

(2021) 11 GAU CK 0050

In the Gauhati High Court

Case No : Writ Appeal No. 254, 321 Of 2019, 3 Of 2020

Ratan Kumar Ghosh And 3 Ors

APPELLANT

Vs

State Of Assam And 11 Ors

RESPONDENT

Date of Decision : 22-11-2021

Acts Referred:

Assam Technical Education Service Rules, 1981 — Rule 8, 12(4)

Citation : (2021) 11 GAU CK 0050

Hon'ble Judges : Sudhanshu Dhulia, CJ;Devashis Baruah, J

Bench : Division Bench

Advocate : D Das, K N Choudhury

Final Decision : Disposed Of

Judgement

1. Heard Mr. D. Das, learned senior counsel for the appellants in Writ Appeal No. 3/2020 assisted by Mr. P.K. Deka, learned counsel and K.N. Chowdhury, learned senior counsel for the appellants in Writ Appeal No. 254/2019 and Writ Appeal No. 321/2019, assisted by Mr. R.M. Deka, learned counsel. Also heard Mr. K. Gogoi, learned Standing Counsel, Technical Education for the State respondents.

2. This Court has been informed that appellant No.3 in Writ Appeal No. 3/2020, namely, Sri Rois Uddin Ahmed has passed away on 18.04.2021 during the pendency of the appeal and, therefore, his name be deleted from the array of the parties. The name of Sri Rois Uddin Ahmed, appellant No.3 is hereby deleted from the array of parties.

3. All these writ appeals have been filed challenging the common judgment and order dated 28.08.2019 passed by the learned Single Judge in W.P.(C) No. 348/2016 and W.P.(C) No. 1721/2016. The main issue before the learned Single Judge was whether Ph.D. is a necessary qualification for appointment/ promotion to the post of Principal in a Government Polytechnic College. The petitioners who had filed the writ petitions before the learned Single Judge were Heads of Department (HoDs) in various Government Polytechnic Colleges in the State of

Assam and had challenged the qualifications for the post of Principal of Government Polytechnic Colleges which inter alia required Ph.D. as a necessary qualification for appointment/promotion to the post of Principal, or so it seemed from the reading of the relevant provisions. Admittedly, the service conditions of the petitioners were governed by the Assam Technical Education Service Rules, 1981. Rule 8 of the aforesaid Rules which is regarding academic qualification for direct recruitment reads as under:

"8. Academic qualification for direct recruitment - The minimum academic qualification and experience of a candidate for direct recruitment shall be as prescribed by the AICTE from time to time as adopted by the Government of Assam".

4. Promotion to other cadres is provided in sub-Rule (4) of Rule 12, which states as under:

"(4) Subject to suitability, an officer shall be eligible for promotion if he possesses the qualifications and experience as prescribed by the AICTE from time to time as adopted by the Government of Assam.".

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5. In 1987, an Act was passed by the Parliament which is known as All India Council for Technical Education Act, 1987 for constitution of the All India Council for Technical Education, which is a central Body with a mandate to prescribe inter alia technical and other qualifications for appointment of teachers, instructors, principals etc., for Government Polytechnics. A Notification was subsequently issued by the All India Council of Technical Education (for short, hereinafter referred to as 'the AICTE') on 05.03.2010 which prescribed inter alia qualifications for appointment of Engineers, Lecturers/Workshop Superintendents, Head of Department and Principals in technical institutions. For Head of Department, the following qualification was given:

Post

Qualification

Experience

Head of Department

Engineering/ Technology

Bachelor's and Master degree of appointment branch in Engineering/ Technology with First Class of equivalent either Bachelor's or Master's level

OR

Bachelor's degree and Master's degree of appropriate branch in Engineering/ Technology with First Class or equivalent either Bachelor's or Master's level and Ph.D. or equivalent in appropriate discipline in Engineering/ Technology

Minimum of 10 years relevant experience in teaching/research/ industry

Minimum of 5 years relevant experience in teaching/ research/ industry.

Thereafter, qualifications and experience for the post of Principal were laid down, which are as follows:

Post

Qualification

Experience

Principal

Qualification as above for the post of Head of Department and Ph.D. in engineering

OR

Qualification as above for the post of Head of Department

Minimum of 10 years relevant experience in teaching/ research/ industry out of which at least 3 years shall be at the level of head of department or equivalent.

