

(2008) 09 GAU CK 0034
In the Gauhati High Court

State of Assam and Others

APPELLANT

Vs

Kalpa Ram Deka and Others

RESPONDENT

Date of Decision : 30-09-2008

Acts Referred:

Citation : (2009) 3 GLR 1 : (2009) 5 GLT 787

Hon'ble Judges : Jasti Chelameswar, C.J;Iqbal Ahmed Ansari, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

I.A. Ansari, J.—An advertisement was published in the year 1996, by the Director, Secondary Education, Government of Assam, inviting applications from intending candidates to fill up about one thousand posts of graduate teachers lying vacant, in provincialised High School and High Madrassas, in different districts of Assam. In the advertisement aforeMentioned, the pay-scale of the graduate teachers (Science and Arts) wasMentioned as Rs. 1,375 to 3,375 per month Pursuant to the advertisement, so published, interviews were held in the year 1998 and some select lists were prepared. With effect from 6.12.1999, Government of Assam imposed a complete ban on appointment in various Government Departments including the Department of Education. However, the Government of Assam Education (Secondary) Department, decided, with the approval of the Finance Department, Government of Assam, to lift the ban on appointment of teachers in High Schools as well as Higher Secondary Schools and WT messages were accordingly issued, on 25.3.2001 and 26.3.2001, to the Inspector of Schools of all the districts of Assam with direction to prepare a select list from amongst the candidates, who had already applied pursuant to the advertisement aforeMentioned. By the said WT messages, it was also clarified that the appointments, pursuant to the said WT messages, would be made on a fixed pay of Rs. 2,500 per month. The said WT messages further made it clear that the appointments would be made on the basis of district wise selection list.

2. Claiming that they had appeared in the interviews held pursuant to the

advertisement, which had been published in the year 1996, that they had been duly selected, that their names had appeared in the select lists and that while they were waiting to receive appointments they had come to learn that a number of school teachers, including one Bobita Kalita, had been appointed in a hush-hush manner by the Inspector of Schools, Kamrup, on 31.3.2001, (i.e., the date when the election notification was published), ignoring thereby not only the lists of selected candidates, but also the relevant Rules and norms, the private respondents herein, as writ petitioners, approached this Court with a writ petition, which gave rise to WP(C) No. 6221/2001.

3. The present appellants, as State respondents, while resisting the said writ petition, admitted that the writ petitioners, (i.e., the private respondents in the present appeal), stood selected as Assistant Teachers pursuant to the said advertisement. By its judgment and order, dated 21.8.2002, this Court, in the writ petition aforeMentioned, having considered the respective cases of the parties took the view that though a selected candidate, whose name finds place in a select list, cannot, as of right, claim to be appointed unless the relevant recruitment rules so indicate and that the State is under no obligation to fill up all or any of the posts, which may be lying vacant, it does not mean that State has the licence to act in an arbitrary manner, the State is bound to respect the comparative merit of the candidates as reflected in a recruitment test and no discrimination can be permitted in this regard.

4. Having found that the writ petitioners (i.e., the private respondents in this appeal), had, admittedly, stood selected, on their own merit, in the select list prepared for Kamalpur Legislative Assembly, this Court, in its judgment and order, dated 21.8.2002 aforeMentioned, directed as under:

The State respondents shall ascertain, within a period of 1 (one) month from the date of receipt of a certified copy of this order, as to how many vacancies for filling up the posts of assistant teachers existed during the relevant period aforeMentioned and after so ascertaining the vacancies, the State respondents shall, in respect of such vacancies, issue necessary order(s) appointing assistant teachers out of the select list aforeMentioned in accordance with the merit position of the petitioners subject, however, to the relevant reservation and other connected policies of the Government governing such appointments. The appointments, so directed, shall be made within a period of two months from the date of receiving a certified copy of this order. The petitioners are directed to furnish to the respondents a certified copy of this order for necessary follow-up action.

5. The decision rendered, on 21.8.2002, in WP(C) No. 6221/2001, was never challenged by the present appellants, who were respondents in the said writ petition. Thus, the directions, which were given by the High Court in WP(C) No. 6221/2001, attained finality.

6. Since the private respondents herein, who were petitioners to WP(C) No.

6221/2001 aforeMentioned, were not given appointments, they filed a petition for drawing contempt proceedings against the appellants. This petition gave rise to COP(C) No. 422/2003. During the pendency of the said contempt petition, the private respondents herein were appointed as assistant teachers at a fixed pay of Rs. 2,500 per month.

7. Contending that when the court had held them entitled to be considered for regular appointments and when the State Government had already appointed them as Assistant Teachers, they must be given the pay scale, which they were entitled to, in terms of the said advertisement and the relevant rules, and that the State Government was acting arbitrarily by giving them fixed pay of Rs. 2,500 per month, the private respondents herein filed another writ petition, which gave rise to WP(C) No. 6813/2005. This writ petition was disposed of. on 6.2.2007, with direction to the present appellants to make available to the writ petitioners (i.e., the private respondent in the present appeal) the pay scale of Rs. 1,375 to 3,375 from the month of January 2006, as had been advertised in the year 1996. It is this direction, which stands impugned in the present appeal by the appellants.

8. We have heard Mr. V.M. Thomas, learned Counsel to for the appellants, and Mr. A. Dasgupta, learned Counsel for the private respondents, who were petitioners in WP(C) Nos. 6221/200 and 6813/2005.

9. While considering this appeal, what needs to be pointed out is that the fact that the directions, given by the judgment and order, dated 21.8.2002, passed in WP(C) No. 6221/2001, had attained finality and that the private respondents herein were appointed as Assistant Teachers is not in dispute before us. In such circumstances, it no longer remains open to the present appellants to contend that the private respondents herein were not duly selected candidates. There was, in our firm view, no justification to continue to give the private respondents a fixed pay of Rs. 2,500 per month. When the selection had been made pursuant to the advertisement, published in the year 1996, the private respondents ought to have been given, at least, the pay scale, which the said advertisement hadMentioned.

10. As a matter of fact, the schedule to the Assam Secondary Education (Provincialised) Service (Amendment) Rules, 1991, shows that a graduate teacher of a High School or High Madrassa falls under Grade-IV, whereunder a graduate teacher of a Higher Secondary School too falls. This Schedule, appended to the Rules, also shows than the pay scale of the graduate teacher of a High School or a High Madrassa is same as that of the Assistant Teacher of a Higher Secondary School, the pay scale being Rs. 1,375 to 3,375. When the petitioners were appointed, on regular basis, they ought to have been given the regular pay scale, which had been advertised, namely, Rs. 1,375 to 3,375 per month. Since the private respondents, while claiming regular pay scale, sought for directions commanding the present appellants to make available to the private respondents herein, (i.e., the petitioners in WP(C) Nos. 6221/2001 and

6813/2005) the pay scale of Rs. 1,375 to 3,375 per month and the same has been granted by the learned Single Judge, we find no justification to interfere with the directions given by the learned Single Judge.

11. Because of what have been pointed out above, we find no merit in this appeal. This appeal, therefore, fails and the same shall, accordingly stand dismissed.

12. No order as to costs.