

(2008) 04 GAU CK 0044

In the Gauhati High Court

Case No : Writ Appeal No. 896 of 2007 & 44 of 2008

Th.Lokendra Singh & Anr.

APPELLANT

Vs

State of Manipur & Ors.

RESPONDENT

Date of Decision : 17-04-2008

Acts Referred:

Citation : (2012) 3 GLT 897

Hon'ble Judges : Maibam Binoy Kumar Singh, J and B.D.Agarwal, J

Bench : Division Bench

Advocate : Advocate appeared for the Petitioners: Mr. Kh. Tarunkumar??
Advocates appeared for the Respondents: Mr. Rosni Piba , Mr. R.S. Reisang,
Addl.GA, Advocates appearing for Parties

Judgement

B.D. Agarwal, J.—This writ appeal is directed against the judgment and order dated 13.03.2008 passed by a learned Single Judge of this Court in Writ Petition (C) No. 896 of 2007. By this impugned judgment, the learned Single Judge has set aside the impugned order dated 27.11.2007 issued by the Joint Secretary, Higher Education, Government of Manipur effecting transfer of three teachers including the appellant and the respondents. Being aggrieved with this order, one of the respondents has preferred this appeal.

2. We have heard Shri Kh. Tarunkumar, learned counsel for the appellant and Shri Rosni Piba, learned counsel for the private respondent No. 1. The State respondents were represented by Shri R.S. Reisang, learned Addl. Government Advocate. We have also perused the impugned order and the pleading of the parties filed in the writ petition.

3. Brief facts of the case are that by the impugned order dated 27.11.2007, the appellant was transferred from the Oriental College, Imphal to Imphal College in the same capacity i.e. Principal incharge. Consequent to his transfer, the respondent No. 1 Dr. T. Thoiba Singh was appointed as Officer on Special Duty (OSD) in the Directorate of Higher Education, Manipur and the previous incumbent of OSD, i.e., Smt. Y. Sumati Devi was appointed as Principalincharge

of Oriental College. The respondent No. 1 challenged the transfer order basically on the ground that he is holding Ph.D degree and well qualified to be appointed as a Principal of a Government college in regular capacity. He ought not to have been shifted in an administrative office where he will have no scope to engage in teaching and research works. According to the respondent/writ petitioner, he was supervising research works of as many as six research scholars and due to his transfer as OSD, further research works of the scholars will be affected. The transfer order was also challenged on the ground that the post of OSD is out the cadre of teaching post and he was transferred to noncadre post without obtaining his consent. The grounds taken by the writ petitioner found favour with the learned Single Judge and the impugned order has been set aside.

4. From the impugned judgment, we find that the impugned transfer order has been set aside on the grounds pleaded by the writ petitioner as well as taking into consideration that the Government of Manipur has substituted the previous Recruitment Rules of Principals of Government Colleges by publishing a new recruitment rules in the year 2002. One of the essential qualification for appointment of principal of a Government college is that such incumbent should possess Master degree with at least 55% marks and candidates must have done Ph.D. or possess equivalent qualifications and he should also have 10 years teaching experience. The learned Single Judge has observed in the impugned judgment that since the private respondents did not possess the qualification laid down in the 2002 recruitment rules, transfer of respondent No. 3/the appellant as Principal incharge of Imphal College was against the recruitment rules. Learned Single Judge has also disapproved the transfer of writ petitioner from teaching post to administrative post i.e. OSD without consent since it is not a cadre post.

5. During the course of argument, Shri Tarunkumar, learned counsel for the appellant submitted although it was pleaded in the affidavit in opposition that the appellant was possessing requisite qualification for being appointed as the Principal of a Government college as per the previous recruitment rules, the learned Single Judge has set aside the transfer order on extraneous consideration. In other words, it was the contention of the learned counsel for the appellant that the appellant was officiating the office of Principal of a Government college since prior to the enactment of recruitment rules in the year 2002 as per the UGC norms. Besides this, the vacancy of the post of Principal also arose before coming into force of the new rules and as such, setting aside of the transfer order on the basis of new rules is unsustainable in law.

6. We have given our anxious thought to the submissions made by the learned counsel for the appellant. In our considered opinion, the observations made by the learned Single Judge that the transfer order was not consistent with the Recruitment Rules of 2002 can be termed as obiter dicta remarks since the issue was not dealt with at length adverting to the eligibility of the respondent No. 3/appellant to the post of Principal.

7. Even if the aforesaid ground is left out of consideration, the impugned transfer order has been rightly interfered with by the learned Single Judge inasmuch as there is no dispute that the post of OSD is outside the cadre recruitment rules of Principal of Government colleges. In such an eventuality, it would have been proper for the Government to obtain consent or No Objection from the writ petitioner. On this ground alone, the transfer order is not sustainable in law. Consequently, we do not find any merit in the appeal and the same is hereby dismissed.

8. As noted earlier, one Smt. Y. Sumati Devi has been appointed as Principal in charge of Oriental College and as stated by the learned counsel for the appellant, the said lady has already taken over the charge of the office of the Principal of the college. In other words, it was the submission of the learned counsel that if the transfer order is set aside, there will be practical difficulty regarding posting of the appellant, namely, Shri Th. Lokendra Singh. In our considered opinion, the Government may issue a fresh order to fill up the post of OSD in the Higher Education Department by bringing any other suitable candidate after obtaining his/her option as well as by posting the appellant to any other appropriate college.

9. We reiterate that the respondent No. 1, namely, Dr. T. Thoiba Singh, shall be reverted back to the post of Principal in charge at Imphal College until the post is filled up on regular basis or till any fresh transfer order is passed by the competent authority.