

(2012) 02 GAU CK 0134
In the Gauhati High Court
Case No : Writ Petition (C) No. 8526 of 2003

Sri. Jiauddin Ahmed and Others	Vs	APPELLANT
State of Assam and Others		RESPONDENT

Date of Decision : 02-02-2012

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2012) 2 GLD 752

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : A.M. Buzarbaruah, for the Appellant; M.R. Pathak, SC. Edu, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—This writ petition involving 7 (seven) ME School teachers, was filed in the year 2003 and to be precise on 30.9.2003 with the following prayer:

It is therefore prayed that Your Lordships would be pleased to admit this petition, issue a rule, call for the records of the case and calling upon the respondents to show cause as to why a writ in the nature of Mandamus should not be issued directing the respondents to pay the petitioners the graduate scale of pay as payable to the Science teachers of the Middle Schools of Assam i.e. M.E., MV/MEMEM who are graduates by qualification and upon perusal of records and considering the show cause if any and upon hearing the parties he pleased to make the rule absolute and/or pass such further or other order/orders as Your Lordships may deem fit and proper.

According to the petitioners, they being Science graduates, are entitled to get graduate scale of pay for the services being rendered by them as Assistant Teachers in ME Schools as according to them the Science graduate teachers appointed in the ME Schools are entitled to get graduate scale of pay. However, the writ petition does not disclose the source of such authorization to draw

graduate scale of pay by the Science graduate teachers working in the ME Schools.

2. Although, in paragraph 2 of the writ petition, the petitioners have stated that all of them had obtained their graduation in various science subjects during 1980 but as per their own showing in subsequent paragraphs, they have obtained their graduation in the year 1984, 1985, 1987, 1982, 1996, 1986 and 1969 respectively. Initially, they were appointed by the Managing Committees of the respective private Schools in 1985, 1987, 1984, 1993, 1983, 1986 and 1985 respectively. While the services of the petitioners No. 1, 2, 3, 4 & 6 were provincialised vide notification dated 19.11.1991, the services of the petitioners No. 5 & 7 were provincialised in the year 1994 and 1998 respectively.

3. As stated in the writ petition, for appointment as Assistant Teacher in Middle Schools, the minimum qualification required is matriculation. It has been stated that the teachers who take up Science subject, are usually known as Science teacher and their required qualification is B.Sc. In paragraph 6 of the writ petition, the petitioners have stated that the Science Graduate teachers are paid higher salary and accordingly they being Science graduates are also entitled to receive higher salary i.e. the graduate scale of pay. In paragraph 8, it has been stated that the teachers appointed directly after 19.11.1991 in various provincialised Schools., are also being paid their salary in higher scale of pay but for the reasons best known to the authorities, the petitioners, although are Science Graduates, have been deprived of such graduate scale of pay.

4. The respondents have filed two counter affidavits, one dated 13.12.2006 and another dated 21.7.2011. In the first affidavit, it has been stated that the petitioners were appointed by the Managing Committees of the respective School before provincialisation of the said Schools and that their services were provincialised in the intermediate scale of pay against the posts created by the Govt. of Assam in the Education Department in the intermediate scale of pay. Referring to the fact of later creation of some posts of science teachers in the graduate scale of pay for upliftment of science education in upper primary schools, it has been contended, that the petitioners cannot claim to be at par with those teachers, inasmuch as, they were appointed/regularized against the posts created in the intermediate scale of pay. The affidavit also refers to the graduate teachers of other disciplines, namely, Arts and Commerce, who are also working in the ME Schools in the intermediate scale of pay.

5. In the 2nd affidavit filed on 21.7.2011, the fact of creation of 5474 number of post of Science teachers in graduate scale of pay for Middle Schools has been brought on record. Those posts were filled up pursuant to the advertisement issued on 3.9.1991. In the advertisement, the posts were described as science teacher and the educational qualification prescribed was B.Sc with Mathematics. It has been stated that in the affidavit that the Govt. created the said posts of science teachers in the higher (graduate) scale of pay in order to attract Science graduates with Mathematics for appointment in Middle Schools due to up

gradation of Mathematics and Science contents in the curriculum in the Middle Schools.

