
(2012) 03 GAU CK 0006

In the Gauhati High Court

Case No : Writ Petition (C) No. 5389 and 5876 of 2010, 4836, 5010, 4922, 5656, 2161, 3377, 2501, 4084, 6479, 3672, 5443, 5460, 3921, 1059, 5934, 148 and 1391 of 2011, 392, 425, 761, 46 and 445 of 2012

Trinayan Ch. Dutta and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 21-03-2012

Acts Referred:

Citation : (2012) 3 GLD 436 : (2012) 2 GLT 1086

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : D. Borgohain, Mr. D. Borah, Mr. P.P. Baruah, Mr. J. Chutiya, Mr. B.C. Das. Mr. P.J. Saikia, Mr. M.U. Mahmud, Mr. D.A. Kaiyum, Mr. Y.K. Phukan, Mr. R. De, Dr. B. Ahmed, Mr. M. Choudhury, Mr. A. M. Buzarbaruah and Mr. D.P. Borah, for the Appellant; U.K. Goswami, SC, Mr. S. Banki, SC, KAAC, Ms. M. Bordoloi, SC, BTC, Mr. I. Hussain, B. Buragohain, J. Roy, Dr. Y. K. Phukan, U. K. Nair, N. Rajkhowa, Z. Rahman, S. Chouhan, S.K. Medhi, Ms. P. Barman, D.P. Borah and Mr. M.R. Pathak, for the Respondent

Final Decision : Allowed

Judgement

B.K. Sharma, J.—Heard the learned counsel for the parties involved in this batch of writ petitions. Since the issue raised is one and the same, all the writ petitions have been heard together and are being disposed of by this common judgment and order. For convenience the facts of W.P. (C) No. 4836/2011 have been considered. The petitioner involved in this writ petition is aggrieved by order dated 09.09.2011 (Annexure-6) by which the Director of Secondary Education, Assam has allowed the respondent No. 4 to hold the charge of Principal of the Higher Secondary School in question. According to the petitioner, he being senior to the respondent No. 4, the charge of the Principal ought to have been given to him instead of giving the same to the respondent No. 4. In this connection, the petitioner has referred to Annexure-5 Gradation list prepared by the Principal of the school in which the name of the petitioner appears at serial No. 2, while that

of the respondent No. 4 appears at serial No. 6.

2. While there is no dispute that as per the date of joining the service in the Graduate cadre the petitioner is senior to the respondent No. 4, the respondent No. 4 and the official respondents have contended that since the cadre of Post Graduate teacher is higher than that of the cadre of Graduate teacher, irrespective of the date of joining the service as Graduate teacher, the Post Graduate teacher will score a march over the Graduate teacher in the matter of promotion including holding the charge of higher post.

3. In the counter affidavit filed by the official respondents through the Director of Secondary Education, Assam, it has been contended that since the Post Graduate teachers are in higher cadre than that of Graduate teachers, the said Post Graduate teacher will always rank senior to the Graduate teacher. In this connection, the Director of Secondary Education has referred to the speaking order dated 29.03.2011 passed by the Commissioner and Secretary to the Government of Assam in the Education (Secondary) Department by which seniority in respect of two teachers has been determined on the basis of the above analogy.

4. In all the writ petitions the issue raised is as to whether in view of the provisions of Assam Secondary Education (Provincialised) Services Rules, 2003, irrespective of the cadre to which the incumbents belong to, i.e. the Post Graduate teacher and the Graduate teacher, their seniority would be determined on the basis of the length of service.

5. Rule 12 of the said Rules of 2003 dealing with recruitment of Principal in Higher Secondary/Higher Secondary & Multipurpose School and qualification thereof has provided that the post of Principal shall be filled up from amongst the candidates having at least 15 years teaching experience as Post Graduate teacher and 17 years teaching experience as Graduate teacher. Thus the feeder cadres for promotion to the post of Principal have been identified as the common cadre of Post Graduate Teacher and Graduate teacher, meaning thereby that the teachers belonging to the both cadres are eligible for promotion to the post of Principal subject to fulfillment of minimum educational qualification and requirement of respective length of service which is 15 years and 17 years.

