
(2013) 08 GAU CK 0005
In the Gauhati High Court
Case No : Writ Petition (C) No. 5087 of 2011

Shri Probhat Borah

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision : 21-08-2013

Acts Referred:

Citation : (2013) 4 GLT 774

Hon'ble Judges : Hrishikesh Roy, J

Bench : Single Bench

Advocate : M. Nath, Mr. D.P. Borah, Mr. A. Roy, Mr. B.K. Singh and Mr. A. Bhattacharjee, for the Appellant; S.M.T. Chistie, Standing counsel, Education, Mr. P.J. Phukan and Mr. H. Baruah, for the Respondent

Final Decision : Allowed

Judgement

Hrishikesh Roy, J.—Heard Mr. M. Nath, learned counsel appearing for the petitioner. The respondent Nos. 1 to 4 are represented by Mr. S.M.T. Chistie, the standing counsel, Education Department. Mr. P.J. Phukan, learned Advocate appears for the respondent No. 5. Claiming to be the seniormost teacher in the Jengraimukh High School, Majuli, Jorhat District, the petitioner challenges the order dated 21.7.2011 (Annexure-4) whereby the DSE, Assam has promoted the respondent No. 5 Nilakanta Nath as the Headmaster of the High School. According to the petitioner, the respondent No. 5 was transferred to the Jengraimukh High School at his own request through the order dated 24.3.1999 (Annexure-2) and accordingly he is disentitled to claim seniority over the existing staff in the transferred school.

2. Mr. M. Nath, the learned counsel refers to the Rule 24(2)(v) of the Assam Secondary Education (Provincialised) Service Rules, 2003 (hereinafter referred to as "the Service Rules, 2003") to contend that when a teacher is transferred at his own request, his seniority in the transferred school will be counted w.e.f. from the date of his joining in the transferred school.

3. Appearing for the respondent No. 5, Advocate Mr. P.J. Phukan however contends that in pursuant to the selection process of 2nd and 3rd February, 2011, the respondent No. 5 was selected for the post of Headmaster, whereas the petitioner was selected for the post of Assistant Headmaster. Accordingly the counsel argues that the petitioner is disentitled to promotion to the post of Headmaster as he was not selected unlike the respondent. The counsel relies upon Rule 13 of the Assam Secondary Education (Provincialised) Service Rules, 1982 (hereinafter referred to as "the Service Rules, 1982") to project that inter se seniority is to be determined on the basis of the date of continuous service and accordingly it is argued that the respondent No. 5 will carry his seniority from the Rangachahi Tonuram Nath High School, from where he was transferred by the order dated 24.3.1999 (Annexure-2).

4. In response, the departmental lawyer Mr. SMT Chistie projects that the respondent No. 5 was transferred at his own request from the Rangachahi Tonuram Nath High School and accordingly under the prevalent law, he is disentitled to claim seniority in the transferred school, where the petitioner will be senior as a longer serving teacher.

5. Interpreting Rule 24(2)(v) of the Service Rules, 2003, the Full Bench of this Court in Jamal Uddin Ahmed vs. State of Assam (reported in 2012(1) GLT 1(FB)) has held that request transfer would entail effacement of the past service of the teacher for the purpose of seniority in the transferred school. Moreover the order whereby the respondent No. 5 was transferred to the Jengraimukh High School clearly stipulated that the transferees "...cannot claim for seniority over the existing staff of the respective schools, where they are posted. No T.A./D.A. is admissible for this purpose."

6. Therefore having regard to the request transfer and also the decision of this Court in Jamal Uddin Ahmed (Supra), it has to be held that the respondent No. 5 can claim seniority in the Jengraimukh High School only from his date of transfer i.e. 24.3.1999.

7. As the respondent No. 5 contends that he was selected for the post of Headmaster, whereas the petitioner was selected only for the post of Assistant Headmaster, it may be useful to refer to the procedure prescribed by Rule 14 of the Service Rules, 2003 for promotion to the post of Headmaster/Assistant Headmaster. Under Sub-Rule (2) & (3) of Rule 14, promotion is to be made on the basis of school-wise seniority on recommendation of the State Selection Board. Here the respondent No. 5 was wrongly considered senior to the petitioner at the relevant time, by taking his past service in the previous school into account. But because of the Full Bench decision, the respondent No. 5 is entitled his seniority in the Jengraimukh High School only from the date of transfer and he can't count his past service in the previous school.

8. Therefore I am of the considered opinion that the State Selection Board committed an error by proceeding on the basis that the respondent No. 5 is

senior to the petitioner in the Jengraimukh High School, where the petitioner is serving since 1.3.1995 on the strength of the appointment order dated 22.2.1995 (Annexure-1), whereas the respondent No. 5 subsequently joined the school on the strength of the transfer order dated 24.3.1999 (Annexure-2).

9. In the above circumstances, since under Rule 14 of the Service Rules, 2003 selection is required to be made through school-wise seniority, for the post of Headmaster/Assistant Headmaster, the exercise undertaken in February, 2011 is held to be vitiated. Consequently the promotion of respondent No. 5 to the post of Headmaster in the Jengraimukh High School is found to be legally unsustainable. As selection of the respondent No. 5 and his promotion to the post of Headmaster in the Jengraimukh High School is quashed, the official respondents are directed to undertake a fresh selection exercise by considering the eligible candidates as per the procedure prescribed by Rule 14 of the Service Rules, 2003. It appears that the Inspector of Schools, Jorhat is currently functioning as the in-charge Headmaster of the High School because of the Court's interim order and this arrangement has its own limitation. Therefore the necessary exercise of selection and appointment of the Headmaster is directed to be carried out expeditiously and preferably within 3 months, from intimation of the Court's order. The petition stands allowed with this direction without any order on cost. A copy of this order be furnished to Mr. SMT Chistie, the standing counsel, Education Department, for necessary communication.