

(2018) 05 GAU CK 0198
In the Gauhati High Court
Case No : Writ Prtition (C) No.716 of 2013

Sadique Ahmed

APPELLANT

Vs

State Of Assam And Ors

RESPONDENT

Date of Decision : 25-05-2018

Acts Referred:

Assam Secondary Education (Provincialisation) Service Rules, 2003 — Rule 18

Citation : (2018) 05 GAU CK 0198

Hon'ble Judges : ACHINTYA MALLA BUJOR BARUA, J

Bench : Single Bench

Advocate : M A I Hussain, B Malakar

Final Decision : Disposed Off

Judgement

1. Heard Mr. A.R. Bhuyan, learned counsel for the petitioner. Also heard Mr. N. Sarma, learned standing counsel for the Secondary Education

Department.

2. The petitioner claims to be a person qualified in M.M. examination (Madrassa Title Examination) in the year 2011 and accordingly, is of the view he

is qualified to be appointed as an FM Assistant Teacher in any senior or title madrassa of the state.

3. The petitioner also refers to a notification dated 23.07.1999 of the Secretary to the Govt. of Assam in the Education Department which provides the

benefit of reservation to the sons or unmarried daughters of retired teachers from primary to secondary level to the extent of 10% of the vacancies.

By referring to the said notification, the petitioner assails the notification dated 12.09.2012 of the Deputy Secretary of the Govt. of Assam in the

Secondary Education Department, by which, the procedure for appointment of FM teachers in the madrassas are being provided. The petitioner

assails the said notification on the ground that the same does not take into account the provision of 10% reservation for the sons and unmarried daughters of the retired teachers.

4. It has been brought to the notice of the Court that in the meantime, the Govt. of Assam by the Office Memorandum dated 04.07.2016 had

withdrawn the benefit of 10% reservation for the sons and unmarried daughters of the retired teachers. As the said provision was under a decision of

the Govt. of Assam and there is no constitutional basis for claiming 10% reservation for the sons and unmarried daughters of the retired teachers, we

do not find that such claim survives after the withdrawal of the said provision by the notification dated 04.07.2016.

5. Mr. A.R. Bhuyan, learned counsel for the petitioner by referring to the provision of Rule 18 of the Assam Secondary Education (Provincialisation)

Service Rules, 2003 submits that even though the provision for 10% reservation for the sons and unmarried daughters of retired teachers had been

withdrawn, but such provision still remains under Rule 18. On perusal of Rule 18, it is noticed that apart from the reservation for SC and ST under the

appropriate law and the reservation for OBC/MOBC under the appropriate Govt. Office Memorandum, there is a further provision that the general

orders in respect of reservation of other category of candidates as may be in force for the time being shall also be followed.

As the provision is that the reservation in respect of other category shall be followed as may be in force for the time being and in view of the fact that

the reservation for 10% reservation for sons and unmarried daughters of the retired teachers had in the meantime been withdrawn, it is no longer in

force and therefore, it cannot be said Rule 18 still provides for such reservation. In view of the above, the prayer made in this writ petition that the

notification dated 12.09.2012 be interfered by providing for 10% reservation for the sons and unmarried daughters of the retired teachers cannot be

accepted.

6. It is stated that in the meantime, the notification of 12.09.2012 was withdrawn by a subsequent notification of 21.12.2013 which has been assailed

by some other petitioner in a writ proceeding before this Court. Closure of this petition shall not in any way affect the adjudication in the other

proceeding and in all other respect other than for providing 10% reservation for

sons and unmarried daughters of retired teacher, the ultimate conclusion that may be arrived in the other proceeding shall prevail. In view of the above, writ petition stands closed. Interim order, if any, passed earlier stands vacated.