
(2012) 07 GAU CK 0050
In the Gauhati High Court
Case No : W.P (C) No. 3535 of 2012

Sri Pradip Chakravorty

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision : 26-07-2012

Acts Referred:

Citation : (2013) 1 GLD 80 : (2012) 5 GLT 656

Hon'ble Judges : Ujjal Bhuyan, J

Bench : Single Bench

Advocate : S. Borthakur, for the Appellant; M.R. Pathak, Standing Counsel, Education Department, for the Respondent

Judgement

Ujjal Bhuyan

1. Heard Mr. S. Borthakur, learned Counsel for the petitioner as well as Mr. M.R. Pathak, learned Standing Counsel, Education Department. Considering the subject matter of challenge and the order that is proposed to be passed, case is taken up for disposal at the motion stage itself.

2. By way of this petition, petitioner challenges the legality and correctness of the order dated 09-07-2012 passed by the Director of Secondary Education, Assam whereby the petition filed by the petitioner for allowing him to function as in-charge Principal of Dolgama Higher Secondary School, district Goalpara (School) has been rejected.

3. Case of the petitioner is that he is a graduate teacher serving in the school since 01-11-1983. Respondent No. 5 is a post graduate teacher of the school, having joined on 27-09-1986. Therefore, he is senior to the respondent No. 5.

4. Under Rule 12 of the Assam Secondary Education (Provincialised) Service Rules, 2003 (2003 Rules), both post graduate teachers and graduate teachers are eligible for recruitment as Principal in Higher Secondary Schools, which is to be filled up by way of direct recruitment. Rule 24(1) of the 2003 Rules provides

for determination of inter-se-seniority of the teachers of graduate cadre and post graduate cadre based on the criteria mentioned therein.

5. The State Government had initially decided by order dated 29-03-2011 to treat the post graduate teachers as senior to the graduate teachers.

6. When the post of Principal of the school fell vacant due to retirement of the then Principal on attaining the age of superannuation, in view of the then prevailing Government decision, respondent No. 5 was allowed to function as in-charge Principal of the School on 08-02-2012.

7. Subsequently, the State Government by order dated 28-02-2012 withdrew the earlier decision dated 29-03-2011 and obliterated the distinction between the two categories of teachers.

8. In view of change in the Government stance, petitioner submitted a petition for making him the in-charge Principal of the School. As adverted to above, the Director rejected the petitioner's claim by holding that placement of respondent No. 5 as in-charge Principal is only a temporary arrangement, observing that the Directorate is trying to conduct selection for appointment of regular Principals. Further holding that the Government decision is not retrospective but prospective, the Director declined to withdraw the additional charge from the respondent No. 5 observing that frequent change of Principal is not in the interest of the school.

9. Learned Counsel for the petitioner submits that the petitioner is admittedly senior to the respondent No. 5 and the impugned order of the Director is ex-facie illegal, being contrary to Rule 24 (1) of the 2003 Rules and the present Government decision. He therefore submits that the matter should be remanded back to the departmental authority to take a fresh decision in the matter consistent with the Government decision.

10. Learned Standing Counsel does not dispute the legal position. He submits that recently this Court by order dated 23-07-2012 passed in W.P.(C) No. 4817/2011 (Abdul Baten -Vs- State of Assam and others) had remanded a similar matter to the Government for a fresh decision. Similar course of action may be adopted in this case as well, he submits.

11. The submissions advanced have been duly considered.

12. As has been noted, both graduate teachers as well as post graduate teachers are eligible for appointment to the post of Principal of Higher Secondary Schools of the State. Though the State Government had initially taken a decision to treat the post graduate teachers as senior to the graduate teachers, the said decision has since been withdrawn and by a fresh decision, both the two categories of teachers are now treated at par. This aspect of the matter has been taken note of by this Court in the case of Trinayan Ch. Dutta and Others Vs. State of Assam and Others, .

13. The question of retrospectivity or prospectivity of the subsequent Government decision to treat post graduate teachers and graduate teachers at par for the purpose of appointment to the post of Principal or holding of office of Principal of Higher Secondary Schools does not arise. The said decision is only a clarificatory one, clarifying the position as it stood on the date of enactment of the 2003 Rules.

14. It is true that holding of office of Principal on in-charge basis is a temporary measure. But at the same time it cannot be denied that though not a regular posting, holding of office of Principal of a school is an important assignment and carries its own weight. Therefore, seniority cannot be over looked. Even while making officiating arrangement or such other temporary arrangement, seniority cannot be ignored as appointing a junior person as in-charge Principal may have an adverse impact on the school administration and consequently on the academic environment of the school. In fact, the subsequent Government decision itself makes the position clear by stating that it would be applicable to selection of Principal, both on in-charge basis as well as on regular basis.

15. It is true that frequent change of Principal of a school is not desirable but at the same time it must be pointed out that the situation requiring a serving teacher to hold additional charge as Principal of the school has been necessitated by the inability of the State to appoint regular Principal.

16. The question as to who between the petitioner and the respondent No. 5 is senior keeping in mind the provisions of Rule 12(d) and 24(1) of the 2003 Rules for the purpose of appointment of the Principal of the school on in-charge basis is a matter which should be best left to the authority to decide As pointed out by the Standing Counsel, in a case relating to holding of charge of Principal of S Ali Higher Secondary School, Sukchar, district Dhubri, this Court by a recent order dated 23-07-2012 passed in W.P.(C) No. 4817/2011 had relegated the contesting parties to the departmental authority for a fresh decision in the light of the subsequent Government decision.

17. In the circumstances, this Court is of the view that a similar course of action should also be adopted in the present case as the view expressed by the Director is clearly unacceptable as he failed to decide as to who between the petitioner and the respondent No. 5 is senior and consequently as to who has a better claim to hold the office of Principal. Viewed in the above context, the impugned order does not stand to reason and is, therefore, set aside and quashed. The matter would now stand remanded to the Commissioner and Secretary to the Government of Assam, Education (Secondary) Department to reconsider the case of the petitioner for holding the office of the Principal of the School after determining the inter-se seniority of the petitioner and the respondent No. 5. The said exercise shall be carried out within a period of six weeks from the date of receipt of a certified copy of this order after giving due notice to the respondent No. 5.

18. Till the decision is arrived at within the period specified, the present arrangement as on date shall continue.

19. Writ petition stands disposed off. No cost.