
(2008) 09 GAU CK 0092
In the Gauhati High Court
Case No : Writ Petition (C) No. 1117 of 2008

Rehana Ahmed

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 08-09-2008

Acts Referred:

Assam Secondary Education (Provincialised) Service Rules, 2003 — Rule 14(4), 2, 24, 24(2)

Citation : (2009) 2 GLR 183 : (2008) GLT 714 Supp

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Advocate : N.S. Thakuria, G.S. Thakuria and P. Ahmed, for the Appellant; M.R. Pathak, P.K. Goswami and A. Barman, for the Respondent

Final Decision : Allowed

Judgement

Amitava Roy, J.—The order dated 18.3.2008 passed by the Inspector of Schools, Kamrup District Circle, Guwahati, entrusting the Respondent No. 4 with the academic affairs of the Gauhati Refinery High School, Guwahati ("the School"), is under challenge in the instant proceeding.

2. I have heard Ms. N.S. Thakuria, learned Counsel for the Petitioner and Mr. M.R. Pathak, learned Standing Counsel, Education Department, Assam. Also heard Mr. P.K. Goswami, learned Counsel for the Respondent No. 4.

3. The abridged version of the Petitioner's case is that she is a Graduate in Science with BT and had been appointed as an Assistant Teacher of the School on 2.2.1982, She has since been serving as an Assistant Headmaster of the School. The School was started in the year 1978 and was provincialised by order No. EPG-202/91/47-A, dated 18.4.1991 and accordingly, the Service of the teaching and non-teaching staff thereof, was provincialised.

4. There was in existence a Primary School in Sector-II of the Guwahati Refinery, which was amalgamated with the Guwahati Refinery High School in the year

1986. The Respondent No. 4 before the amalgamation, was serving as an Assistant Teacher in that Primary School. However, following the amalgamation, he was also integrated in the School. Accordingly, his services were also regularized in the year 1991. Referring to the annexures appended to the order dated 26.12.1991 issued by the Director of Secondary Education, Assam, the Petitioner has contended that as it is apparent therefrom that the date of joining of the Respondent No. 4 in the School is 1.4.1986 compared to her 4.2.1982 and, therefore, he could not be construed to be the senior most teacher in the School. In spite thereof, Shri Prabin Barman earlier Assistant Headmaster of the School, though is functioning as the In-charge Headmaster of the School by the impugned order, the Respondent No. 4 has been allowed to look after the academic affairs thereof. Being aggrieved by the above, the Petitioner has submitted a representation on 19.3.2008 before the Inspector of Schools, Kamrup District Circle, Guwahati but to no effect.

The Respondent No. 2 through the Deputy Director of Secondary Education, Assam, has submitted a counter to the effect that though the Respondent No. 4 had been serving in the Primary School since 1974, his services for the purpose of seniority would be counted from the date of amalgamation thereof with the School in the year 1986. According to the Respondent-authority, the amalgamated school was provincialised w.e.f. 1.4.1991, as a consequence whereof, the services of the Respondent No. 4 were also provincialised and he was accorded the graduate scale of pay along with the existing staff with effect from that date. The said Respondent-authority clarified that the seniority of the Respondent No. 4 was computable only from the date of his joining the amalgamated school and, therefore, as the Petitioner have been serving the High School w.e.f. 4.2.1982, she is admittedly senior to him. The answering Respondent has asserted that the Inspector of Schools, KDC, Guwahati, before issuing the impugned order, did not obtain the prior approval of the competent authority.

5. The Respondent No. 4, in his affidavit, asserted to have been appointed as the Headmaster of the Primary School on 6.6.1974 being a Graduate. He has averred that he had been in continuous service since then till the amalgamation of the said institution with the High School in the year 1986 and thereafter, till date. He reiterated that the Guwahati Refinery High School was established in the year 1982. He also admitted provincialisation of his service w.e.f. 1.4.1991. He, however, emphasised that in terms of the Service Book as on 1.4.1991 while the Petitioner was drawing Rs. 2,095, he was on receipt of Rs. 2,155 per month as pay. The answering Respondent has, therefore, maintained that ascertained by the length of service, he being the senior most of the School was rightly entrusted with the responsibility of administering the academic affairs thereof by the impugned order.

