
(2014) 05 GAU CK 0018
In the Gauhati High Court
Case No : WP(C) No. 6200/2012

Sri Khargeswar Chetia

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision : 21-05-2014

Acts Referred:

Citation : (2014) 05 GAU CK 0018

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : S.K. Singha, Advocate for the Appellant; A. Deka, learned Standing Counsel, Education Department, Mr. B. Gogoi, Mr. N. Bora and Mr. J. Payeng, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Biplab Kumar Sharma, J.—All the writ petitions have been heard analogously and are being disposed of by this common judgment and order.

2. WP(C) NO. 854/2012:-

The challenge in this writ petition is the Annexure-C letter dated 28.12.2011 by which the DEEO, Lakhimpur directed the president Goroimari M.E. School to release the petitioner from the school in which he was shown to have been working as an Assistant Teacher. The fact of the matter is that although the petitioner was appointed in the school (Venture stage) way back in 1986, but he was elected as Ward Member of Ghatapathar GMPC under No. 71 Uttar Dhakuakhana Gaon Panchayat in the year 2008. After remaining in the office of the Ward Member for three years, the petitioner resigned from the Ward Membership by submitting resignation letter and he was released as Ward Member and thereafter rejoined his duty as an Assistant Teacher of the school. However, in view of the impugned letter referred to above, when he was sought to be debarred from attending the school, he approached this Court.

WP(C) NO. 1552/2013:-

The challenge in this writ petition is the list of eligible employees of the Goroimari M.E. School sent for provincialisation of their services, which excluded the name of the petitioner. According to the petitioner, irrespective of his tenure as Ward Member, he having been appointed way back in 1986, he is entitled to get his service provincialised.

WP(C) NO. 6200/2012:-

This 3rd writ petition has been filed by the petitioner for a direction to the respondents to include his name in the list of teaching staff sent for provincialisation of their services. According to the petitioner, he having been appointed in 1986, he is entitled to get his service provincialised being senior to the private respondent.

3. I have heard Mr. S.K. Singha, learned counsel for the petitioner and have also heard Mr. A. Deka, learned Standing Counsel, Education Department. Mr. B. Gogoi, learned Counsel, representing the respondent No. 8 has made his submission while Mr. N. Bora, learned counsel representing the Headmaster of the school made his submission. Mr. J. Payeng, learned counsel has made submission for the School Managing Committee.

4. I have given my anxious consideration to the submissions made by the learned counsels for the parties and have also perused the entire materials on record.

5. From the materials on record, it appears that when the appointments were made in the school by the Managing Committee, in the resolution while the name of the petitioner appeared at Sl. No. 3, that of the respondent No. 8 appeared at Sl. No. 2. While according to the respondents, as per the said seniority position, it is the respondent No. 8, who is senior to the petitioner, but according to the petitioner, he having joined the school one month ahead of the respondent No. 8, he is senior to the said respondent.

6. At this stage, Mr. B. Gogoi, learned counsel representing the respondent No. 8 submits that it was incumbent on the part of the School Managing Committee to issue appointment orders in reference to the resolution instead of delaying issuance of the appointment order in favour of the respondent No. 8. He submits that since the respondent No. 8 had no hand in the delay, his seniority cannot be affected and is required to be decided on the basis of the merit positions indicated in the resolution for appointment of teachers.

7. It appears that the services of the respondent No. 8 has already been provincialised, but because of the interim orders operating in this proceeding, he is yet to receive the benefit thereof. As noted above, the petitioner was elected as Ward Member of the particular Gaon Panchayat in which position he remained for a period of three years as against full tenure of five years. As per the own showing of the petitioner (Annexure-F) representation dated 27.11.2012 made to the District Scrutiny Committee, under the provisions of the Assam Venture

Educational Institution (Provincialisation of Services) Act, 2011, he had tried his luck in the Panchayat Election 2007-2008 and submitted nomination for the post of Ward Member of the particular Gaon Panchayat. As stated in the said representation, he had verbally intimated the Managing Committee about the same. Thereafter, when he got elected, he took oath of office of the Ward Member on 15.03.2008 and continued as Ward Member till he resigned from the said assignment. On perusal of the documents annexed to the writ petition being WP(C) No. 854/2012, it is seen that the resignation tendered by the petitioner as Ward Member was accepted by the Block Development Officer vide letter dated 28.11.2011 (Annexure-B). Upon such acceptance of resignation, he was released from the assignment of Ward Member w.e.f. 28.11.2011.