In case of Architecture, professional practice of 10 years as certified by the Council of Architecture shall also be considered valid.

6. The argument of the petitioners before the learned Single Judge was that although the AICTE has come out with qualifications where Ph.D. is a necessary qualification, but this would not be a necessary qualification in their cases, inasmuch as, the Notification of the AICTE dated 05.03.2010 was adopted by the Government of Assam vide its Office Memorandum dated 18.01.2016 and since the posts of Principal which were to be filled up had come up before 18.01.2016, Ph.D. should not be a necessary qualification for the post of Principal. Negating this argument, the learned Single Judge gave his findings in Paragraph No. 68 as under:-

"68. Accordingly, this Court would hold as follows and issue the following directions:

(1) The requirement of Ph.D. as an essential qualification for appointment to the post of Principal of Government Polytechnics in the State of Assam would become operative from the date of issuance of the Notification by the AICTE on 05.03.2010 and not from any subsequent date as may be decided by the State Government.

(2) Since the requirement of Ph.D. as an essential qualification for appointment to the post of Principal of Polytechnic/Technical institution came to be effective in terms of Regulations made by the AICTE in 2010 which were notified on 05.03.2010, and since there was no such mandatory requirement of possession of Ph.D. prior to the notification of the AICTE Regulations, the vacancies to the

posts of Principal which arose only after issuance of the Notification by the AICTE on 05.03.2010 will have to be filled up by the candidates possessing Ph.D. and other qualifications prescribed by the AICTE and vacancies occurring prior to 05.03.2010 can be filled up by candidates even if they do not possess Ph.D. in Engineering/Technical Education provided they fulfil other conditions mentioned under the Assam Technical Education Service Rules, 1981.

(3) As regards the validity of the Office Memorandum dated 18.01.2016 by which the State Government has inserted an alternative experience criterion for appointment to the post of Principal, i.e. experience of six years at the level of Lecturer Selection Grade without having any experience as HOD for minimum 3 years, as the same is not provided under the AICTE Regulations of 2010, to that extent, the aforesaid alternative experience criterion, cannot be made the experience qualification for appointment to the post of Principal even if one possesses Ph.D., in lieu of the requirement of minimum of 10 years relevant experience in teaching/ research/industry out of which at least 3 years shall be at the level of Head of Department or equivalent, and in case of Architecture, professional practice of 10 years as certified by the Council of Architecture as prescribed by the AICTE in the Regulations notified on 05.03.2010. The experience criterion prescribed by the AICTE in the Notification dated 05.03.2010 could not be substituted by another criterion by the State Government as an alternative criterion by lowering down the standard. While the State may provide additional criteria, the same cannot be in derogation of the criteria laid down by the AICTE.

(4) Consequently, any recommendation/appointment made contrary to the above directions have to be recalled and fresh consideration for promotion to the vacant posts of Principals have to be made in terms of the directions issued above.

Resultantly, if the private respondents, do not fulfil the qualifications and experience prescribed by the AICTE as notified on 05.03.2010 as discussed above, their recommendation and appointment as Principals of the Polytechnic Colleges/Technical Institutes in terms of the recommendation of the DPC meeting dated 27.01.2016 would be liable to be set aside.

(5) Till such exercise for consideration for promoting/appointing such eligible persons to the posts of Principals on regular basis as directed above is completed, these vacant posts of Principals have to be filled up on officiating/temporary/in-charge basis from amongst the candidates in the posts/grade just below the posts of Principals on the basis of seniority, and if any of the petitioners are already serving as Principals on in charge basis on the basis of seniority, they may be allowed to continue till regular appointments are made as directed above."

7. In other words, the learned Single Judge was of the view that Ph.D. was an essential qualification for appointment to the post of Principal of a Polytechnic/Technical Institution and this came with effect from the date of Notification

issued by the AICTE on 05.03.2010. According to the learned Single Judge, this qualification would be effective from 05.03.2010 i.e., the date of the Notification issued by the AICTE and it would not depend upon its adoption by the State Government. Apart from this, the Selection Grade Lecturers with 6 years of experience who were granted equivalence to HoD (which was also a necessary criteria), was also held to be lowering down the standard set by the AICTE and hence illegal. It was specifically stated that while the State Government may provide additional criteria but the same cannot be in derogation of the criteria laid down by the AICTE.

