

(2012) 06 GAU CK 0021
In the Gauhati High Court
Case No : W.P (C) No. 1649 of 2011

Sri Ganga Ram Phukan

APPELLANT

Vs

The State of Assam and others

RESPONDENT

Date of Decision : 04-06-2012

Acts Referred:

Citation : (2013) 1 GLD 74

Hon'ble Judges : Ujjal Bhuyan, J

Bench : Single Bench

Advocate : N. Dutta, Ms. B. Bhuyan, Mr. B. Talukdar, Adv, Mr. M. Das and Mr. P. Mahanta, for the Appellant; M.R. Pathak, SC, Education Department, for the Respondent

Judgement

Hon"ble Mr. Justice, Ujjal Bhuyan

1. Heard Mr. N. Dutta, learned Sr. counsel for the petitioner. Also heard Mr. M. R. Pathak, learned standing counsel, Education Department. The case of the petitioner is that he is one of the founder teachers of the Bihpuria College, which was established on 01-08-1988. Following a selection process, the petitioner was appointed as Lecturer in Philosophy by order dated 08-12-1988, pursuant to which he joined on 10-12-1988.

2. Bihpuria College (college) was initially brought under the deficit system and thereafter provincialised on 01-12-2005. However, the service of the petitioner was not regularized. Consequently, he continued to render service as Lecturer of Philosophy in the college against a non-sanctioned post. The petitioner is aggrieved as because his service has not been regularized by the authority on the ground that he does not possess the prevalent UGC norms.

3. At the time of his appointment, the petitioner had post graduate degree (MA) in Philosophy securing 52.62% marks, which was above the then prevalent norm of 52.50% marks in the minimum as prescribed by the University Grants Commission (UGC). Thereafter, the UGC decided to enhance the minimum

qualifying marks to 55% marks in Master degree. Following the same, the Government of Assam in the Education Department took a decision on 30-12-1988 prescribing the minimum educational qualification for appointment as Lecturer as 55% in the Master degree. The said decision dated 30-12-1988 was made effective from the date of issuance of the letter. Though the petitioner was appointed on 08-12-1988 prior to the said date and possessed 52.62% marks in post graduation, which was the requisite UGC norms at that point of time, his service was not regularized.

4. The State framed office memorandum dated 17-07-2004 to provide for allocation of vacant sanctioned posts of Lecturer to the departments of deficit grants-in-aid colleges where teachers are working without sanctioned posts by way of re-adjustment and consequential regularization of their services. Following a Division Bench judgment of this Court dated 14-05-2009 passed in W.P(C) Nos. 724 and 1103 of 2009, filed by a group of Lecturers seeking regularization in terms of the office memorandum dated 17-07-2004, the Director of Higher Education, Assam prepared a provisional seniority list dated 30-12-2009 of Lecturers working against non-sanctioned posts for regularization. In the said list, the petitioner's name figured at Sl. No. 1. But in spite of that, his service was not regularized.

5. Feeling aggrieved, the petitioner is before the Court seeking a direction upon the respondents to regularize his service in terms of the provisional seniority list dated 30-12-2009.

6. The respondent No. 3, Director of Higher Education has filed his counter affidavit. In his counter affidavit, the respondent No. 3 has referred to the office memorandum dated 17-07-2004. According to the respondent No. 3, as per Clause-4(a) thereof, the Lecturers seeking regularization must have the requisite UGC norm as on the date of regularization, which in the present case is minimum 55% marks in Master degree. As the petitioner does not have the aforesaid minimum marks, his service cannot be regularized.

7. Mr. N. Dutta, learned Sr. counsel submits that reference to the office memorandum dated 17-07-2004 is wholly unnecessary. All that the petitioner seeks is regularization of his service. In view of the fact that on the date of his recruitment and appointment, the petitioner had fulfilled the then prevalent UGC norms and that the subsequent enhancement of UGC norms to minimum 55% marks came into effect from 30-12-1988, the latter would not be applicable to the petitioner. Referring to the case of Md. Saiful Islam Vrs. State of Assam and Ors; reported in (2010) 6 GLR 1, learned Sr. counsel submits that from a perusal of the said judgment rendered by a Division Bench of this Court, it is evident that the Government of Assam had taken a decision that enhanced UGC norms would not be applicable to the existing lecturers who were appointed on or before 15-12-1988. Such Lecturers would be entitled to relaxation of the norms to 52.50% marks in the Master degree. The Division Bench held the fixation of the said cut off date cannot be said to be arbitrary. The Division Bench further noted

that the Government took the decision to give the benefit of UGC scale of pay to those Lecturers who had joined service on or before 15-12-1988. Therefore, he contends that the petitioner having admittedly joined on 10-12-1988, would be entitled to the UGC scale of pay and regularization of his service.