6. In view of the above provision it is the plea of the Graduate teachers that since the teachers belonging to both the cadres are eligible for the post of Principal, while giving the charge of Principal the Graduate teacher cannot be discriminated on the ground that the Post Graduate teacher is a higher cadre.

7. The above aspect of the matter has been dealt with by the Government of Assam in the Education (Secondary) Department by passing a speaking order dated 28.02.2012. Mr. U.K. Goswami, learned SC, Education Department submits that in view of the said order dated 28.02.2012, the issue raised in all the writ petitions has now been settled. For a ready reference, the said order dated 28.02.2012 is quoted below:

GOVERNMENT OF ASSAM EDUCATION (SECONDARY)

DEPARTMENT, DISPUR, GUWAHATI-06

No. ASE 157/2011/85 Dated Dispur the

28th February, 2012

ORDERS

Read : Order passed by the then Commissioner and Secretary, Education (Sec) Department, vide No. ASE 157/2011/49 dated 29th March, 2011 and No. ASE 481 /2009/58 dated 27th September, 2011.

Read also : Report submitted by the Director of Secondary Education, Assam vide letter No. DSE/Court Cell/2/2011/26 dated 2nd February, 2012

Findings : It appears that in the order passed by the then Commissioner and Secretary, Education (Sec) Department vide No. ASE 157/ 2011 /49 dated 29th March, 2011 it has been held that a Post Graduate Teacher who belongs to Grade-11 is senior to a Graduate Teacher who belongs to Grade-II as per provision of the Assam Secondary Education (Provincialised) Service Rules, 2003 and accordingly, a Post Graduate Teacher deserves preferential treatment for holding a higher post of Principal of the Higher Secondary School either on in-charge or regular basis. The aforesaid speaking order goes against the provisions of Rule 12(d) of the Assam Secondary Education (Provincialised) Service Rules, 2003 wherein it has been provided the provision of selection Principal from amongst the Post Graduate Teacher having teaching experience for 15 years and the Graduate Teachers having teaching experience for 17 years. Consequently, this order has deprived the deserving Graduate Teachers from their legitimate due.

Order : After careful examination of all other aspects, the Governor of Assam is pleased to decide that the existing provisions under Rule 12(d) of the Assam Secondary Education (Provincialised) Service Rules, 2003 for selection of Principal of the Higher Secondary School either on in-charge or regular basis shall continue to be in force and orders accordingly.

This shall come into force with immediate effect.

Sd/-

Secretary to the Government of Assam

Education (Secondary) Department

Dated Dispur the 28th February, 2012

8. By the aforesaid order it has been held that as per the provision of Rule 12(d) of the Assam Secondary Education (Provincialised) Services Rules, 2003, for selection of Principal of Higher Secondary Schools either on in-charge or regular

basis, the teachers belonging to both the cadres shall be eligible. Thus the earlier distinction made between the teachers belonging to said two cadres, i.e. the Post Graduate teacher and Graduate teacher, has been done away with. In other words, the teachers belonging to both the cadres have been treated at par for the purpose of promotion to the post of Principal either temporary or regular basis.

9. Since by the said order dated 28.02.2012 the grievance raised by the petitioners involved in this batch of writ petitions has been redressed, all the writ petitions stand disposed of in terms of the said order. Consequently, the impugned orders by which irrespective of seniority, the Post Graduate teacher have been given the charge of Principal, stand set aside and quashed. The respondents shall take necessary follow up action in terms of the their own order dated 28.02.2012 as quoted above.

10. At this stage, learned counsel for the parties submit that the process for regular selection of Principal/Headmaster may now be initiated by the respondents in accordance with law. Needless to say that it is always advisable to appoint Principal/Headmaster on regular basis instead of managing the affairs on adhocism. The respondents may do the needful in this regard. All the writ petitions are disposed of.