

(2007) 03 GAU CK 0041
In the Gauhati High Court

Tapan Kr. Das and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 01-03-2007

Acts Referred:

Citation : (2008) 3 GLT 234

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Judgement

Ranjan Gogoi, J.—All these cases being inter connected were heard together and are being disposed of by this common judgment and order.

2. The petitioners in all the cases under consideration claim to be dropped teachers of L.P., M.E. and High Schools of the State of Assam. Dropped teachers have been understood to be those who were appointed/engaged prior to provincialisation of the schools but whose services were not provincialised but were dropped. This Court had earlier dealt with the rights of such dropped teachers in a group of about 30 writ petitions i.e. Civil Rule No. 1571/1998 and other connected cases. All the aforesaid cases were disposed of by this Court by judgment and order dated 01.9.2003 directing consideration of all such cases by a Court appointed committee in the light of the eligibility norms spelt out by the Govt., order dated 13.1.2003 which was, to some extent, modified by the Court by its aforesaid order dated 1.9.2003. All persons found eligible were to be regularized in substantive vacancies in a phased manner.

3. The present writ petitions have been filed to contend that notwithstanding the order dated 1.9.2003 passed by this Court in Civil Rule No. 1571/1998 and other connected cases the entitlement of the petitioners have not been finalized. Instead, an advertisement 6.12.2005 has been issued in the newspapers inviting applications for filling up the vacant posts of High, L.P. and M.E. Schools.

4. The short projections in the writ petitions are to the effect that the entitlement of the writ petitioners to regularization in accordance with the earlier order of

this Court should be finalized and pending such finalization if appointments are to be made pursuant to the advertisement issued a situation may develop where no further posts will be available thereby disentitling the eligible persons to appointment though they may be found entitled to such appointment.

5. Sri. M.K. Choudhury, learned Senior Counsel appearing on behalf of the department, has submitted that pursuant to the order of this Court dated 1.9.2003 passed in Civil Rule No. 1571/1998, a high power committee was constituted to examine the cases of all dropped teachers in the State. Public notices were issued in the newspapers inviting eligible candidates to submit their particulars to the designated authority for due verification and consideration. According to Sri Choudhury, the high power committee, in turn, constituted a screening committee to scrutinize the cases of all eligible persons on the basis of the documents made available Sri Choudhury has further submitted that most of the incumbents, if not all, were given personal hearing also. Thereafter, the high power committee had prepared a report for submission to the State Govt., for its acceptance. However, in view of the pendency of the present cases, the State Govt., according to Sri Choudhury, had thought it proper to defer accord of its approval or otherwise to the recommendations of the high power committee until appropriate leave is granted by the Court.

6. Sri Choudhury, learned departmental counsel, has also placed before the Court the report of the high power committee which is in two parts. A consideration of the said report as placed before the Court would go to show that in so far as High Schools are concerned 608 cases of dropped teachers were considered by the committee out of whom 346 teachers have been found eligible. In so far as M.E. schools are concerned the report goes on to indicate that out of 778 cases considered only 93 cases were recommended. However, according to the high power committee, though 271 cases of L.P. School teachers were considered none could be recommended for regularization because in so far as L.P. schools are concerned there can be no dropped teachers. The reasons for aforesaid view taken are as evident from the report of the high power committee and the same will be dealt with at a later stage. Sri Choudhury has further submitted that it has been decided by the Govt., that 5% of the vacancies advertised by the notice dated 6.12.2005, have been earmarked by the Govt., for being filled up from the category of dropped teachers.

7. The facts noticed above have reduced the dimensions of the case to extremely constrained limits. In so far as High and Middle Schools of the State are concerned the high power committee, on due examination, has found 346 and 93 teachers eligible to claim themselves as dropped teachers and therefore entitled to regularisation in accordance with the Govt., policy decision dated 11.1.2003 and the order of the Court dated 01.9.2003 passed in Civil Rule No. 1571 of 1998. If that be so, this Court finds no impediment in granting leave if, at all, any such leave is required, to enable the Govt., to consider the report of the high power committee and take its own decision in the matter. The Govt., upon

consideration of the said report, if it agrees with the same, will notify the names of the persons found eligible in two leading newspapers, one of which will be a vernacular paper. As 5% of the advertised vacancies are stated to be available and the number of such vacancies will be more or less adequate to regularise the persons found eligible in the report of the high power committee as may be approved by the State Govt., the Court directs that such appointments may be made by the Govt., if it is so desired. In doing so the Court goes by the clear stand taken by the State that presently there is need for appointment of teachers. The persons who have not been found eligible as dropped teachers by the high power committee whose names will be self evident from the list directed to be published in the newspapers, are left with the option of seeking their remedies in law, if so advised.

8. The High Power Committee has taken the view that unlike M.E and High Schools, who were required to submit a list of teachers who were working along with the student population which provided a rational and objective basis for determination of the actual need of the teaching staff of the school which, in turn, facilitated identification of the dropped teachers there was no such requirement in the case of L.P. school teachers. An argument has been offered by Sri Choudhury, learned departmental counsel, that a L.P. School in the absence of any such requirement, may have recruited a large number of teachers out of whom only a few were really necessary. Are all such other teachers to be understood as dropped teachers because their services were not provincialised at the initial stage? Mr. Choudhury has also drawn the attention of the Court to the specific finding recorded by the high power committee that at the time of provincialisation of L.P. Schools posts were sanctioned on the basis of need, performance and seniority and that whatever number of posts that were required in terms of the student population were sanctioned.

9. The facts stated above, if they are correct, may sustain the views recorded by the high power committee with regard to L.P. school teachers. However, the said facts have to be supported by requisite evidence, after necessary enquiry in that light had been made. In this regard the Court has looked into Part-II of the report of the high power committee which is a compilation of the basic facts collected by the screening committee. In none of the compilations recorded upon enquiry by the screening committee there is any evidence of the fact that any such exercise was performed by the said committee. It is the considered view of the Court that in case of L.P. School what was really required to be determined is the student-teacher ratio at the time when provincialisation was made and to sanction that many posts of teachers that stood justified on the basis of the student population. If there were need for more teachers and yet lesser posts were sanctioned, the teachers already working, in order of seniority, to the extent of the posts necessary will be dropped teachers. As the aforesaid exercise does not appear to have been performed by the high power committee I am of the view that the said committee should be required to perform the task once again in so far L.P. schools are concerned.

With the above observations and directions all these writ petitions shall stand disposed of with the further direction that necessary and consequential action in terms of the present order will be initiated and completed by all concerned.