6. In her affidavit-in-reply, the writ Petitioner has insisted that she has been receiving the graduate scale of pay w.e.f. 2.2.1982 and the Respondent No. 4

w.e.f. 10.4.1986. She has denied the Respondent No. 4's claim of receiving Rs. 2,155 per month on the provincialisation of his services compared to Rs. 2,095 by her. The Petitioner has categorically contended that following the amalgamation of the Schools, the Respondent No. 4 was appointed afresh as a teacher therein on 10.4.1986.

In an additional affidavit, the Respondent No, 4, has pleaded that he had been accorded the graduate scale of pay of Rs. 325-650 w.e.f. 6.6.1981 as would be evident from his Service Book compared to the Petitioner, who had been receiving pay in the said scale only from 1.2.1982. He denied that his appointment in the amalgamated school was in the nature of a fresh recruitment, but was in continuation of his service under the Primary School.

7. Ms. Thakuria, has argued that the Respondent No. 4 having been appointed afresh in the amalgamated school w.e.f. 1.4.1986, his seniority would have to be determined from that date. Moreover, he having been accorded the Graduate Scale of Pay in the said School also with effect from the said date, both on the counts of length of service as well as the date of receipt of Graduate Scale of Pay, the Petitioner is senior to him and, therefore, the impugned order is, per se, illegal and unsustainable in law. In support of her submissions, the learned Counsel has referred to the extracts of the Service Books of the parties annexed to their pleadings, the letter dated 26.12.1991 provincialising the services of the teaching and non-teaching staff of the amalgamated School and the letter of appointment dated 10.4.1986 issued by the School to the Respondent No. 4. She has further referred to a letter dated 16.12.2000 of the Headmaster of the School of addressed to the Director of Secondary Education, Assam, forwarding the names of three Senior most teachers for processing their cases for selection as Assistant Headmaster of the institution to contend that as the name of the Petitioner is not included in the panel, it would imply that he had never been construed to be the Senior most teacher as claimed by him.

8. Mr. Pathak, while endorsing the stand taken in the State affidavit, has submitted that if the court is so inclined, the issue may be referred to the Government for decision on the issue of the inter se seniority of the parties in terms of Rule 24(2)(viii) of the Assam Secondary Education (Provincialised) Service Rules, 2003 ("the "Rules").

9. Mr. Goswami, has urged with reference to the extracts of the Service Book of the Respondent No. 4 that it being apparent therefrom that the Graduate Scale of Pay had been extended to him w.e.f. 6.6.1981, the plea to the contrary is untenable. In support of his submission that similar letters as dated 10.4.1986 to the Respondent No. 4 had been issued to the other serving teachers as well, the learned Counsel has drawn the attention to a letter dated 18.2.1986 addressed to Smt. Arati Baruah, Assistant Teacher in similar lines. He, therefore, contended that the appointment letter dated 10.4.1986 to the Respondent No. 4 did not denote his fresh appointment in any view of the matter. As the Respondent No. 4 has been in continuous service from the date of his appointment with the

Primary School, for the purpose of seniority, his tenure before the amalgamation cannot stand effaced. To buttress his arguments, Mr. Goswami, placed reliance on the decisions of this Court in Jagabandhu Das Vs. State of Assam and Others, and Umesh Chandra Bhuyan Vs. State of Assam and Others,

10. Ms. Thakuria, as against this, has maintained that the contents of the letters dated 1.4.1986 and 18.2.1986 are not identical and, therefore, the Respondent No. 4's claim of continuous of service is wholly misconceived. She placed reliance on the decision of this Court in Gopal Deb Nath v. Assam Administrative Tribunal and Ors. 2001 (2) GLT 293.