8. The petitioners who were not having Ph.D. were made ineligible and hence they have filed the present writ appeals challenging the order of the learned Single Judge. Similarly, some of the respondents who were granted the benefit of equivalence in the State Government's Memorandum dated 18.01.2016 were also held to be ineligible. Both are before this Court in these Writ Appeals.

9. Mr. D. Das, learned senior counsel for the writ appellants in W.A. No. 3/2020 has relied upon a judgment of the Hon'ble Apex Court in the case of Gelus Ram Sahu & Ors. -vs- Dr. Surendra Kumar Singh & Ors., reported in (2020) 4 SCC 484, on the same subject which was delivered by the Hon'ble Apex Court on February 18, 2020 i.e. after pronouncement of the judgment of the learned Single Judge. The said judgment is on absolutely similar facts and also relates to the qualification of HoDs and Principals as stipulated by the AICTE in its Notification dated 05.03.2010, where a similar finding was given by the High Court of Chhattisgarh, holding that Ph.D. is a necessary qualification for the post of Principal in Government Polytechnic Colleges. There were two answers given by the Hon'ble Apex Court which are absolutely relevant for our purposes. The precise question formulated by the Hon'ble Apex Court was as under:

"Is PhD mandatory for appointment to the post of "Principal" under the 2010 AICTE Regulations ?"

The answer to the said question is given in Paragraph Nos. 14 to 17, which are reproduced below for ready reference:

"14. A perusal of the qualification table makes it obvious that there can be multiple HoDs for different departments (like Engineering, Architecture, Hotel Management, Pharmacy, etc) . In order to be HoD of any such Department, a prospective candidate needs to have both Master's and Bachelor's degrees in the relevant field. Whereas candidates with a PhD must have had 5 years of experience in the allied field, others without it must have worked for 10 years. Phrased differently, PhD is not mandatory for HoD, and instead results in a 5-year relaxation in requisite work experience. In other words, PhD has been treated equivalent to 5 years' teaching experience.

15. The interpretation as propounded by Respondent 1 would necessarily mean that there is no power with a State Government to make PhD optional, and that the higher of the two alternate criteria specified under the 2010 AICTE

Regulations would be binding on all. We find such a plea is problematic on two counts. Firstly, it implies that PhD, specifically in "Engineering" only, would be compulsory for all Principals. This creates an inconsistency as such a restriction would be in conflict with the nature of "experience" specified by the AICTE, like recognition of experience certificate granted by the Council for Architecture, which undoubtedly shows that there can be candidates other than from the field of "Engineering" eligible for appointment as Principal. Secondly, such a contention would be iniquitous insofar as it disenfranchises HoDs from multiple recognised departments from applying to the posts of Principal, and arbitrarily restricts the zone of consideration to Engineering HoDs only. Such seems to be neither the intent of the 2010 AICTE Regulations nor is it supported by any cogent reasoning.

16. We are also not inclined to read down the rules to omit the "in Engineering" part and only selectively insist upon a "PhD", for in the present facts it would amount to crossing the fine line between interpretation and legislation. Hence, the only permissible way to read the AICTE criteria would be to lay emphasis on the phrase "or" and hence interpret "PhD in Engineering" as being optional and it being discretionary upon the adopting institution/State Government to specify either of the two criteria.

17. This does not mean that we have not given due weightage to PhD degree while interpreting the 2010 AICTE Regulations. A candidate with PhD degree can become HoD with merely 5 years of work experience, whereas candidates without PhD need to work for 10 years. Although, requirement of experience for becoming Principal is 10 years uniformly, it comes with a stipulation that 3 years must have been spent as HoD or in an equivalent position. Thus, a candidate without PhD would compulsorily need 10 years' experience for HoD and would need to work further 3 years in that capacity i.e. for minimum of 13 years' experience to become Principal. Those with a PhD, on the other hand, can apply for Principalship within 10 years, as they would have become eligible for HoD with 5 years' experience, and could have completed the further 3 years' term as HoD in the interregnum. Hence, hypothetically, there is a 5-year eligibility relaxation granted under the AICTE Regulations to those with a PhD."

