
(1990) 01 GAU CK 0017
In the Gauhati High Court
Case No : Civil Revision No. 133 of 1989

State of Assam

APPELLANT

Vs

Dwarika Prasad Yadav

RESPONDENT

Date of Decision : 05-01-1990

Acts Referred:

Assam Administrative Tribunal Act, 1977 — Section 9, 9
Assam Secondary Education (Provincialisation) Act, 1977 — Section 4(3), 4(3)

Citation : (1990) 2 GLJ 78

Hon'ble Judges : S.K.Homchaudhuri, J

Bench : Single Bench

Advocate : U.Das, S.K.Sen, A.Sharma, Advocates appearing for Parties

Judgement

1. This revision petition under section 115 C. P. C. is directed against the judgment and order dated 7. 3. 83 passed by the learned Assistant District Judge No, 1, Cachar, Silchar in Misc. Appeal No. 45 of 1982 dismissing the appeal filed against the ad interim order of injunction dated 5. 7. 82 passed by the learned Munsiff No 3, Silchar in Misc. Case No. 13/82 arising out of Title Suit No. 154 of 1982.

2. The plaintiff opposite party is an Assistant Teacher working in the D. N. H. F. School, Janarband. The said school had been a Govt. Aided School and was provincialised under the Assam Secondary Education (Provincialisation) Act, 1977 (Act XIX of 1977) hereinafter referred to as "the Act". The plaintiff opposite party however, exercised option to continue in service upto attaining the age of 60 years as provided under subsection (3) of section 4 of the Act. While working as Assistant Teacher in the said provincialised school the opposite party was transferred from his parent school to Badarpur Public High School. The plaintiff opposite party instituted a Title Suit in the Court of learned Munsiff at Silchar, which was numbered as Title Suit No. 154/82. The plaintiff opposite party prayed for a declaration that he was not liable to be transferred from the parent school and that the order of transfer was void and not operative etc. The plaintiff also

filed an application praying for an ad interim injunction not to give effect to the order of transfer till disposal of the Misc. Case No. 13/82 in Title Suit No. 154/82. The learned Munsiff after hearing the parties by the order dated 5. 7. 82, issued temporary injunction as prayed for. Being aggrieved the defendant petitioners filed Misc. Appeal No. 45/82 in the Court of the learned Assistant District Judge, Silchar. The learned Assistant District Judge, Silchar by the impugned order dated 7. 3. 83 upheld the order of temporary injunction and dismissed the appeal. Feeling aggrieved, the defendantpetitioners the State of Assam and others have approached this Court in this revision petition.

3. Mr. U. Das, learned Govt. Advocate has assailed the impugned order on the following grounds(1) after provincialisation of the school by Act XIX of 1977, as per provision of section 3 of the Act, the plaintiffopposite party became a Government employee (civil servant) and, as such, the Title Suit was not maintainable in view of the expressed bar under section 9 of the Assam Administrative Tribunal Act, 1977. Transfer being condition of service, the plaintiffopposite party's grievances was within the exclusive jurisdiction of the Assam Administrative Tribunal ; and (2) after provincialisation of the school, where the plaintiffopposite party was working, he having become a Government employee, under the conditions of service, he was liable to be transferred in other schools. On the aforesaid grounds the learned Government Advocate has submitted that the learned Courts below acted illegally and without jurisdiction in passing the impugned order which are liable to be set aside. Mr. Das has submitted that section 3 of the Act clearly provides that all employees of Secondary Schools after the school is provincialised, shall deemed to be the employee of the Government of Assam with effect from the date of appointment as such, for exercise of option by the plaintiffopposite party under section 4 (3) of the Act to continue in service upto completion of 60 years of age and consequent disentitlement to pension and gratuity, he does not cease to be a State Government employee. Mr. Das has also drawn my attention to the form prescribed in the Rules framed under the Act for exercising option which simply provides the exercise of option to continue to service upto attaining the age of 60 years and to forego pension and gratuity.

4. Mr. S. K. Sen, learned counsel for the plaintiffopposite party on the other hand has submitted that as per provision of section 4 (3) of the Act employees, other than Grade IV employees of the Govt. Aided schools, which came to be provincialised by the Act XIX of 1977, who do not intend to go on superannuation on attaining the age of 58 years and exercise option to continue till the completion of 60 years would be allowed to serve upto the age of 60 years on the same terms and conditions which were applicable to them before the provincialisation and as such, the service Rules and other terms and condition of service applicable to the State Government employees are not applicable to them. That the plaintiffopposite party admittedly having exercised option under section 4 (3) of the Act, his service is governed by the terms and conditions of service which had been governing his service prior to the "appointed day" that

