
(2019) 05 GAU CK 0076
In the Gauhati High Court
Case No : Writ Appeal No. 241 Of 2018

Syed Najirul Hussain

APPELLANT

Vs

State Of Assam And Ors

RESPONDENT

Date of Decision : 20-05-2019

Acts Referred:

Assam Secondary Education (Provincialisation) Service Rules, 2003 — Rule 14(4)

Citation : (2019) 05 GAU CK 0076

Hon'ble Judges : A.S. Bopanna, CJ; Arup Kumar Goswami, J

Bench : Division Bench

Advocate : P Mahanta

Final Decision : Disposed Off

Judgement

A.K.Goswami, J

Heard Mr. P. Mahanta, learned counsel for the appellant. Also heard Mr. S.K. Ghosh, learned Standing Counsel, Higher Education Department for Respondents No.1, 2 and 3; and Mr. U.K. Nair, learned senior counsel assisted by Mr. B. Kaushik, learned counsel for Respondent No.4.

This intra-court appeal is directed against the order dated 20.06.2018 passed in I.A. (Civil) No.979/2018, whereby the interim order dated 24.01.2018 passed earlier in the writ petition filed by the appellant was vacated on an application filed by the present Respondent No.4 for alteration/modification/vacation of the interim order, registered as I.A. (Civil) No.979 of 2018.

The Respondent No.4 as well as the appellant had applied pursuant to the advertisement dated 14.5.2015 for the post of Headmaster in Kachari Mahal High School, Madhukuchi, District-Kamrup (R). By an order dated 5.8.2017 issued by the Director of Secondary Education, on the recommendation of the State Selection Board, 44 numbers of teachers were promoted to the post of Headmaster/Superintendent in respect of schools indicated against their names. The Respondent No.4 was appointed as the Headmaster of Kachari Mahal High

School. This order dated 5.8.2017 appointing the Respondent No.4 to the post of Headmaster was the subject matter of challenge in the writ petition instituted by the present appellant. The contention advanced on behalf of the appellant, as would be evident from the impugned order dated 20.6.2018, was that the Respondent No.4 did not fulfill the eligibility criteria as he did not have the teaching experience of 10 years as a graduate teacher as per Rule 14(4) of the Assam Secondary Education (Provincialisation) Service Rules, 2003. It was also contended by the appellant that the Hindi Sikshan Parangat degree acquired by him was not recognized as equivalent to B.Ed. without there being any justification and, therefore, his case was not considered though he was entitled to be considered for the said post.

The learned Single Judge on consideration of the materials on record had opined that Respondent No.4 had the eligibility criteria and taking that view, the interim order passed earlier was vacated.

Mr. P. Mahanta, learned counsel for the appellant has submitted that a perusal of the order would go to show that while the writ petition is pending for disposal, the conclusion, as has been recorded, is in the nature of final conclusion and, therefore, if the same is allowed to stand on record, the appellant will be prejudiced at the time of final hearing of the writ petition. Furthermore, it is his contention that the conclusion that has been recorded is not borne out of record and, therefore, the writ appeal deserves to be allowed.

On the other hand, Mr. U.K. Nair, learned senior counsel for Respondent No.4 submits that the materials on record unequivocally demonstrate that Respondent No.4, as recorded by the learned Single Judge, had the teaching experience of more than 11 years as graduate teacher and, therefore, when Respondent No.4 is continuing to discharge his duties as Headmaster for more than one year, no case is made out for interference in this writ appeal.

Mr. S.K.Ghosh, learned Standing Counsel, Higher Education Department also endorses the submission made by Mr. U.K. Nair, learned senior counsel for Respondent No.4.

When the writ petition is pending for consideration, we do not consider it appropriate to advert to the contentions advanced by the learned counsel for the parties at this stage. Having noticed that the Respondent No.4 is continuing in his post for the last almost one year, we do not consider it appropriate to interfere with the impugned order in the writ appeal of the present nature.

When any finding is recorded while considering an interim application, it goes without saying that the same is tentative and prima facie in nature and the ultimate decision will be based on a full scale hearing to be accorded to the learned counsel for the parties.

Having said that, we find from a perusal of the order that there is some justification in the apprehension expressed by Mr. Mahanta, learned counsel for

the appellant that the conclusion can be construed as a final conclusion in the matter in issue. Accordingly, we record that the conclusion indicated in the impugned order is tentative and prima facie in nature and the same will have no bearing in the final decision of the writ petition.

With the above observation and direction, the writ appeal stands disposed of.