10. In other words, what was held by the Hon'ble Apex Court was that if the qualifications of HoDs and Principals of Polytechnics/ Technical Institutions are to be studied in harmony and then what comes out is that Ph.D. is actually not a necessary qualification in all cases, for a candidate to be promoted to the post of Principal. It is not a necessary qualification, provided one has 10 years' teaching experience and 3 years' experience as HoD. In other words, for a candidate who is not having Ph.D., the minimum qualification for being promoted to the post of Principal is 10 years' teaching experience and 3 years' experience as HoD, whereas if one has Ph.D. the minimum qualification would be 5 years' teaching experience and 3 years' experience as HoD.

11. Learned counsel for the appellants as well as the learned counsel opposing

the writ appeal have very fairly admitted that the interpretation made by the learned Single Judge was of the same Notification of the AICTE dated 05.03.2010, where now the Hon'ble Apex Court (in the case of Gelus Ram Sahu) has given a different interpretation holding that the Notification dated 05.03.2010 does not make Ph.D. mandatory for the post of Principal.

12. Mr. K.N. Chowdhury, learned senior counsel for the appellants in Writ Appeal No. 254/2019 and Writ Appeal No. 321/2019 [who were private respondents in WP(C) No. 348/2016 and WP(C) No. 1721/2016] submitted that the appellants in the said writ appeals were not having any experience of HoD in a Government Polytechnic or Technical Institution, but by granting equivalence to a Lecturer Selection Grade who had 6 years of experience, the State Government in its Notification dated 18.01.2016 had given an alternative criteria of experience as different from what was given by the AICTE Notification dated 05.03.2010. Whereas in the AICTE Notification, necessary experience was laid down as under:

"Minimum 10 years relevant experience in teaching/ research/ industry out of which at least 3 years shall be at the level of head of department or equivalent.

In case of Architecture, professional practice of 10 years as certified by the Council of Architecture shall also be considered valid"

The Office Memorandum dated 18.01.2016 prescribed a different criteria of experience for the post of Principal which is as under:

"Minimum of 10 years relevant experience in Teaching/ Research/Industry out of which at least (a) 3 years shall be at the level of HOD or (b) 6 years at the level of Lecturer Selection Grade."

13. It was on the strength of this qualification that the respondents were selected in the selection process, which was challenged by the petitioners and on this the learned Single Judge had to say as under:

"(3) As regards the validity of the Office Memorandum dated 18.01.2016 by which the State Government has inserted an alternative experience criterion for appointment to the post of Principal, i.e. experience of six years at the level of Lecturer Selection Grade without having any experience as HOD for minimum 3 years, as the same is not provided under the AICTE Regulations of 2010, to that extent, the aforesaid alternative experience criterion, cannot be made the experience qualification for appointment to the post of Principal even if one possesses Ph.D., in lieu of the requirement of minimum of 10 years relevant experience in teaching/research/industry out of which at least 3 years shall be at the level of Head of Department or equivalent, and in case of Architecture, professional practice of 10 years as certified by the Council of Architecture as prescribed by the AICTE in the Regulations notified on 05.03.2010. The experience criterion prescribed by the AICTE in the Notification dated 05.03.2010 could not be substituted by another criterion by the State Government as an alternative criterion by lowering down the standard. While the State may provide

additional criteria, the same cannot be in derogation of the criteria laid down by the AICTE."

Consequently, the following order was passed:

"(4) Consequently, any recommendation/appointment made contrary to the above directions have to be recalled and fresh consideration for promotion to the vacant posts of Principals have to be made in terms of the directions issued above. Resultantly, if the private respondents, do not fulfil the qualifications and experience prescribed by the AICTE as notified on 05.03.2010 as discussed above, their recommendation and appointment as Principals of the Polytechnic Colleges/Technical Institutes in terms of the recommendation of the DPC meeting dated 27.01.2016 would be liable to be set aside.

(5) Till such exercise for consideration for promoting/appointing such eligible persons to the posts of Principals on regular basis as directed above is completed, these vacant posts of Principals have to be filled up on officiating/temporary/in-charge basis from amongst the candidates in the posts/grade just below the posts of Principals on the basis of seniority, and if any of the petitioners are already serving as Principals on in charge basis on the basis of seniority, they may be allowed to continue till regular appointments are made as directed above."

