
(2012) 02 GAU CK 0066
In the Gauhati High Court

Sri Dulu Ranjan Roy, S/O.Late Gopendra Lal Roy, R/
O.Village : Dohabora Chowk, P.O.Jorhat, Pin Code – 785001
District : Jorhat, Assam.

APPELLANT

Vs

State of Assam, Represented By The Commissioner and
Secretary to The Government of Assam, Education
(Secondary) Department, Dispur, Guwahati – 6

RESPONDENT

Date of Decision : 06-02-2012

Acts Referred:

Citation : (2012) 02 GAU CK 0066

Hon'ble Judges : Amitava Roy, J and S.R.Sen, J

Bench : Division Bench

Advocate : For the Applicant : AS Choudhury, Senior Advocate. Mr. IH Saikia, Advocate. Mr. R Ali, Advocate. Mr. MH Ahmed, Advocate.??For the Respondents : Mr. A Deka, SC, Education Department, Assam. Mr. SK Medhi, Advocate. Mr. D Bora, Advocate., Advocates appearing for Parties

Judgement

Amitava Roy, J.

1. In challenge is the judgment and order dated 01.02.2012, passed in MC No. 2562/2011 arising out of WP(C) No. 4079/2011, thereby, vacating the interim order dated 12.08.2011, thus dislodging the writ appellant's incumbency as Incharge Headmaster of the Lakshmi Union High School, Jorhat (hereinafter referred to as the School).

2. We have heard Mr. AS Choudhury, Senior Advocate assisted by Mr. IH Saikia, Advocate for the petitioner and Mr. A Deka, learned Standing Counsel, Education Department, Assam for the respondent Nos.1 to 4. Also heard Mr. SK Medhi, learned counsel for the respondent No. 5.

3. The facts in bare essential are that in response to the advertisement dated 02.11.2010 issued by the Director of Secondary Education, AssamcumMember Secretary, State Selection Board, Assam for filling up, amongst others, of the post of Headmaster of the School, the parties in the fray offered their

candidature. Admittedly, as on date, the appellant/writ petitioner was not possessed of BT/B.Ed. degree as prescribed to be a condition of eligibility by Rule 14 of the Assam Secondary Education (Provincialised) Service Rules, 2003 (for short hereafter referred to as the 2003 Rules) for the said post. In that view of the matter, the appellant/writ petitioner was not allowed to participate in the selection process, on the culmination whereof, the respondent No. 5 herein along with others were recommended for appointment to the corresponding posts. She was, accordingly, appointed as Headmistress of the School by order dated 19.07.2011 of the Director of Secondary Education, Assam. Meanwhile, however, as a stop gap arrangement, the appellant/writ petitioner had been allowed to hold the charge of the said office pending regular appointment thereto. As, inspite of her selection, the respondent No. 5 was not allowed to join or assume charge of the office, she submitted her joining report in the office of the Inspector of Schools. Situated thus, the appellant/writ petitioner approached this Court with WP(C) No.4079/2011, questioning, inter alia the validity of the advertisement dated 02.11.2010 and also the appointment of the respondent No. 5 as regular Headmaster of the School. His chief contention was that having regard to the date of occurrence of the vacancy in the said office i.e. 31.03.2002, the 2003 Rules was not applicable and instead the process of filling up the same ought to have governed by the Assam Secondary Education (Provincialised) Service Rules, 1982 (hereinafter referred to as the 1982 Rules). According to him, as BT/B.Ed. was not an essential condition of eligibility under the 1982 Rules, the decision to exclude him from the selection process was apparently illegal and arbitrary vitiating the same. He, therefore, consequently pleaded invalidity of the selection process initiated by the advertisement prescribing the aforementioned norm of eligibility as well as the selection and appointment of the respondent No. 5.

4. As mentioned hereinabove, this Court while, by order dated 12.08.2011, in the interim, directed that the functioning of the appellant/writ petitioner as Headmaster of the School would not be discontinued without its leave, the respondent No. 5 after entering appearance in the writ proceedings, she filed an interim application (registered as MC No. 2562/2011), seeking vacation and/or modification of this order. After hearing the learned counsel for the parties, by the order impugned herein, the interim protection has been recalled.

5. Reiterating the pleaded stand of the appellant/writ petitioner visavis the process and appointment of the respondent No. 5, Mr. Choudhury, has urged that as the appellant has been arbitrarily disqualified by resorting to Rules, 2003, which has no application to the selection process, in the interest of justice, he ought to be allowed to hold the charge of the office of the Headmaster of the School pending final adjudication of the writ proceedings. As on record, the appellant is senior in service to the respondent No. 5 by a margin of about 20 years in the facts and circumstances of the case, his deposition from the office of the Headmaster of the School in the manner done is obviously illegal and discriminatory.

6. Mr. Deka, has argued, in reply that not only the provision of the 2003 Rules are applicable to the selection process, even assuming that it is not so, as the appellant/writ petitioner is sans BT/B.Ed. degree, the respondent No. 5 is entitled to a weightage of preference as contemplated under the 1982 Rules and in that view of the matter as well, the latter's selection is unassailable in law and on facts.

7. Endorsing the above stand, Mr. Medhi, has argued that meanwhile the respondent No. 5 has taken over the charge of the office of the Headmaster of the School even before the interim order of status quo had been passed in the instant appeal on 04.02.2002. In support of his plea, Mr. Medhi has produced a copy of the order dated 03.02.2012 of the Director of Secondary Education, Assam allowing the respondent No.5 to hold the charge of the office involved with immediate effect. A communication dated 04.02.2012 of the respondent No. 5 in the capacity of the Headmistress of the School and addressed to the Inspector of Schools (I/C), JDC, Jorhat affirming the above, has also been laid before this Court. A hand note of one Jeena etc., Assistant Teacher of the School indicating the handing the office materials including the keys to the respondent No. 5 in endorsement of the above change over, has also been produced.

8. We have taken note of the pleaded facts to the extent necessary and have also extended our consideration to the arguments advanced. The learned Single Judge, while vacating the interim order had taken note of the judgment and order dated 31.01.2012, passed by a Division Bench of this Court in WP(C) No. 765/2011, sustaining the prescription of BT/B.Ed. as one of the essential conditions of eligibility vide the 2003 Rules. It was held as well that even under the 1982 Rules preference was available to candidates possessing BT/B.Ed. degree and in that view of the matter, the appellant/writ petitioner could not have scored a march over the respondent No. 5 in such a selection as well. Observing that the appointment of the respondent No. 5 has been in a selection regularly conducted under the 2003 Rules and that therefore, she should be allowed to hold the post of Headmistress of the School, the interim restraint was vacated.

9. On a totality of the facts recited hereinabove and bearing in mind, in particular, the assumption of the office involved by the respondent No. 5 meanwhile, we are of the view that no interference with the impugned judgment and order is warranted. This is more so as the adjudication of the writ petition on merit is pending. It has been submitted at the Bar that the issue pertaining to the applicability or otherwise of the 2003 Rules qua the vacancies arising before the enforcement thereof is subjudice in a batch of writ petitions listed for final hearing on 20.02.2012. The contention to this effect as raised by the appellant/writ petitioner can thus be very well analysed in details if the WP(C) No. 4079/2011 is analogously heard therewith.

10. Having regard to the limited challenge in the appeal, in the above factual premise, we are disinclined to interfere. The appeal lacks in substance and is

dismissed. The learned Single Judge is requested to decide the writ petition on merit without being in any way influenced by the present determination. No costs.