
(2018) 06 GAU CK 0032
In the Gauhati High Court
Case No : Writ Prtition (C) No. 918 of 2018

Sayed Ahmed Ali	Vs	APPELLANT
State Of Assam And Ors		RESPONDENT

Date of Decision : 07-06-2018

Acts Referred:

Citation : (2018) 06 GAU CK 0032

Hon'ble Judges : MICHAEL ZOTHANKHUMA, J

Bench : Single Bench

Advocate : U. K. Nair, N. Hussain, N. Sarma

Final Decision : Disposed Off

Judgement

1. Heard Mr. U. K. Nair,Â Senior counsel, assisted by Mr. N. Hussain, counsel for the petitioner. Also heard Mr. N. Sarma, counsel for the respondent Nos. 1 to 5 and Mr. K. N. Choudhury, Senior counsel, assisted by Mr. R. Kotoki, counsel for the respondent No. 6.

2. The petitioner herein is aggrieved by the order dated 30.01.2018, by which the respondent No. 6 has been transferred to the petitioner's school as

Headmaster. The petitioner's main challenge to the transfer order dated 30.01.2018 is that the school, in which the respondent No. 6 was the

Headmaster, i.e., Hazipara MEM School, had been amalgamated with the Hazipara High School and as per the amalgamation scheme made by the

Government, vide OM dated 22.09.2016, the respondent No. 6 became an employee of the Hazipara High School as Assistant Headmaster. The

respondent No. 6, being an employee of the amalgamated High School, he could not have been transferred as Headmaster to the Bhowkamari

Nabanoor M.E. School.Â

3. The petitioners' counsel submits that the employees of the Elementary school are governed by the Assam Elementary Education (Provincialization)

Act, 1974 (hereinafter referred to as the '1974 Act', the Assam Elementary Education (Provincialization) Rules, 1977 (hereinafter referred to as

the '1977 Rules') and the Assam Elementary Education (Provincialization) Service and Conduct Rules, 1981, while, the employees, working

under the Secondary Schools/Institutions, are governed by the Assam Secondary Education (Provincialization) Act, 1977 and the Assam Secondary

Education (Provincialized) Service Rules, 2003.

4. The sum and substance of the petitioner's challenge to the transfer of the respondent No. 6 as Headmaster of Bhowkamari Nabanoor M.E. School

is that the faculty member of a secondary school cannot be transferred to an M.E. School, which is governed by a different set of Acts and Rules.

5. Mr. K. N. Choudhury, counsel for the respondent No. 6, submits that the Hazipara ME School and Hazipara High School were both

amalgamated on 11.01.2018 and the respondent No. 6 has been transferred to the petitioner's school as Headmaster on 30.01.2018. He submits that

as per the scheme for amalgamation and merger of different school, as given in the OM dated 22.09.2016, the entire process for

amalgamation/merger was to be completed within 90 days. He submits that as the respondent No. 6 had been given his salary as Headmaster of

Hazipara MEM School for the month of January, 2018, the same showed that the amalgamation process of the two schools had not been completed

on the date, when the transfer order was issued. Accordingly, there was no bar on the transfer order of the respondent No. 6 to the petitioner's

school. He further submits that the petitioner does not have the locus-standi to file the present case, as the petitioner cannot be said to be an aggrieved

person. He submits that the petitioner is an Assistant Teacher of the Bhowkamari Nabanoor M.E. School and as per the sub-divisional wise

gradation list of Assistant Teachers, issued on 22.08.2004, the petitioner is at Serial No. 8.

6. The Senior counsel for the respondent No. 6 thus submits that the petitioner has not been able to show that any of his statutory or legal rights has

been violated in the transfer of the respondent No. 6 as Headmaster in the petitioner's school, inasmuch as, the petitioner has not been promoted to the

post of Headmaster and he is only an in-Charge Headmaster.

7. Mr. Choudhury, Senior counsel for the respondent No. 6, further submits that the petitioner has not come to the Court with clean hands as he has

failed to disclose the fact that he had been suspended, vide order dated 06.03.2018 by the State respondents, while the interim order had been issued by this Court on 07.03.2018.