is, the date on which the school was provincialised. The plaintiff opposite party is, therefore, cannot be deemed to be a Government employee. The plaintiff opposite party was not liable to be transferred to any other school under the terms and conditions which had governed his service condition prior to provincialisation of the school and as per section 4 (3) of the Act and having statutory right to serve under the same terms and conditions, he cannot be transferred from that school. The plaintiff is also continuing to get the benefit of Contributory Provident Fund which was one of the conditions of his service before provincialisation. Mr. Sen has submitted that the plaintiff opposite party not being a Government employee, the question of approaching the Assam Administrative Tribunal by him for redressal of his grievances could not and did not arise. The learned counsel has further submitted that assuming but not admitting that the plaintiff opposite party became a Government employee, inasmuch as, (i) section 4 of the Assam Administrative Tribunal Act provides that Assam Administrative Tribunal shall have jurisdiction to entertain and dispose of appeals preferred by civil servants against any order passed by a competent authority in respect of any condition of service, (ii) the "condition of service" referred to in section 4 of the Assam Administrative Tribunal Act has been defined in section 2 (e) thereof exhaustively but "transfer of service" from the place to another has not been included as one of the conditions of service of the civil servant in the said exhaustive definition.

5. Although there is no direct bearing in the case Mr. Sen has however submitted that the Court may take judicial notice of the fact that after provincialisation of almost all Government Aided Secondary Schools by the Act XIX of 1977, the school teachers and other employees who did not opt for continuance of service upto the age of 60 years foregoing their pension and pensionary benefits, have been subjected to transfer and other liabilities, namely, superannuation at the age of 58 years. The benefit of Contributory Provident Fund either to existed also stopped in their cases. But hundreds of teachers and other employees who have been made to retire on attaining the age of 58 years have not been granted regular pension, gratuity and other pensionary benefits on the plea that the relevant rules for granting pension and pensionary benefits have yet to be framed and consequently the retired teachers and other employees, facing starvation are moving from pillar to post for getting pension and their pensionary benefits. Thus, while the Government enforced the liability of transfer, retirement at the age of 58 years on the teachers of the provincialised schools, has not been discharging the obligation to grant pension and pensionary benefits to the retired teachers and other employees.

6. I have considered the submissions made on behalf of the defendant petitioners as well on behalf of the plaintiff opposite party. I have gone through the impugned orders and other materials on records. To appreciate the submissions put forward by the learned counsel appearing on behalf of the petitioner as well as for the opposite party it is apt to quote the relevant provisions of the Assam Act XIX of 1977 as follows :

"Section 3 Employees to be Government Servants : Subject to the provisions of Article 30 of the Constitution of India, on and from the appointed day all employees of all secondary schools in the State of Assam shall be deemed to have become employees of the State Government of Assam with effect from the date of appointment on the following terms and conditions :

(1) All rules including service rules and rules of conduct and discipline which are applicable to Government servants of corresponding ranks shall be applicable to all employees.

(2) All employees shall get such emoluments as salary and allowances as may be prescribed;

Provided, that no employee shall get as emoluments any amount which is less than the amount he was getting immediately before the appointed day.

(3) Service of all the employees shall be encadred in appropriate cadres in accordance with the rules framed by the State Government for this purpose.

(4) The interse seniority of the employees of a cadre or class shall be determined on the basis of principles laid down in the rules framed under this Act.

Section 4. Superannuation and pension etc : (1) Notwithstanding anything in the proceeding section all employees other than Grade IV employees of a secondary school coming within the purview of this Act shall on attaining the age of 58 years, go on superannuation. Grade IV employees shall go on superannuation on attaining the age of 60 years.

(2) All employees going on superannuation under the proceeding subsection shall be eligible to pension or gratuity or both in accordance with the Pension Rules applicable to the Government servants of equivalent rank. In such a case the employee's contribution along with accumulated interest therein made towards the provident fund or the existing employees concerned before such superannuation shall be paid back to and recovered by the State Government of Assam.

(3) Any existing employees, other than the Grade IV employees, who does not intend to go on superannuation on attaining the age of 58 years shall have the option to continue upto the completion of the age of 60 years under the same terms and conditions which were applicable to him before the appointed day in which case he shall not be entitled to any pension or gratuity.

(4) Any existing employee, other than Grade IV employees, who does not intend to go on superannuation on attaining the age of 58 years shall have the option id continue till the completion of 60 years shall give an option in writing to that effect in the manner prescribed within a period of three months from the appointed day. Any existing employee who does not give such option in writing within the date specified above shall be deemed to have opted for going on superannuation on attaining the age of 58 years.