The selection and appointment of the writ appellants in Writ Appeal No. 254/2019 and Writ Appeal No. 321/2019 [private respondents in WP(C) No. 348/2016 and WP(C) No. 1721/2016] were set aside as the criteria set out by the State Government as qualification was held to be derogatory to the one laid down by the AICTE.

14. We have the learned counsel for the appellants on this aspect as well. The learned counsel would argue that the AICTE in its Notification dated 05.03.2010 while prescribing the qualification as well as experience for the post of Principal had stated as under:-

"Minimum 10 years relevant experience in teaching/ research/ industry out of which at least 3 years shall be at the level of head of department or equivalent"

15. The emphasis of Mr. K.N. Chowdhury, learned senior counsel for the appellants in Writ Appeal No. 254/2019 and Writ Appeal No. 321/2019 is on the words "or equivalent" and he would argue that this much of discretion was given to the State Government to not only make HoDs with 3 years' experience as eligible, but even such persons who were having equivalence should also to be considered and the Lecturers having Selection Grade who have been considered have been so considered for relevant considerations, inasmuch as, a Lecturer Selection Grade after 6 years of service gets an academic grade pay of Rs. 9000/- which is equivalent to the academic grade pay of a HoD. Therefore, since the academic grade pay of Lecturers Selection Grade who have put in 6 years and HoDs who are having academic grade pay of 9000/- is equivalent, they have

been granted equivalence. The learned counsel has also relied upon a judgment of the Apex Court in the case of Chandrakala Trivedi -vs- State of Rajasthan & Ors., reported in (2012) 3 SCC 129, wherein it has been stated that there is a subtle difference between "equivalent" and "exact" and what is equivalent may not be exact. In Paragraph 8 of the said judgment, the Apex court has stated as under :

"8. The word "equivalent" must be given a reasonable meaning. By using the expression "equivalent" one means that there are some degrees of flexibility or adjustment which do not lower the stated requirement. There has to be some difference between what is equivalent and what is exact. Apart from that, after a person is provisionally selected, a certain degree of reasonable expectation of the selection being continued also comes into existence."

16. Mr. Chowdhury, learned senior counsel has also pointed out that the workload of a HoD and a Lecturer Selection Grade is the same as far as teaching is concerned as both are supposed to take 14 hours of teaching assignment within a week.

17. The settled position of law is that while two posts are to be equated, the equivalence of salary of the two posts is one of the factors to be considered while equivalence has to be granted. There are other relevant factors also such as responsibility attached to that post, the kind of decision one has to take in that post and whether the post carries more or less administrative responsibility etc., etc. In the present context, the AICTE had made 3 years of experience as HoD mandatory for the reason that the person holding the post of HoD should have an administrative experience for at least 3 years. This becomes apparent in view of the 2016 clarifications given by the AICTE to Query No. 48. The query was "Whether a faculty of Engineering & Technology with minimum 10 years relevant experience in teaching/research out of which 3 years is in the same grade pay (i.e. Rs. 9000) at par with HoD is eligible for the post of Principal in Polytechnic." The clarification given by the AICTE was "Yes, provided the person also has an administrative experience of at least 3 years." Therefore, the emphasis was on "administrative experience" and, in our view, rightly so for the reason that ultimately the selection/appointment is to be made for the post of Principal of a Polytechnic where the functions are by and large administrative. Therefore, to that extent we are not interfering with the order of the learned Single Judge as we are of the opinion that grant of equivalence to Selection Grade Lecturers who had no administrative experience was wrong.

18. All the same, to the extent that the learned Single Judge has held that Ph.D. is a necessary qualification for appointment to the post of Principal of a Polytechnic College, we now hold that in terms of the law laid down by the Hon'ble Apex Court in the case of Gelus Ram Sahu, this finding has to be set aside. To that extent, the Writ Appeal No. 3 of 2020 succeeds and we hold that in terms of the law laid down by the Hon'ble Apex Court in Gelus Ram Sahu, Ph.D. would not be a necessary qualification for appointment/ promotion to the post of

Principal of a Polytechnic College, provided such a candidate fulfills all other qualifications as laid down by the AICTE in its Notification dated 05.03.2010.

19. Subject to the above observations/directions, all the Writ Appeals stand disposed of. Only to the extent as we have observed above, the order of the learned Single Judge is set aside.

20. All interim orders passed earlier in the Writ Appeals stand vacated.