
(2010) 02 GAU CK 0041
In the Gauhati High Court
Case No : Writ Petition (C) No. 4420 of 2009

Sri Bijan Bhattacharjya

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 05-02-2010

Acts Referred:

Assam Secondary Education (Provincialised) Service Rules, 2003 — Rule 14(4)
Constitution of India, 1950 — Article 226

Citation : (2010) 1 GLD 883 : (2010) 6 GLR 528

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

I.A. Ansari, J.—Heard Mr. P. Sarma, learned Counsel for the petitioner, and Mr. M.R. Pathak, learned standing counsel, Education Department, appearing on behalf of respondent Nos. 1 to 4. Heard also Mr. U.K. Nair, learned Counsel, appearing on behalf of the respondent No. 5.

2. The controversy, in this writ petition, has arisen following the retirement, on superannuation, of one Promod Chandra Sharma, senior-most Assistant teacher of Belsor Girls' High School Belsor. While the date of joining of the said incumbent, in the said school, was 1.9.1974, the petitioner joined the said school, as Assistant teacher, on 23.12.1983, and the respondent No. 5 joined the said school, as Assistant teacher, on 15.5.1984. While graduate scale of pay was made available to the petitioner with effect from 1.1.1984, respondent No. 5 was given graduate scale of pay with effect from 15.5.1984. On the retirement of the said Pramod Chandra Sharma on 30.6.2009, respondent No. 5, namely, Uday Barman, who is an Assistant teacher in the said school holding degrees of B.Sc. and B.Ed., has been allowed, by order, dated 5.10.2009, issued by the respondent No. 3, namely, the Director of Secondary Education, Assam, to hold the charge of the office of the headmaster of the said school with the financial power to draw and disburse, in terms of Fundamental Rule 49, salary, etc., of the

teachers and staff of the said school. The order, dated 5.10.2009, aforementioned clearly mentions that the order aforementioned has been passed as a purely temporary measures. Aggrieved by the fact that the date of joining of the respondent No. 5, in the said school, was later than that of the petitioner, who is also an Assistant teacher serving in the said school, the petitioner has filed this writ petition, under Article 226 of the Constitution of India, impugning the order, dated 5.10.2009, on the ground that the petitioner, being the senior-most teacher in the said school, was entitled, and ought to have been allowed, to hold the charge of the office of the headmaster of the said school in the absence of a regularly appointed headmaster of the said school.

3. On perusal of the materials on record, including the materials made available in the Misc. Application No. 82/2010 filed in this writ petition and the records, made available by the learned Standing Counsel, Education Department, what transpires is that the petitioner is a subject-teacher of Hindi without having B.Ed. Degree; whereas the respondent No. 5 is, as already indicated above, a graduate of Science and B.Ed. Degree

4. Sub-rule (4) of Rule 14 of the Assam Secondary Education (Provincialized) Service Rule, 2003, prescribes the minimum qualification required for appointment to the post of, amongst others, headmaster of a High School. The requisite qualifications, as per the said rule, are, amongst others, that the person shall be a graduate in arts, science or commerce with B.T. or B.Ed. degree and that he or she must have, at least, 10 years of teaching experience as a graduate teacher.

5. When the facts, as narrated above, are considered in the light of the statutory provisions aforementioned, it becomes clear that a person, though may be a graduate in arts, science or commerce, is not eligible to be appointed as the headmaster of a High School unless he also holds the requisite degree in Education as aforementioned. The State respondents, particularly, respondent No. 3, had, thus, two options available to them in this regard. One of the two options was to allow the present petitioner to hold the charge of the office of the headmaster of the said school, despite the fact that the petitioner did not have the requisite qualification, and the other was to allow the respondent No. 5 to hold the charge of the office of the headmaster on, at least, the ground that he was educationally qualified to hold the charge and had requisite experience too. Respondent No. 3, it is clear from the records, appointed and allowed the respondent No. 5 to hold the charge of the office of the headmaster because he has the requisite educational qualifications and he is but barely four months" junior to the petitioner. The respondent No. 3 exercised the option of allowing the respondent No. 5 to hold the charge cannot be said to be so arbitrary, unreasonable, or illegal so much so that it would warrant interference by this Court in exercising its power under Article 226 of the Constitution of India.

6. Appearing on behalf of the petitioner, Mr. Sharma has pointed out that respondent No. 3 has passed several orders allowing the persons, who did not

have the requisite educational qualification to hold the charge of the office of the headmaster of High School and, in such circumstances, he ought not to have departed from the practice that was being followed.

7. In a situation, where a person has more than one option and the person chooses the option, which is legal and reasonable, such an option cannot be interfered with on the ground that the person, in the past, had taken action, which was illegal and unreasonable. In the name of removing discrimination, this Court cannot, in exercise of its powers under Article 226, command a person to repeat an illegality, which might have been committed by him in the past. In fact, respondent No. 3, referring to two decisions of this Court, has noted, while making the impugned order, that it is the respondent No. 5, who has the requisite qualification to hold the post, and, hence, he be given the charge of the office of the headmaster of the said school.

8. This Court, taking into consideration all the facts and circumstances of this case as narrated above, finds no reason to interfere with the impugned order.

9. Because of what have been discussed and pointed out above, this writ petition is not admitted and the same shall accordingly stand dismissed.

10. No order as to cost.