transferred to the Basic Training Centre, Golokganj in the same capacity. It is also the case of the petitioner that before she was transferred from Diphu to

Golokganj, the petitioner was invited for a selection of regular appointment in the post held by her vide call letter dated 12.07.1994. Although the petitioner appeared in the interview and performed well, but the result of the interview was not informed to the petitioner. But, nevertheless, she was transferred to the Basic Training Centre, Golokganj and allowed to continue to serve in the same capacity. Subsequently, she was also attached as a Programme Officer to the District DPEP, Dhubri, which was on a deputation and she was allowed to draw the graduate scale of pay and deputation allowance as applicable.

3. It is the case of the petitioner that in the meantime, the post of Graduate Instructor in the Basic Training Centre, Golokganj had fallen vacant and the petitioner upon considering herself that she is duly qualified for being promoted to the said post, had submitted a representation on 22.01.2004. Although no formal order was issued in the representation, but she was orally intimated by the officials in the office of the Director of SCERT, Assam that her service as Normal Instructor has not been regularised and therefore, in order to be considered for promotion, her service has to be regularized. It is informed that thereafter the petitioner was regularised as a Normal Instructor w.e.f. 27.09.2007 along with 33 other employees, vide the order under Memo No.SCERT/ESSTT/AD-HOC/184/2001/310 dated 04.09.2013.

4. It is the case of the petitioner that although she had been appointed in the year 1993 as a normal instructor, but by the impugned order dated 08.10.2010 issued under the signature of the Director, SCERT, Assam, the respondent No.4 Smti Pratiba Rani Roy, who is a Craft Instructor in the Basic Training Centre, Golokganj was promoted temporarily as a Graduate Instructor in the said institution. The petitioner contents that the said respondent No.4 is much junior to the petitioner in the service as a Craft Instructor, and therefore, the impugned order of promotion is vitiated as the legitimate claim of the petitioner on the basis of her seniority has been ignored and refused promotion. Mr. A.R. Sikdar, learned counsel for the petitioner submits that the said respondent No.4 does not have the qualification of B.Ed, whereas the writ petitioner has the said qualification and therefore, she is not only a better candidate, but on the other hand, the respondent No.4 is even not qualified to be promoted as a Graduate Instructor. Mr. Sikdar, learned counsel refers to Clause-5 of the Assam SCERT (Basic Training Centre) Service Order, 2004, wherein in sub clause-3, it is provided that the post of Principal shall be selected from the select list of Graduate Instructors having eight years experience in the post and having the required qualification for instructor with B.Ed. By referring to the said clause-5(3), the learned counsel for the petitioner submits that the requirement of the qualification of B.Ed is also an essential requirement for the post of Graduate Instructor.

5. Per-contra, Mr. J. Abedin, learned counsel appearing on behalf of the respondent Nos. 1 and 2, submits that the initial appointment of the petitioner in the year 1993 being an ad-hoc appointment and she having been regularised

w.e.f. 27.09.2007, her seniority for the purpose of promotion is to be construed only from the date of regularisation i.e. 27.09.2007. Mr. Abedin, learned counsel on the other hand, submits that the respondent No.4 was regularised in service as a Craft Instructor on 02.04.2001. Therefore, by taking the date of regularisation to be the basis for determining the seniority, the respondent No.4 is senior to the petitioner and hence, the impugned order of promotion stands justified. With regard to the other contention of Mr. A.R. Sikdar, learned counsel for the petitioner, that the respondent No.4 does not have the B.Ed degree and as such, not duly qualified to be promoted to the post of Graduate Instructor, MR. Abedin, learned counsel for the respondent Nos. 1 and 2 submits that although clause-5(3) of the aforesaid service order of 2003 requires the qualification of B.Ed for the post of Principal, but as the service order is silent, the requirement of the qualification of B.Ed for the promotion to the post of Graduate Instructor cannot be inferred. Mr. A.R. Sikdar, learned counsel for the petitioner also refers to the Annexure-16, bearing No.Janasanyog/461/10, which was issued under the signature of the Director, SCERT, Assam, wherein 05(five) numbers of posts of Graduate Instructor (Arts) had been advertised for the purpose of direct recruitment. Mr. Sikdar, learned counsel refers to the required qualification as stated in the said advertisement and points out that the B.Ed degree is a requirement for the post of Graduate Instructor (Arts) also.

6. It is the considered view of this Court that the services of the petitioner having been regularised w.e.f. 27.09.2007 and she having been earlier appointed on ad-hoc basis in the year 1993, the question whether the petitioner would be entitled to the said period of service as an ad-hoc employee from 1993 to 2007 to be taken into consideration in determining her seniority depends on the answer as to in what manner the petitioner was initially inducted into service on ad-hoc basis in the year 1993. In the event, the petitioner was inducted into service by following the due procedure of advertisement and selection under the law, the petitioner is entitled to get her seniority from the date of her initial appointment and not confined to the date of regularization. It has also come to the notice that Clause-5(3) of the above referred service order of 2004 provides that the required qualification for the post of Principal would also include B.Ed, but from the same it cannot be inferred without any further material that for the post of Graduate Instructor also the required qualification would be B.Ed. The Annexure-16 advertisement of 2004 being an advertisement for direct recruitment, the qualification of B.Ed prescribed in the said advertisement is relatable only to a process of direct recruitment made for the post of Graduate Instructor. The question whether the B.Ed is a required qualification for the purpose of promotion to the post of Graduate Instructor is not known as per the materials available before this Court. In this view of the matter, the matter is remanded back to the Director, SCERT/respondent No.2 to verify from the record as to what is the required qualification for promotion to the post of Graduate Instructor and whether the required qualification also includes B.Ed degree. In the event, the director arrives at a conclusion that B.Ed is also a required

qualification for promotion to the post of Graduate Instructor, appropriate orders would be passed in respect of the impugned order of promotion made in favour of the respondent No.4 by giving her an opportunity of hearing.

7. The respondent No.2/director would also examine from the record as to how the petitioner was initially inducted into service in the year 1993. If from the record, it is found that the petitioner was appointed by following the due procedure of advertisement and interview etc, the director shall pass appropriate orders granting her seniority with effect from the date of her initial appointment from the year 1993.

8. The above exercise would be carried out by the respondent No.2 within a period of three months from today. The petitioner, if she intends to bring any more materials for the consideration of the Director, she may submit a representation within 15 days from today and the Director, in such event, would give due consideration to the representation. It is clarified that even if the petitioner does not file any representation, still the Director would be required to carry out the aforesaid exercise as indicated above. The Director may pass a consequential speaking order accordingly.

9. With the above observations, the writ petition stands disposed of.