
(2013) 09 GAU CK 0054
In the Gauhati High Court
Case No : Writ Petition (C) No. 747 of 2007

Smti. Anima Rani Dey

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision : 11-09-2013

Acts Referred:

Citation : (2013) 09 GAU CK 0054

Hon'ble Judges : Hrishikesh Roy, J

Bench : Single Bench

Advocate : N. Dhar, Mr. B.K. Sen, Mr. B. Malakar and Mr. B. Deb, for the Appellant; A. Deka, SC, Education Deptt. and Mr. F.U. Borbhuya, Advocate Appearing, for the Respondent

Final Decision : Disposed Off

Judgement

Hrishikesh Roy, J.—Heard Mr. N. Dhar, learned counsel appearing for the petitioner. The respondents are represented by the Standing Counsel for the Education Department Mr. A. Deka. The petitioner joined on 12.03.1983 as a teacher in the Ramkrishna Vidya Mandir L.P. School in Silchar on the strength of the appointment order dated 10.03.1983 (Annexure-1). But when the school was provincialised" w.e.f. 14.09.1988 through the order dated 05.05.1990 (Annexure-7) issued by the DEEO, Silchar, the service of a junior teacher Smti. Sikha Choudhury (Respondent No. 6) was undeservingly provincialised. Accordingly petitioner challenges the said provincialisation order of 05.05.1990.

2. The learned counsel Mr. N. Dhar refers to the Rule 4 of the Assam Elementary Education (Provincialisation) Rules, 1997 (hereinafter referred to as the "1997 Rules") to project that all teachers serving continuously for 2 years on the date of provincialisation the school should have been considered. But in any case ignoring the senior teacher for provincialisation of the junior teacher (Respondent No. 6) is contended to be totally unjustified.

3. It appears that after the petitioner is overlooked, he approached the Civil

Court through Title Suit No. 82/1990 but the learned court of Sadar Munsiff No. 4, Silchar through the judgment dated 02.08.1995 (Annexure-8) declared that the suit is not maintainable. The resultant Title Appeal No. 43/1995 was dismissed on 11.10.1999 (Annexure-9) by the Appellate Court and the RSA No. 22/2000 filed by the aggrieved plaintiff was withdrawn from this court on 07.12.2006 (page. 54) to enable the plaintiff to file writ petition, to challenge the non-provincialisation of her service.

4. Representing the Respondent No. 6, Advocate Mr. F.U. Borbhuya submits that the Respondent No. 6 fulfilled the eligibility criteria for provincialisation under Rule 5 (iii) of the 1997 Rules, and accordingly the counsel argues that the petitioner's challenge at this belated stage to the provincialisation order passed on 05.05.1990 (Annexure-7) should not be entertained by this court.

5. For the departmental authorities, Mr. A. Deka, Standing Counsel, Education submits that the petitioner was erroneously pursuing her remedies in the wrong forum and only because she failed to secure any relief from the Civil Courts, she has belatedly filed this case 17 years later, to challenge the provincialisation order passed in 1990.

5.1. The Standing Counsel, refers to the decision of this court in Jiban Ch. Deka and Others Vs. State of Assam and Others, to project that a High Powered Committee was constituted to consider the claim of dropped teachers of provincialised schools and the petitioner herein could have approached the High Powered Committee for redressal of her grievances, by responding to the newspaper advertisement(s) issued by the Committee on 06.11.2004 & 15.12.2005 to facilitate the dropped teachers to apply for reconsideration.

6. While the 1997 Rules do not specify the number of teachers who can be provincialised in a venture L.P. School, this lacunae is addressed by the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 (hereinafter referred to as the "2011 Act"). Under the schedule to this Act, for L.P. Schools, single post of Assistant Teacher along with the Headmaster can be provincialised. However, when the Parent Teacher Ratio (PTR) exceeds 30 in a given L.P. School, consideration for one additional teacher can be made under the 2011 Act.

7. The petitioner admittedly is serving since 12.03.1983 in the Ramkrishna Vidya Mandir L.P. School and being in the dropped category is receiving a meager amount from the Managing Committee of the school, whereas, the Headmistress and the provincialised teacher are receiving regular wages.

8. But the court is informed that the High Powered Committee which was constituted for considering the grievances of the dropped teachers in pursuant to the Jiban Ch. Deka (Supra), is no more functional and accordingly the alternate forum of redressal is unavailable on date. In such circumstances, I am of the view that the Commissioner and Secretary to the Govt. of Assam, (Elementary) Education Department should be directed to consider the grievances of the

petitioner whose service was not provincialised, although she was a senior teacher in the school as can be gathered from the inspection report dated 30.04.1986 (Annexure-6), given by the S.I. of Schools, Silchar.

9. To facilitate the consideration, the petitioner may give representation to the Commissioner which should be considered on merit. As the dropped teacher was pursuing her remedy until 07.12.2006 in the Civil Courts, the Commissioner may dispose of the representation with a speaking order expeditiously and preferably within 8 weeks of intimation. The case is disposed of accordingly with the above direction without any order on cost.