
(2003) 02 GAU CK 0029
In the Gauhati High Court
Case No : Civil Rule No. 4699 of 1995

Saidur Rahman

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 10-02-2003

Acts Referred:

Citation : (2004) 1 GLR 546

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Advocate : A.S. Choudhury, R. Mazumdar and I. Hussain, for the Appellant; J. Ahmed, for the Respondent

Final Decision : Dismissed

Judgement

Amitava Roy, J.—The petitioner before this Court, has assailed the order dated 4.11.1995 passed by the Deputy Director of Madrassa Education, Assam, discharging him from service. At the relevant time the petitioner was holding the post of Assistant Teacher in Mahimari Senior Madrassa (Pre-Sr. Section).

2. I have heard Mr. A.S. Choudhury, learned senior counsel assisted by Mr. I. Hussain, learned counsel for the petitioner, Mr. K.C. Mahanta, learned State counsel for the respondent Nos. 1, 2 and 3 and also Mr. J. Ahmed, learned counsel for the respondent Nos. 4 and 5.

3. The case of the petitioner in short is that he had passed the H.S.L.C. Examination in the year 1976 and was appointed as Assistant Teacher in the preparatory section of the Mohimari Senior Madrassa (herein after referred to as Madrassa) by the Managing Committee thereof by communication dated 26.2.1979. His appointment was approved by the Deputy Director of Madrassa Education, Assam by order dated 24.2.1986 subject to the condition that he was to pass the P.U./H.S.S.L.C. Examination within two years. The petitioner has candidly admitted in the Writ petition that though thereafter time was granted to him for passing the P.U./H.S.S.L.C. Examination he, on the ground of his illness

could not acquire the said qualification. Eventually, by the impugned order dated 4.11.1995 he was discharged from service.

4. In the counter affidavit filed by the respondent No. 3, the stand taken by him is that as per the departmental norms, the Managing Committee of the Madrasa had appointed the petitioner vide resolution No. 5 dated 23.2.1979 subject to the condition that he would qualify himself within two years and that the said resolution was approved by the Deputy Director of Madrasa Education, Assam. It has been asserted in the said counter that as per norms of Madrasa Education, passing of H.S.S.L.C./P.U. was necessary for a candidate to be qualified for the post of Assistant Teacher. According to the answering respondent, reasonable opportunities were afforded to the petitioner to qualify himself, but he failed to do so, and therefore, the impugned decision had been taken.

The respondent Nos. 4 and 5 have filed separate affidavits. While denying that the petitioner was appointed as Assistant teacher on 26.2.1979, they have contended that it was only on 1.5.1982 that the resolution was taken in the Executive Body meeting, of the Madrasa to advertise for the preparatory post of Assistant teacher and accordingly on 2.5.1982 such advertisement was made. In response to the said advertisement the Writ petitioner also applied alongwith other candidates and after the interview, the petitioner was selected for appointment and he was appointed thereafter. In the appointment order which was issued on 13.8.1982, it was mentioned therein that no financial liability would be taken by the Managing Committee until the post was sanctioned by the Government. Thereafter by communication dated 29.6.1985 the Secretary, State Madrasa Education Board conveyed the decision of the Government to sanction 3 posts of Assistant teachers (two classical teachers preferably F.M. and one General teacher P.U./H.S.S.L.C.) in the intermediate scale of pay in the preparatory Section of the Senior Madrasa. According to them, as the petitioner was not found academically qualified for holding the post, his appointment to the post of Assistant teacher in the Madrasa was approved subject to the condition that he would pass the P.U./ H.S.S.L.C. examination within a period of two years. However, as the petitioner failed to acquire the said qualification he was discharged from service.

5. While controverting the statements made in the affidavit filed by the respondent Nos. 4 and 5, the Writ petitioner in his affidavit in reply reiterated that no appointment order dated 13.8.1982 was ever sent to him. He denied that the preparatory Section was started only in 1982. On the other hand he alleged that the stand of the respondent Nos. 4 and 5 lacked bona fide inasmuch as they were interested to provide appointment their man in the post which the petitioner had been holding.

6. An additional affidavit has also been filed by the Writ petitioner annexing documents, inter alia, to show that the petitioner had passed the H.S.L.C. Examination in the year 1976 with Arabic as one of the subjects.

