
(2012) 10 GAU CK 0006
In the Gauhati High Court
Case No : Writ Appeal No. 116 of 2008

Shri Jagabandhu Das

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 19-10-2012

Acts Referred:

Citation : (2013) 1 GLD 545

Hon'ble Judges : Adarsh Kumar Goel, C.J;Ujjal Bhuyan, J

Bench : Division Bench

Advocate : S.K. Medhi, Mr. I. Das and Mr. R.K. Bharali, for the Appellant; J. Abedin, S/C, Education, for the Respondent

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, C.J. and Ujjal Bhuyan, J.—This writ appeal is directed against the judgment and order of the learned Single Judge dated 24.01.2008 passed in W.P. (C). No. 3208/2006, dismissing the writ petition filed by the appellant, challenging the promotion of respondent No. 6 as Assistant Headmaster of Binapani High School, Diphu, District-Karbi Anglong, Assam. Case of the appellant is that following a selection process, he was appointed as Assistant Teacher of Binapani High School (School) on 09.02.1980, pursuant to which, he joined on 20.02.1980. At that stage, the School was a venture one. Appointment of the appellant was approved by the Inspector of Schools on 15.11.1980.

2. According to the appellant, respondent No. 6 was appointed as Assistant Teacher in the School on 02.01.1981. By order dated 18.11.1981, the Headmaster of the School conveyed the approval granted by the Inspector of Schools to the appointment of the teachers of the School. In respect of appellant, approval was granted with effect from 20.02.1980 whereas in respect of respondent No. 6, it was 02.01.1981.

3. The School was provincialised with effect from 01.01.1985. Following

provincialisation, the Inspector of Schools published the list of existing teaching and non-teaching staff of the school wherein appellant was placed at serial No. 3 above respondent No. 6 at serial No. 6.

4. The post of Assistant Headmaster of the School fell vacant on 24.04.2006 on the death of earlier incumbent. The Inspector of Schools, Karbi Anglong District Circle issued order dated 26.05.2006 promoting respondent No. 6 to the post of Assistant Headmaster of the School declaring him as the senior most teacher.

5. Appellant challenged the aforesaid order dated 26.05.2006 in W.P. (C). No. 3208/2006 contending that he was senior to the respondent No. 6, his service having been approved with effect from 20.02.1980 whereas that of respondent No. 6 on 02.01.1981. Further prayer was for a direction to the authority to promote the appellant to the post of Assistant Headmaster after declaring him to be senior to the respondent No. 6.

6. The writ petition was resisted by the respondents. The Inspector of Schools in his counter affidavit stated that contrary to the assertion of the appellant, respondent No. 6 was appointed as Assistant Teacher by the Managing Committee of the School on 16.10.1979, on which date itself, he had joined. Thereafter, he was appointed as stipendiary teacher with effect from 02.01.1981 in the School under the "Half-A-Million-Job-Programme". This stand of the State respondents was further elaborated in paragraph 9 of the counter affidavit, which is as under:--

9. That with reference to the statements made in paragraphs 12, 13, 14 & 15 of the writ application, the deponent states that the respondent No. 6 had joined the said school in the year 1979 (16/10/1979) as an Assistant Teacher for teaching language (Assamese). The respondent No. 6 continued his services in the said post till 1/1/1981. Subsequently, the respondent No. 6 was placed as a stipendiary teacher in the same school under "Half-A-Million-Job-Programme" (HMJP) and the said appointment was approved by the then Inspector of Schools, Karbi Anglong District Circle, for short, K.A.D.C., vide order dated 21/1/1981 with effect from 2/1/1981. The deponent states there was a move from the then Headmaster of the School requesting approval of appointment of the respondent No. 6 as Assistant Teacher for the period 16/10/1979 to 1/1/1981. However, the then Inspector of Schools, K.A.D.C. opined that as the appointment of the respondent No. 6 as stipendiary teacher was already approved from his end, there was no use according him approval for the appointment of Language Teacher. The deponent states that such response from the then Inspector of Schools, K.A.D.C. coupled with the fact that the respondent No. 6 had been working as Assistant Teacher for more than four months before joining of the petitioner, prompted the authorities to proceed on the basis that no further/fresh approval of the appointment of the respondent No. 6 as a Language Teacher was required and in terms of the earlier approval of the respondent No. 6, the authorities proceeded to consider him for promotion to the post of Assistant Headmaster of the School and accordingly, the order dated