8. The very fact that the petitioner had to tender resignation from the post of Ward Member and the same was also required to be accepted by the BDO, would go to show that it was altogether a different assignment which the petitioner occupied after the election. He remained away from the school for a period of long three years till such time he had resigned from the Membership of the Gaon Panchayat, which was accepted w.e.f. 28.11.2011. It was only after such acceptance of resignation, he was allowed to rejoin the school as per the resolution adopted in the meeting of the School Managing Committee. It was in such circumstances, the DEEO had issued the impugned communication dated 28.12.2011 directing the school authority to release the petitioner from his service as Assistant Teacher.

9. It was in the aforesaid circumstances, the respondent No. 8 was held to be senior to the petitioner and his service was provincialised. Referring to Rule 7 of the Assam Aided (Middle English School and Middle English Madrassa) (Conduct and Discipline of the Employees) Rules, 1960, the learned counsel for the petitioner submits that the petitioner was entitled to contest the Gaon Panchayat Election and his period of absence from the school is required to be treated as compulsory leave.

10. Rule 7 of the aforesaid Rules of 1960 permits an employee to seek election to legislative body or to hold office of any political organization or local bodies, it is provided that the period would be treated as compulsory leave without pay from the date of filing nomination till the announcement of the results. Depending upon the outcome of the results, an employee is entitled to rejoin his post immediately. In the event of his election, he shall be on compulsory leave without pay from the date of filing nomination till termination of his office to which he has elected. Rule-7 further provides that such elected employee shall be allowed to retain lien on his post for a period not exceeding the full term of the elected body to which the employee is so elected.

11. Referring to the above provision, Mr. Singha, learned counsel for the petitioner submits that the aforesaid period from 2008-2011, during which the petitioner was holding the office of Ward Member of the particular Gaon Panchayat is required to be treated as compulsory leave. The said provision will

have to be understood in the totality of the provision contained in the Rules of 1960. As per Rule-2, no employee shall except with the previous direction of the Director of Public Institution, engage in any trade or calling or accept any private employment, except private tuition subject to a maximum of two hours. Rule-3 provides for discipline. As per the said provision, the appointing authority with the prior approval of the Inspector of Schools or Deputy Inspector of Schools may place an employee under suspension. It also provides for departmental enquiry etc. Rule-4 provides for penalties.

12. In the instant case, as per the own showing of the petitioner, he did not take any prior permission of the appropriate authority to leave the school and/or to contest the election. He submitted his nomination at his sweet will and as per the aforesaid representation, he had verbally intimated the school authority. He remained away from the school holding the office of the Ward Member in the particular Panchayat. Thereafter, in 2011 he resigned from the said office seeking to rejoin the school, which was allowed by the School Managing Committee. It is in this context, the learned counsel for the respondents have submitted that when the aforesaid Act of 2011 gave opportunity of provincialisation of services, the petitioner became wiser so as to leave the post of Ward Member taking a chance for provincialisation of his service. Although the School Managing Committee allowed him to rejoin the duty, but the District Elementary Education Officer by his impugned communication, directed the school authority to debar the petitioner from attending classes, as in the meantime, he was away from the school for a period of three years holding the office of Ward Member pursuant to his election.

13. If for the aforesaid reasons, the respondent No. 8 has been held to be senior to the petitioner, I see no reason to interfere with the same. As regards debarring the petitioner from attending the school etc, the matter is left open to the sound discretion of the respondents.

14. All the writ petitions are disposed of in terms of this Judgment and Order. Interim orders operating in this proceeding, stands vacated. Consequently, the respondent No. 8 will be entitled to get the admissible benefit of provincialisation of his service.