8. At this stage, Mr. U. K. Nair, counsel for the petitioner, submits that he was not given a copy of the suspension order dated 06.03.2018 and the

petitioner came to know of the same only on 15.03.2018.

9. Mr. N. Sarma, counsel for the respondent Nos.1 to 5, upon instruction, submits that the Director had committed a mistake in issuing the transfer

order dated 30.01.2018, as the Director was not aware of the amalgamation order dated 11.01.2018. He submits that the amalgamation of schools had

been completed on 11.01.2018.

10. I have heard the counsels for the parties.

11. For a better understanding of the case in hand, para 3(4), 3(7) and para 6 of the scheme of amalgamation and merger of different school, issued by

the Secondary Education Department, Government of Assam, vide OM dated 22.09.2016, is reproduced below:-

3.(4) In case LP or MEÂ school is amalgamated with a High School, the Assistant Teachers and other staff of the LP or MEÂ SchoolÂ shall

be the employee of the amalgamated school and their services shall be placed at the disposal of the Secondary Education Department. The staff

pattern shall be fixed as per existing norms for a High School and the excess teaching and non-teaching employees shall be posted elsewhere against

the vacant post with their seniority of the earlier school. There shall not be any financial loss and whatever the emolument they are getting shall

continue after amalgamation.

3.(7) In the event the highest school is High School, the Headmaster of the High School shall continue after amalgamation. The post of Headmaster of

MEÂ Schools shall be re-designated as AssistantÂ Headmaster with same pay scale whatever they are drawing and the post shall be heldÂ by the

existing headmaster of the ME School without requiring the qualification for the post of Assistant Headmaster. However, after cessation of the

services of such Assistant Headmaster, the vacancy shall be filled up from the candidates having requisite qualification as per procedure stipulated in

the Service Rules in force.

6. For smooth implementation of the above scheme and for obtaining Government approval the following procedures shall be adopted by authority concerned.

(1) Block Level Committee shall identify such schools which are eligible for merger or amalgamation and shall send the list of such school with detail particular as per Annexure -I and shall forward to the District Level Committee for examination.

(2)The District Level Committal will examine the proposal as may be required and furnish their recommendation on proposed amalgamation/merger to

the Director of Secondary Education, Assam, if the highest school is under Secondary education or the Director of Elementary Education, Assam, if

the highest school is under elementary education.

(3)The Director of Secondary Education or the Director of Elementary Education as the case may be, shall furnish proposal to the Government in

respective Department with the post details as per Annexure II for approval.

(4)The Secondary Education Department or the Elementary Education Department as the case may be, shall issue approval after consultation with the Finance Department.

(5) The entire process for such amalgamation/merger shall be completed within 90 days and the proposal shall be retained in each stage not beyond 15 days.â??

12. A perusal of the above quoted paragraphs shows that upon amalgamation of the Hazipara MEM School along with theÂ Hazipara High School,

the post of Headmaster of the Hazipara MEM School was to be re-designated as Assistant Headmaster with the same scale as the Headmaster of

the erstwhile Hazipara MEM School.

13. Para 6 (5) of the OM dated 22.09.2016 states that the entire process of amalgamation/merger shall be completed within 90 days.

14. A reading of the above paragraphs and the facts, as narrated by the counsels, shows that the issue to be decided is whether the amalgamation of

the two schools, i.e., Hazipara MEM School and Hazipara High School, had been

completed on 11.01.2018, or before the impugned transfer order

dated 30.01.2018. If the amalgamation had been completed prior to the impugned transfer order, the respondent No. 6 would have to be considered to

be an employee of Hazipara High School and he would have to be considered as an Assistant Headmaster of the High School.

15. The letter dated 11.01.2018, issued by the Commissioner and Secretary to the Government of Assam, Secondary Education Department, and

addressed to the Director of Secondary Education, states as follows:-

??Sir,

I am directed to say that Governor of Assam is pleased to amalgamate the following schools with Hazipara High School under the Siksha Khetra-a

Scheme for amalgamation of Schools which are located on same Campus in pursuance of the Government's OM issued vide No. ASE 481/2016/17,

dated 22.09.2016 subject to condition that no additional post are create and no additional implication will occur.