6. The 2nd affidavit has furnished the details of appointments and provincialisation of the services of the petitioners with the statement that some of the petitioners were regularized as Assistant Teacher in the intermediate scale of pay under the particular scheme of Operation Black Board (OBB). It has been contended that the petitioners having accepted their provincialisation/regularization of their services in the intermediate scale of pay, they cannot turn around from that position and that too after so many years, so as to contend that they are entitled to higher scale of pay (graduate scale of pay), as they are all science graduates. As against the claim of the petitioner No. 6 and for that matter all the petitioners that they are the graduates of 1980, it has been stated in the affidavit that the respondent No. 6 obtained his graduation in science only in the year 1996.

7. In paragraph 13 of the said affidavit, it has been stated thus:-

13. That the Assistant Teachers in the Intermediate Scale of Pay with educational qualification of higher secondary or equivalent and Science Teachers in the Graduate Scale of pay with B.Sc. with Mathematics in Middle Schools are two separate and distinct categories of teachers in Middle Schools. The Petitioners, though B.Sc. were not appointed against the specific 5474 numbers of posts of Science Teachers in the Graduate Scale of Pay in Middle School that were created by the Government with specific intent and objective and further, the services of the Petitioners were provincialised as Assistant Teachers in the Intermediate Scale of Pay which they accepted, as they were appointed by the concerned School Managing Committees much earlier when posts with Graduate Scale did not exist in the Middle Schools. Simply with a B.Sc. Degree and working in Provincialised Middle School as an Assistant Teacher would not entitle an incumbent to receive Graduate Scale of Pay as he or she was not appointed against the post of Science Teacher in the provincialised Middle School.

8. If we go by the aforesaid averments made in the affidavit, the petitioners were never appointed against the posts carrying graduate scale of pay but were appointed against the posts carrying intermediate scale of pay. In reply to the said paragraph 13 of the affidavit, the petitioners have stated thus :-

15. That the averments made in: paragraph 13 are repetitions of the earlier paragraphs and in this respect the averments made in paragraphs 3, 4, 5 and 6 are reiterated. With regard to the averments that the Assistant Teachers in the Intermediate Scale of pay with educational qualification of higher secondary or equivalent and Science Teachers in Graduate scale of pay with B.Sc. with Mathematics in middle schools are two separate and distinct categories of teachers in middle schools it is stated that Assistant Teachers in the intermediate scale with educational qualification of higher secondary or equivalent and teachers serving as Science Teachers and impart education in Science and

Mathematics and having a qualification of B.Sc. are also two separate and distinct categories of teachers in the middle schools. The category of teachers serving as Science Teachers and imparting education in Science and Mathematics and having a qualification of B.Sc and the Science Teachers in Graduate scale of pay with B.Sc. with Mathematics in middle schools are in the same category and there is no intelligible differentia between the two and therefore both the categories are entitled to graduate scale of pay.

9. In the affidavit in reply filed by the petitioners, it has been contended that since the required qualification of a science graduate teacher under Assam Elementary Education (Provincialised) Rules, 1977 is B.Sc, there is requirement of Assistant Teacher with B.Sc degree and consequently the petitioners being B.Sc degree holders, are required to be treated at par with the Science Graduate teachers who were appointed pursuant to the aforesaid advertisement dated 3.9.1991. It has also been contended that for every ME School, there being requirement of a Science Graduate teacher and the petitioners having fulfilled the said requirement, they are entitled to receive graduate scale of pay.

10. Heard Mr. A.M. Buzarbaruah, Learned Counsel for the petitioners as well as Mr. M.R. Pathak, learned Standing Counsel, Education.

11. Projecting it to be a case of discrimination and violation of Article 14 of the Constitution of India, Mr. A.M. Buzarbaruah, Learned Counsel for the petitioner has argued that when it is the established fact that all the petitioners are science graduate teachers and are imparting education in science subjects, as per the policy decision of the Government, they are entitled to receive their salary in the graduate scale of pay at par with those science graduate teachers, who are specifically appointed against those 5474 number of posts pursuant to the advertisement dated 3.9.1991. According to him, even otherwise also and irrespective of the said advertisement and appointment, the petitioners being science graduate teachers are on a different footing than the Arts and Commerce graduates, entitling them to receive graduate scale of pay.

12. Countering the above argument, Mr. M.R. Pathak, learned Standing Counsel, Education, submits that the petitioners having not been appointed as science graduate teachers, they cannot claim higher salary merely on the ground that they are science graduates. He submits that the petitioners having been appointed by the respective Managing Committees of the Schools before provincialisation and there being nothing to indicate that they had been appointed as science teachers; they are not entitled to receive graduate scale of pay, more particularly, when their services were provincialised/regularized against the post carrying intermediate scale of pay. He has also placed reliance on the decision of this Court reported in *Sitangshu Sekhar Das and Another Vs. State of Assam and Others*, , so as to contend that the petitioners cannot claim to be equal to science graduate teachers who were appointed pursuant to the aforesaid advertisement.