26/5/06 was issued. The deponent states that the aforesaid facts would go to show that the respondent No. 6 is senior to the petitioner who joined the school in the year 1980 and all statements to the contrary are denied. The deponent states that there has been no violation of any Rule and/or Regulation in issuance of the order dated 26/5/06. The allegations of collusion on the part of the answering deponent and deprivation of the petitioner's legitimate expectation are denied.

Therefore, the contention of the appellant that he was senior to respondent No. 6 was denied.

7. The Inspector of Schools filed an additional affidavit further reiterating the stand taken in the counter affidavit. Respondent No. 6, in his counter affidavit, stated that when the appellant had joined the school, there were altogether six teachers, including the appellant and the respondent No. 6. He has also asserted that he was appointed as Assistant Teacher in the School on 16.10.1979, which was followed by his appointment under "Half-A-Million-Job-Programme". He was in continuous appointment since 16.10.1979. Therefore, he contended that he was senior to the appellant and was rightly promoted as Assistant Headmaster.

8. In his rejoinder affidavit, appellant has denied the claim of the respondents that respondent No. 6 had joined the school prior to him.

9. Learned Single Judge on due consideration held that respondent No. 6 having joined the school on 16.10.1979 and continued uninterruptedly, therefore, he cannot lose his seniority from the initial date of appointment, unless any contrary order is passed. Referring to Rule 13 of the Assam Secondary Education (Provincialised) Service Rules, 1982, learned Single Judge held that in view of the continuous appointment of respondent No. 6 with effect from 16.10.1979, he is entitled to count his seniority from that date and therefore his seniority was rightly counted above the appellant. Observing that the respondent No. 6 was promoted as Assistant Headmaster following the prescribed procedure, learned Single Judge declined to interfere with the promotion of respondent No. 6 and dismissed the writ petition.

10. Aggrieved, the petitioner is before this Court by way of the present appeal.

11. We have heard Mr. S.K. Medhi, learned counsel for the appellant as well as Mr. J. Abedin, learned Standing Counsel, Education Department, Assam.

12. Learned counsel for the appellant while reiterating the submissions made before the learned Single Judge has also submitted that the determination of inter se seniority between the appellant and respondent No. 6 by the learned Single Judge was not justified. According to him, the documents on record indicate that service of the appellant in the school was approved by the authority with effect from 20.02.1980 whereas that of respondent No. 6 on 02.01.1981, which clearly made him senior to respondent No. 6. Therefore, promotion of respondent No. 6 overlooking the justified claim of the appellant is required to be

interfered with.

13. Learned Standing Counsel on the other hand supports the decision of the learned Single Judge.

14. The submissions made have been considered. We have also perused the relevant materials on record.

15. Contention of the appellant that respondent No. 6 having been appointed on 02.01.1981, he cannot be declared senior to the appellant, who was appointed prior to him on 20.02.1980, cannot be accepted as the learned Single Judge after perusal of the record, which was produced at the time of hearing and on due consideration had arrived at a definite finding that respondent No. 6 had joined service in the school on 16.10.1979, which is prior to the date of joining of the appellant on 20.02.1980, and was in continuous service thereafter. Appellant is unable to show any cogent material to dislodge such finding. As per Rule 13 of the Assam Secondary Education (Provincialised) Services Rules, 1982, which was then holding the field, the inter se seniority of the existing employees were required to be determined in relation to the date of continuous appointment; date of joining and date of birth. In so far filling up of the post of Assistant Headmaster was concerned, it was required to be done by promotion from the school wise seniority list of Assistant Teachers on the recommendation of the Selection Board. The selection was also to be based upon satisfactory Annual Confidential Report for last 3 years and seniority of service in graduate scale of pay with a minimum 7 years of teaching experience. The learned Single Judge on due consideration held as follows:--