8. On the other hand, Mr. M. R. Pathak, learned standing counsel, Education Department referring to the affidavit of the Director of Higher Education submits that the case of the petitioner would have to be considered in the light of the office memorandum dated 17-07-2004 which does not provide for any relaxation of the existing UGC norms, which is 55% marks in the minimum in Master degree. As the petitioner does not have the minimum marks as prescribed by the UGC, his case was, therefore, rejected by the department.

9. The submissions of the learned counsels have been considered.

10. There is no dispute to the fact that the petitioner was appointed as Lecturer pursuant to a selection process and that he had joined on 10-12-1988. At that time, the prescribed UGC norm was 52.50% marks in Master degree, which the petitioner possessed. As has been noticed by this Court in *Md. Saiful Islam*(supra), the Government had taken a decision to exempt the existing Lecturers appointed on or before 15-12-1988 from the requirement of the higher qualification of having 55% marks in Master degree for grant of UGC scale of pay. If that be so, there can be no justifiable reason to deny the benefit of UGC scale to the petitioner, who had joined prior to 15-12-1988 and possessed the UGC norms prevalent at that point of time.

11. The hurdle, it appears, is because the respondents had considered the case of petitioner on the basis of the office memorandum dated 17-07-2004. As has already been noticed above, the Government of Assam in the Education (Higher) Department had issued the office memorandum dated 17-07-2004 for regularization of the services of the Lecturers working against non-sanctioned posts by way of re-adjustment. As per Clause 4(a) of the said office memorandum, vacant post in a particular department of a college may be allocated in order of seniority to accommodate a teacher of the same college who is working in some other department without a valid sanctioned post, provided such a teacher is appointed by the governing body following due procedure, having the requisite UGC norms.

12. This Court in the judgment and order dated 14-05-2009 referred to above directed the Education Department to prepare a provisional list of such teachers and thereafter to make a final list for their regularization. In terms of such direction, the Director of Higher Education, Assam prepared a provisional list dated 30-12-2009, wherein the name of the petitioner appeared at Sl. No. 1. The relevant particulars of the petitioner as appearing in the said seniority list are as under:

1

Date of advertisement

01-11-1988

2.

Date of Interview

28-11-1988

3.

Date of G.B. Resolution

05-12-1988

4.

Date of appointment

08-12-1988

5.

Date of Joining

10-12-1988

6.

NET/SLET/M. Phil/Ph.D obtained

M. Phil.

7.

Percentage of marks in Master Degree

52.62%

8.

Remarks

No UGC Norms

From the above particulars, it is clear that the petitioner's selection and appointment were prior to 15-12-1988.

13. However, in the final list dated 22-04-2010, the petitioner is excluded. As is evident from the counter affidavit, the reason for such exclusion is that the petitioner does not have the UGC norms as on 17-07-2004, the date of issuance of the office memorandum, on the strength of which regularization was considered by the authorities.

14. A closure look at the said office memorandum dated 17-07-2004, particularly Clause-4(a) thereof, would indicate that the requirement is that appointment

should be against a non-sanctioned post by following the due procedure and having the UGC norms required. In the opinion of the Court, the term "UGC norms required" would mean the UGC norms prevalent as on the date of selection and appointment. In the case of the petitioner, as has already been noticed, he was appointed on 08-12-1988 and joined on 10-12-1988. At that time, the UGC norm was 52.5% minimum marks in Master degree. The petitioner had 52.62% marks in his Master degree. The Government had already taken a decision that the higher norms of having minimum 55% marks in the Master degree would not be made applicable to the existing Lecturers who were appointed on or before 15-12-1988 and they would be entitled to relaxation of the norms to 52.5% marks in Master degree. Similar benefit has already been extended a number of Lecturers similarly placed like the petitioner, which would be evident from the judgment in Md. Saiful Islam(supra) itself.

15. In view of above, this Court is satisfied that the petitioner has made out a case for a direction to the respondents, more particularly the respondent Nos. 1 and 3, to regularize his service as Lecturer of Philosophy in the Bihpuria College, Lakhimpur.

16. Ordered accordingly.

17. Such direction be carried out within a period of two months from the date of receipt of a certified copy of this order. No cost.