13. I have given my anxious consideration to the submissions made by the Learned Counsel for the parties and have also considered the relevant materials available on records.

14. Although, Mr. Buzarbaruah, Learned Counsel for the petitioners has referred to the provisions of Assam Elementary Education (Provincialisation) Act, 1974 and the rules framed there under, namely, the Assam Elementary Education (Provincialisation) Rules, 1977, so as to contend that there is requirement of having a Science Graduate teacher in every ME School but on being asked as to which provision refers to such a condition precedent, nothing could be pointed out. However, he has referred to Rule 3 of the Rules of 1977, which lays down the requisite age and qualification for appointment as Assistant Teacher, Hindi teacher, Arabic teacher, Language teacher and Science Graduate teacher for Which the requirement is B.Sc "from any recognized University. Mr. Fathak, learned Standing Counsel, Education submits that the aforesaid qualification which was brought into effect vide notification dated 10.11.2005 and published in the Assam Gazette Extra Ordinary dated 10.11.2005, has been stuck down by the Division Bench of this Court and has been upheld by the Apex Court in the case of Ranu Hazarika v. State of Assam, reported in (2011) 1 GLT (SC) 52.

15. Irrespective of the aforesaid decision when the provisions of the said Acts and Rules do not indicate that the appointment of Science graduate teacher in ME School is a mandatory condition coupled with the fact that the petitioners were also not appointed as science graduate teacher, they will not be entitled to claim graduate scale of pay on the analogy, that in each one of the ME Schools, there is requirement of science graduate teacher and that they are the only science graduate teachers in the said Schools.

16. When the writ petition was filed in 2003, there was no averment in the writ petition that the petitioners were appointed as science graduate teacher by the respective Managing Committees of the Schools in which they have been serving. Their only stand is that since they are all science graduates, they are entitled to receive graduate scale of pay.

17. As to how the definite plea of the respondents in paragraph 13 of their counter affidavit filed on 21.7.2011 has been dealt with has been referred to above. In paragraph 13 of the said affidavit, it is the categorical stand of the respondents that the services of the petitioners were provincialised as Assistant Teacher in the intermediate scale of pay. It has further been stated that merely because the petitioners are B.Sc. degree holders, the same does not mean that they are entitled to receive graduate scale of pay. It has further been stated that simply with a B.Sc. degree and having worked in provincialised Middle Schools as science teacher would not entitle them to receive graduate scale of pay as he or she has not been appointed as a Science teacher in the provincialised middle school. To this specific plea of the respondents, the petitioners have responded to with the above quoted statement in the affidavit-in-reply. It has not been denied that they were not appointed against any post of science graduate teacher and

that they were appointed upon provincialisation against the post carrying intermediate scale of pay.

18. In *Sitangshu Sekhar Das* (supra), this Court found that the petitioners involved in the said case although graduates, had been appointed to posts carrying intermediate scale of pay. In such circumstances, it was held that they cannot automatically claim the graduate scale of pay. It was found that the petitioners involved in the said case were not appointed against the aforesaid 5474 posts of science teachers and that they were appointed much earlier to creation of the said posts, when the graduate scale did not exist in the ME Schools. Referring to the purport and intent for creation of aforesaid posts, it has been observed that said posts of Science Graduate Teachers of ME School has been created with specific intent and objective and the petitioners cannot claim their entitlement in the graduate scale of pay on the basis of the aforesaid Science Graduate Teachers posts.

19. To be entitled to graduate scale of pay, the petitioners will have to establish that he have been appointed against the posts meant for science graduate teachers carrying graduate scale of pay. As noted above, in the writ petition, there is no whisper that the petitioners had been appointed as Science Graduate Teachers or their services had been provincialised/ regularized against Science Graduate posts. They having been appointed in the intermediate scale of pay, merely because they are all Science graduates that cannot claim higher salary on the basis of their educational qualification irrespective of the posts held by them. There is also no explanation as to why the petitioners have invoked the writ jurisdiction only in 2003, although their services were regularized several years back in intermediate scale of pay. For all the aforesaid reasons, I do not find any merit in the writ petition and accordingly it is dismissed. There shall be no order as to costs.