11. I have extended my cautious consideration to the contentious pleadings and the arguments advanced. The facts pertaining to the initial appointment of the Petitioner and the Respondent No. 4, in the Guwahati Refinery School and the Primary School, the amalgamation thereof, in the year 1986 and the eventual provincialisation of the amalgamated institution by order dated 18.4.1991 referred to hereinabove, are matter of records. The extracts of the service book of the Petitioner reveals that she was appointed as Assistant Teacher in the year 1982 in the Graduate Scale of Pay w.e.f. 2.2.1982. The extracts of the Service Book of the Respondent No. 4 discloses that he was appointed as the Headmaster of the Primary School on 6.6.1974 at a consolidated pay of Rs. 150 per month. Though, his pay on 6.6.1981 is shown to be Rs. 325 per month, both the figures representing the pay and the year show signs of interpolations and overwriting. It is, thus, not possible to decisively conclude that the Respondent No. 4 has been receiving Rs. 325 per month in the Graduate Scale of pay w.e.f. 6.6.1981 as claimed by him. The order of provincialisation dated 26.12.1991 (Annexure P/2 to the writ petition), evinces that the services of the teaching and non-teaching staff had been provincialised w.e.f. 1.4.1991. In the annexure accompanying the said letter the dates of joining of the Petitioner and the Respondent No. 4 have been recorded to be 4.2.1982 and 1.4.1986 respectively.

12. Incidentally, the Primary School and the Guwahati Refinery School, had got amalgamated in the year 1986. The order dated 13.7.1992, issued by the Inspector of Schools, KDC, Guwahati, discloses the basic pay of the Petitioner and the Respondent No. 4 to be Rs. 2,095 in the pay scale of Rs. 1,375 to Rs. 3,375. This prima facie belies the Respondent No. 4's claim of receiving Rs. 2,155 after provincialisation of the School. In the seniority list containing the endorsement of the Headmaster-in-charge of the School (Annexure P/5 to the writ petition) as well, the dates of appointment of the Petitioner and the Respondent No. 4 aforementioned, have been shown to 2.2.1982 and 1.4.1986 respectively. The dates of their receipt of Graduate Scale of Pay have been indicated to be 10.2.1986 and 10.4.1986 in that order. In the remarks column in the said document, it is mentioned in clear terms that the Respondent No. 4 had joined the amalgamated High School on 1.4.1986 on fresh appointment as per the appointment letter No. OX/86, dated 10.4.1986. This appointment letter dated 10.4.1986 (Annexure B/1 to the affidavit-in-reply of the Petitioner),

reveals that the Respondent No. 4 with reference to his application and interview with regard thereto, had been intimated thereby of his selection and appointment at a remuneration of Rs. 700 per month in the pay scale of Rs. 675-1110 and other allowances as mentioned therein w.e.f. 1.4.1986. Clause 2 thereof clarified that the said Respondent had been selected for service in the Guwahati Refinery High School, Noonmati. The mode of termination of the service is as stipulated in Clause 6. The Respondent No. 4 was extended the offer subject to the said terms and conditions contained in the letter, which as the document reveals were accepted by him. This letter when placed in juxtaposition with the one dated 18.2.1986 (Annexure-F to the additional-affidavit of the Respondent No. 4), does not appear to be wholly identical to the latter. Apart therefrom, the seniority list referred to hereinabove, does not indicate that Smt. Arati Baruah's date of joining to be 10.2.1986, though indicated in the letter, but records the same to be 2.2.1982 like the-Petitioner. Significantly, it is the Respondent No. 4 and one Sri Nagendra Nath, who are shown to have joined the amalgamated High School on 1.4.1986 in terms of their respective appointment letters dated 10.4.1986 referred to therein. The appointment letter of Smt. Arati Baruah, therefore, does not advance the case of the Respondent No. 4.

13. The letter dated 16.12.2000 of the Headmaster addressed to the Director, Secondary Education, Assam, forwarding the name of the Petitioner, Smt. Mridula Bora (since retired in August, 2007) and Smt. Arati Baruah, is indicative of the fact that as on that date, the Respondent No. 4 was not considered to be senior to them. The unambiguous and categorical stand of the Director of Secondary Education, Assam, in his affidavit, that the seniority of the Respondent No. 4 has to be reckoned from 1.4.1986 in the amalgamated School, cannot be lightly cast aside. On a consideration of the above factual revelations in their entirety, the Petitioner's claim of seniority over the Respondent No. 4 appears to have substance. There is no material on record to demonstrate that the Respondent No. 4 had been adjudged earlier to be senior to the Petitioner either by the School authorities or the State-Respondents.