13. I have given my anxious consideration to the submissions made by the learned counsel for the parties and the materials on record. As indicated above, it is not correct to say that at the time of joining the school by the petitioner there were only two other teachers in the school. Annexure-3 order dated 15.11.80 on which the petitioner has placed reliance itself indicates that there were other teachers in the school whose appointments could not be approved in absence of the certificates in original. It is nobody's case that the appointments of other teachers could never be approved in absence of original certificate and/or that those teachers never produced the original, certificates. If the respondent No. 6 was appointed on 16.10.79 there cannot be any reason as to why his seniority should not be counted from that date. It is his definite case that he continued his service on the basis of appointment made by the Managing Committee of the school like that of the petitioner w.e.f. 16.10.79 to 02.01.81 and even thereafter he was appointed in the school against the particular post w.e.f. 02.01.81 by order dated 23.01.81. Diluting the claim of the petitioner that the respondent No. 6 came into existence in the school only w.e.f. 02.01.81, the respondents have furnished enough materials to show that the said respondent was part and parcel to the school even prior to 02.01.81 and in fact, he was appointed by the Managing Committee on 16.10.79. If the respondent No. 6 joined the school on 16.10.79 and continued uninterruptedly irrespective of the

subsequent order dated 23.01.81, unless any contrary order is passed, he cannot lose his seniority from the initial date of appointment.

14. As per the Rule 13 of the Assam Secondary Education (Provincialised) Service Rules, 1982, the inter se seniority of the existing employees shall be determined in relation to the date of continuous appointment; date of joining and date of birth. The continuous appointment of the respondent No. 6 being w.e.f. 16.10.79, he is entitled to count his seniority from that date and not any other date. Rule 2(h) of the same Rules defines "period of service" as the "period of continuous service from the date of appointment". The Division Bench of this Court in the case reported in : (1988) 2 GLR 17, Nipen Kalita v. State of Assam and others, held that the date of joining of the school even before the provincialisation of school is the factor towards determination of inter se seniority. In the instant case also, the respondent No. 6 having joined the school prior in point of time than that of the petitioner, the respondents have rightly counted his seniority above the petitioner.

15. Apart from the above, the impugned order dated 26.05.06 (Annexure-11) by which the respondent No. 6 has been promoted as Assistant Headmaster of the school does not indicate that the same is temporary and/or by way of any stop-gap arrangement. In this connection the statement made in paragraph-10 of the counter affidavit filed by the official respondents is relevant. This aspect of the matter has been discussed above. In the said paragraph, it is the categorical stand of the respondents that the impugned order has been passed following the procedure laid down for promotion. The basis for promotion from amongst the senior teachers of the school is to conduct the selection by the Selection Board on the basis of the annual confidential report and teaching experience etc. According to the official respondents, the respondent No. 6 has been promoted following the said criteria to which there is no denial on the part of the petitioner, as noted above. Even otherwise also, once it is held that the respondent No. 6 is senior to the petitioner, in absence of any adverse materials and pleading to that effect, the promotion of the respondent No. 6 cannot be interfered with.

16. Normally and as a general principle, questions relating to determination of inter se seniority between rival claimants should be left to the departmental authorities to decide as such determination may require going into disputed questions of fact and the writ Court should not ordinarily undertake such an exercise.

17. However, the basic issue in the present case was validity or otherwise of the promotion order of respondent No. 6 and incidental to that was the question of seniority of the rival claimants i.e. of the appellant and respondent No. 6. The learned Single Judge having undertaken the exercise, the outcome of which we are in agreement with, we see no good ground to disturb such finding of the learned Single Judge. Therefore, we find no merit in the appeal, which is accordingly dismissed, leaving the parties to bear their own costs.