Name of School Hazipara High School Bhawanpur DISE Code : 18050208115

Name of the Amalgamated School Hazipara M.E. Madrassa DISE Code ? 18050211005 Name of the Amalgamated School 210 No Fukipara Boys

L.P. School Howy DISE Code 18050211002

After amalgamation in the name of school shall be Hazipara High School and SMC/SMDC of the instructions with inclusion of the two representation

from Guardian and one from Teachers of each amalgamated schools.

Further, the Governor of Assam is pleased to order that the following posts including vacant posts shall be the employees of Hazipara High School and

the posts held by them shall be the post under the said school after amalgamation of the schools as stated above.

This is issued with the approval of the Finance (EC-III) Department issued vide U.O. No. 525/2017 dated 25.05.2017.??

16. The said letter dated 11.01.2018 also shows that the post of Headmaster as vacant, at Serial No. 12 of the chart given in the said letter.

17. The above facts show that the amalgamation of the two schools had been done on

11.01.2018 and that the respondent No. 6, who was the erstwhile Headmaster of the Hazipara ME School, was now an employee of the Hazipara

High School, as his post has been treated to be vacant, vide letter dated 11.01.2018. The issuance of the salary to the respondent No. 6 as

Headmaster of the Hazipara ME School for the month of January, 2018, to my mind, does not imply that the respondent No. 6 is still holding the post

of Headmaster of Hazipara ME School, as the amalgamation had been done, vide the letter dated 11.01.2018 and the post of Headmaster had been

declared to be vacant as on 11.01.2018. As such, the respondent No. 6 became the Assistant Headmaster of a secondary school, i.e., Hazipara High

School. Thus, the respondent No. 6 could not have been transferred to an Elementary school, which is governed by a different set of Acts and Rules.

18. The above, coupled with the submission of the counsel for the respondent No. 1 to 5, which is to the effect that the Director had committed a

mistake in issuing the transfer order dated 30.01.2018, as the Director was not aware of the amalgamation order dated 11.01.2018, in the opinion of

this Court, does not confer any right upon the respondent No.

6. Accordingly, it cannot be said that the impugned transfer order dated 30.01.2018 can be said to be validly issued. In the case of Union of India -vs-

S.R. Dhingra reported in 2008 (2) SCC 229, the Apex Court has held that a mistake does not confer any right and a mistake can be corrected.

19. In the present case, there is nothing to show that the amalgamation was not completed for all practical purposes in view of the letter dated

11.01.2018, issued by the Commissioner and Secretary to the Government of Assam, Secondary Education Department. The Finance Department

having already approved the amalgamation on 20.05.2017 and as the post of Headmaster of Hazipara MEM School had been declared to be vacant as

on 11.01.2018, the giving of the January, 2018 salary to the respondent No. 6 cannot be implied to mean that the respondent No. 6 was not the

Assistant Headmaster of the amalgamated Hazipara High School. Little follow up actions and discrepancies will have to be cleared through efflux of

time.Â

20. The respondent No. 6 thus has to be considered to be an employee of the Hazipara High School and as employees of Secondary Schools and

employees of Elementary schools are governed by different Acts and Rules, the transfer order dated 30.01.2018 is held to be illegal and the same is,

accordingly, set aside.

21. With regard to the contention of the counsel for the respondent No. 6 that the petitioner cannot be said to be an aggrieved person, as he has not

suffered any legal injury by way of the impugned transfer order, this Court finds that if the transfer order of the respondent No. 6 had been valid, the

petitioner could not have been considered to have suffered any legal injury, as he was only an Assistant Teacher, holding the charge of Headmaster.

However, in the facts and circumstances of the case, the petitioner's position of in-Charge Headmaster could not have been taken away by an illegal

transfer order dated 30.01.2018, which has been admitted by the Director, who issued the transfer order, to be a mistake. The above being stated, it is

not proper to run the Bhowkamari Nabanoor M.E. School indefinitely through an in-Charge Headmaster. Accordingly, the State respondents are

directed to take steps for appointing a regular Headmaster to the school.

22. In view of the reasons stated above, this Court finds that the impugned transfer order dated 30.01.2018 is illegal and the same is, accordingly, set

aside.

23. This writ petition is, accordingly, disposed off.Â Â