14. This court in Gopal Debnnath (supra), in the contextual facts of amalgamation of a Lower Primary School with its Middle Vernacular School, held that the teachers of the two Schools belong to two different cadres and on amalgamation, their seniority would have to be counted as MV School teachers from the date of amalgamation and not earlier to it. Seniority of the Petitioner, who before the amalgamation was serving in the LP School, was thus computable from the date of amalgamation and his services prior thereto was of no avail for the purpose, it ruled.

15. The aspect of amalgamation was not involved in Jagabandhu Das (supra), wherein, this Court held that the inter se seniority of the existing employees of the High School involved was to be determined with respect to the dates of their appointments and continuous service thereafter. In the singular facts of the instant case, this authority is of no substance to the Respondent No. 4.

16. In Umesh Chandra Bhuyan (supra), Tulsibari ME School and Tulsibari Bahumukhi HS School were amalgamated dated 14.9.2005. The Petitioner therein, had been appointed in the ME School on 20.5.1973 initially by the Managing Committee and his services were, thereafter, regularized w.e.f. that date. The School was provincialised w.e.f. 1.3.1978. The Respondent No. 4, who was first appointed on 20.12.1972 as an Assistant Teacher in Borghuli Neheru High School, provincialised w.e.f. 1.10.1977 was, thereafter, transferred to the Tulsibari Bahumukhi HS School on 2.2.1993. The Petitioner claimed that as the Respondent No. 4 had been transferred to the High School on his request, his past service stood forfeited for the purpose of seniority. On the retirement of the Principal of the amalgamated school he having been allowed to hold the charge of the office, the Respondent No. 4 instituted a writ proceeding before this Court. After a bout of debate before the departmental authority on the issue of inter se seniority as required by this Court, the Respondent No. 4 having been installed as the In-charge Principal of the School, a Second round of litigation was initiated. In the facts of the case, this Court held that the Respondent No. 4 was ahead of the Petitioner in time qua the date of receipt of Graduate Scale of pay and that the Respondent No. 4 was not liable to be denied the benefit of his past services rendered under the other school before his transfer. In this regard, this Court noticed that the Petitioner before the amalgamation, was serving in ME School lower in rank and status than that of High School unlike the Respondent No. 4, who continued to be in the cadre of graduate teacher in a High School. It was further observed that the two services were governed by the different and independent sets of Rules. The Respondent No. 4, thereafter, was adjudged to be senior to the Petitioner.

17. The parties, presently, are governed by the Rules, which defines "Graduate Teacher" in Rule 2(n). It means the category of Assistant Teacher in High/Higher Secondary/Higher Secondary and Multipurpose High Madrasa Schools for whose appointment, minimum qualification prescribed is a Graduate degree in Arts, Science or Commerce and includes Demonstrators in Higher Secondary/Higher Secondary & Multipurpose School. In terms of the Rules, therefore, a teacher with a Graduate degree in an ME School is not construed to be a Graduate Teacher under the Rules. Rule 14(4), which lay down the conditions of eligibility for promotion to the post of Headmaster of a High/High Madrasa School mandates, inter alia, 10 years of teaching experience as a Graduate Teacher therefor. Rule 24, which ordains the norms for measuring the seniority of an Assistant Teacher for promotion to the post of Headmaster in Sub-rule (2)(i) indicates the length of continuous service from the date of joining as Graduate Teacher in the School to be the fundamental criteria with other situation wise measures as enumerated in Clauses (ii) to (iv). On this count as well, the Respondent No. 4's claim of superior seniority above the Petitioner founded on his past service in the ME School, is untenable in the teeth of the Rules.

18. In the wake of the above, the irresistible conclusion is that the Petitioner is senior to the Respondent No. 4 in service in the amalgamated High School.

School seniority for the purpose of the In-charge arrangement vis-a-vis the office of the Headmaster being the normally accepted yardstick, the impugned order judged on that touchstone in the facts and circumstances of the case, cannot be sustained. The order dated 18.3.2008 is, thus, interfered with. The petition is allowed in the above terms. No costs.