Appointed day" and the date of appointment as appearing in section 3 has been defined in section 2 (i) and 2(ii) of the Act as follows : "2 Definition : In this Act unless there is anything repugnant in the subject or context

(i) "appointed day" in relation to any area means the day on which this Act comes into force in that area, (ii) "date of appointment" means in relation to any employee, the date on which he joined the service of a school imparting Secondary Education on and from the date of its coming under ad hoc system of grantinaid."

7. It is apparent from section 3 of the Act that on and from the date of provincialisation of Secondary Schools all employees of the provincialised Secondary Schools in the State of Assam shall be deemed to have become employees of the State Government of Assam with effect from the date of appointment, and that all rules including the Service Rules and Rules of Discipline and Conduct which are applicable to a Government servant of the corresponding rank shall be applicable to all such employees of the provincialised schools. It is also clear from the provision of section 4(3) of the Act that an employee other than Grade IV employee of a Government Aided School, on provincialisation of schools, if exercised option to continue in service upto completion of 60 years of his age foregoing pension and gratuity even if become a Government employee as per provisions of the section 3 of the Act, has the statutory right to continue to serve upto 60 years on the terms and conditions of service which had been applicable to him before provincialisation of the school. Admittedly, before the provincialisation of the school the plaintiffopposite party had no transfer liability as such he has the prima facie case to claim that the condition of service having no transfer liability has continued to be his statutory right after provincialisation.

8 On the question as to whether the bar under section 9 of the Assam Administrative Tribunal Act applies to suit filed be the plaintiffopposite party, on reading the provision of section 4 with section 2 (e) of the Assam Administrative Tribunal Act, it is difficult to hold that the bar under section 9 of the Assam Administrative Tribunal Act applies in the suit instituted by the plaintiffopposite party.

9. It is really distressing to note that a large number of school teachers and other employees of the provincialised secondary schools who had been made to retire on attaining the age of 58 years has not been granted pension and pensionary benefits for years together on the plea that the rules regulating grant of pension and other pensionary benefits are yet to be framed. Long 12 years passed since Act XIX of 1977 came into force, yet it is not known whether the Government machinery would take initiative for framing rules for giving pension and pensionary benefits to the retired teachers and other employees who have been deprived of the benefits of their Contributory Provident Fund and had been made to retire on attaining the age of 58 years. In our welfare State various schemes for grant of old age pension etc are being considered, but a large number of teachers and employees, who rendered long years service, after their

retirement are yet to get the pension and other pensionary benefit which is denied on the plea that the rules for pension are not yet framed. Provisions of section 3 of the Act clearly stipulates that all employees of the provincialised schools would be deemed to be Government employees with effect from the date of appointment in the Secondary Schools. Section 2 (ii) of the Act defines the "date of appointment". That the date of appointment of the teachers and other employees of the school, is date of appointment on and from which the school came under adhoc system of grantinaid. Section 3 of the Act having clearly provided that all Service Rules will be applicable to the employees of the provincialised school, the Pension Rules applicable to State Government employees will also naturally apply in their case and they will be entitled to get pension and other pensionary benefits as per Pension Rules applicable to other State Government employees as such without framing rules, the retired teachers and other employees of the provincialised schools can be granted pension and pensionary benefits and that total period of qualifying service for the purpose of granting pension and gratuity etc. to the retired employees of the provincialised schools, can clearly be counted from the date of appointment of such employees in the institution under anhoc system of grantinaid or deficit system of grantinaid and case of appointment of any such incumbent in the institution before it came under the adhoc system of grantinaid, from the date the institution came under the adhoc system of grantinaid. It the Government wants to frame the rules for granting pension and pensionary benefit, counting service with effect from the date of original appointment of an employee in the institution whether the institution came under the ad hoc system of grantinaid or not, that benefit can be extended on framing the rules even after grant of pension and other pensionary benefits to the retired teachers and other employees of the provincialised schools under the State Pension Rules under which all Government servant are entitled to get pension and pensionary benefit, counting their service from the date of appointment in the institution under adhoc system of grantinaid or if employed earlier from the date of coming the institution under ad hoc system of grantinaid. The retired teachers and other employees of the provincialised schools cannot be denied pension and other pensionary benefit, which can easily be granted to them as per provisions of the Act itself, on the plea of framing Rules.

10. Although the deprivation of pension and other pensionary benefits to the retired teachers and other employees is not directly involved in this case, since it has pointed out that hundreds of retired teachers an! employees of provincialised Secondary Schools denied pension and other pensionary benefits, in other words are deprived of their means of livelihood arbitrarily on the plea of framing rules, aforesaid observation and clarification has been felt necessary.

11. Reverting to the questions directly involved, for the reasons stated above, I do not find any infirmity in the impugned orders which calls for interference under section 115 C. P. C. by this Court. As such, the petition is without merit and is dismissed with cost of Rs. 500/.