Mr. Choudhury, learned counsel for the petitioner argued that at the time of his appointment, there was no prescribed qualification for appointment of the teaching staff and subsequently, the Madrassa Education Curriculum of the State Madrassa Education Board was reorganised as "Re-organised Senior Madrassa Curriculum, courses of and syllabi 1979" and as per this, the qualification for the post of Assistant teacher (General), preparatory Section was prescribed as pass in H.S.L.C. with Arabic or in High Madrassa Examination. He has argued that admittedly, the petitioner possessed the said qualification at the relevant time and therefore his appointment was legal and valid. In the Re-organised Senior and Title Madrassa curriculum courses and Syllabi, 1992 introduced thereafter, the qualification prescribed for the post was pass in H.S.S.L.C. Examination in Arts or in Science with atleast 40% marks with Arabic at least up to H.S.L.C. or AHM Examination as the case may be. The learned senior counsel has also submitted that the requirement of the said academic qualification of the 1992 curriculum was not relevant so far as the petitioner is concerned inasmuch as he had been appointed much before the said qualification was introduced for the purpose of appointment to the post of Assistant teacher (General) preparatory Section of a senior Madrassa in the State. According to him, therefore, the impugned order of discharge on the ground that the petitioner had failed to acquire the higher academic qualification of passing the H.S.S.L.C. Examination was not tenable in law. He maintained that though the petitioner had been provided with the opportunity of passing the H.S.S.L.C. Examination but had failed to acquire the said qualification, the petitioner has the right to continue of the Assistant teacher at the strength of his appointment on 26.2.1979. Relying of the communication dated 19.3.1984 (Annexure-10 to the Writ petition), the learned senior counsel has further argued that in the facts and circumstances of the case, the petitioned has the right to continue as Assistant teacher in the preparatory section of the Madrassa with the Matriculate scale of pay and therefore, the impugned decision of discharging him from the post cannot be sustained in law and on facts. In this regard the learned senior counsel for the petitioner has also drawn the attention of this Court to the order dated 15.12.1995 passed in Writ, Appeal No. 540/95 preferred by the petitioner against the order refusing to stay the impugned order of discharge. By the said order it was provided that in case no appointment had been made, the post would not be filled up during the pendency of the Civil Rule. It is submitted at the Bar that the post remains unfilled till date.

In reply, the learned counsel for the respondents have argued that at the petitioner did not possess the required academic qualification to hold the post of Assistant teacher in the preparatory Section of the Madrassa his appointment was approved subject to the condition that he would make up the deficiency within a period of two years. But as inspite of repeated opportunities he failed to clear the H.S.S.L.C./P.U. Examination, he was rightly discharged.

7. The question that would emerge from the pleadings of the parties and the submissions made on the basis thereof is whether the action of the State

respondents in discharging the petitioner from service on the ground that he had failed to pass the H.S.S.L.C. Examination in terms of the order of approval dated 24.2.1986 is legally sustainable.

Admittedly, the petitioner has passed only the H.S.L.C. Examination. It is also not the case of the petitioner that he had at any earlier point of time assailed the order of approval and the condition contained therein. It is apparent from the documents annexed that the petitioner has been afforded sufficient opportunities to acquire the higher qualification, but he had failed to do so. The communication dated 9.5.1977 (Annexure-11 to the affidavit-in-reply of the petition) provides that the teachers having minimum qualification for preparatory classes as a Feeder Institution to Senior Madrassa shall have to be maintained for the time being by the Managing Committee of the institution till the posts are created by the Government. The language appearing in the said communication is clear that such arrangement would be temporary till the posts are created by the Government. The communication dated 29.6.1985 (Annexure-3 to the affidavit-in opposition of the respondent No. 4), the authenticity where has not been challenged shows that the Government had sanctioned 3 posts (two classical teachers and one general teacher) in the Intermediate scale of pay in the preparatory sections of the Senior Madrassas. It further reveals that even prior to the 1992 curriculum referred to above, one sanctioned post of General teacher in the Madrassa was provided and the academic qualification prescribed was P.U./ H.S.S.L.C. In point of time, this communication is before the appointment of the petitioner was approved by the Government on 24.2.1986. The approval of the appointment of the petitioner is in consonance with the above decision of the Government. In that view of the matter the communication dated 9.5.1977 on which reliance has been placed by Mr. Choudhury is of no assistance to the petitioner. For the same reason the communication dated 19.3.1984 (Annexure 10 to the Writ petition) does not advance the case of the petitioner. This is more so because the petitioner had not challenged the order of approval that the condition subject to which it was granted was not applicable to him.

8. The petitioner was thus holding the post sanctioned by the Government for which academic qualification prescribed was pass in H.S.S.L.C. or P.U. Examination. It appears that sufficient opportunities were granted to the petitioner to make up the deficiency in his academic qualification. The petitioner accepted the order of approval without any demur. The condition subject to which the post was sanctioned has also not been challenged. In the above facts and circumstances, in my considered view the impugned decision of the authority can not therefore be faulted with. It is within the authority of the State respondents to prescribe the conditions of eligibility for a post in public service and the petitioner having accepted the condition subject to which his post was sanctioned and approval was accorded to his appointment cannot be allowed to spin out contending that the said conditions are not binding on him. A higher academic qualification prescribed for appointment of a teacher would undoubtedly have a bearing on the standard of academic excellence and cannot

be rejected as irrelevant or unwarranted.

9. Before parting, a reference to the order dated 15.12.1995 passed by this Court in W.A. No. 540/95 is necessary. On a reading of the said order it is clear that this Court, pending disposal of the Writ petition restrained the authorities from filling up the post on the consideration that in case the petitioner succeeds, he would be entitled to be reinstated with consequential benefits. The Division Bench however, did not interfere with the order of the learned Single Judge refusing interim stay of the order of discharge. No opinion on the merits was expressed. For the findings recorded hereinabove, no further discussion on this is necessary. The petition is thus devoid of merits and is accordingly dismissed. No costs.