
(2018) 04 GAU CK 0035
In the Gauhati High Court
Case No : WA 161 of 2017

WASHIM ARIF

APPELLANT

Vs

THE STATE OF ASSAM and 2 ORS

RESPONDENT

Date of Decision : 04-04-2018

Acts Referred:

Citation : (2018) 04 GAU CK 0035

Hon'ble Judges : AJIT SINGH C.J, MANOJIT BHUYAN

Bench : Division Bench

Final Decision : Dismissed

Judgement

Manojit Bhuyan, J

1. Heard Mr. M.K. Choudhury, learned Senior Counsel for the appellant as well as Ms. R. Choudhury, learned counsel representing Respondent Nos.1

and 2. Also heard Mr. S. Borthakur, learned counsel representing Respondent No.3.

2. This intra-Court appeal is directed against the order dated 24.04.2017 dismissing WP(C) 2320/2017 filed by the appellant.

3. Challenge in the said writ petition was to the Notice dated 31.03.2017 of the Director of Higher Education, Assam allocating 272 posts of Assistant

Professors in various colleges for Advertisement towards filling up the posts. In so far as Ratnapith College at Chapar is concerned, certain posts

including one post of Political Science, were also allocated for the purpose of Advertisement. The said Notice dated 31.03.2017 was contended to be

bad in law on ground that while allocating one post of Political Science for Advertisement, the legitimate entitlement of the appellant for getting the

benefit of adjustment against a sanctioned post as per Office Memorandum dated

17.07.2004 was not taken into consideration. According to the appellant, he had joined as Lecturer in the Political Science Department at Ratnapith College, Chapar on 04.09.2004 against a non-sanctioned post.

4. The learned Single Judge held that the appellant cannot claim the benefit of the Office Memorandum dated 17.07.2004 and, in this respect, also

referred to the Full Bench decision of this Court in the case of Mizanor Rahman and Ors. vs. State of Assam, reported in 2012 (1) GLT 520.

5. A perusal of the Office Memorandum dated 17.07.2004 shows that the same was issued by the Government of Assam in the Education (Higher)

Department as a one-time measure for regularizing the services of more than 300 college teachers who were found to be serving in different degree

colleges under the deficit system of grants-in-aid since the year 1989 against non-sanctioned posts. By the said Office Memorandum, the

procedure/modalities were prescribed for adjustment of the services of identified college teachers working without sanctioned posts. The said Office

Memorandum was purpose-specific and once the objective of the Office Memorandum was achieved, another Office Memorandum dated 12.10.2004

was issued stipulating that no College under the deficit grants-in-aid system should engage any person as a Lecturer where no sanctioned post exists

for the purpose.

6. In Mizanor Rahman (supra), a Full Bench of this Court have considered the rationale for issuance of the said Office Memorandum dated

17.07.2004. It is seen that the same was issued to address the problem of an identified group of Lecturers working against non-sanctioned posts as a

one-time measure. This Office Memorandum was issued pursuant to a Cabinet Memorandum dated 25.03.2004, followed by approval of the Cabinet

on 09.06.2004. The Full Bench held that those Lecturers whose cases were not under consideration at the time when the Cabinet decision was taken

on 09.06.2004, they cannot claim the benefit of the Office Memorandum, in as much as, the procedure of regularization envisaged in the Office

Memorandum was intended to take care of only about 300 identified college Lecturers and not those who were subsequently appointed after

17.07.2004.

7. Having noticed the Office Memorandum dated 17.07.2004 and the Full Bench decision of this Court and also having regard to the admitted position

that the appellant was appointed as Lecturer against non-sanctioned post at Ratnapith College on 04.09.2004, as such his claim for deriving benefit from the Office Memorandum dated 17.07.2004 is without any basis and/or substance.

8. As a last ditch effort, the appellant have brought to notice three orders of regularization in respect of 3 persons i.e. Ms. Diptimani Goswami,

Jamanur Rahman and Dr. Namita Das (at page 23, 103 and 107 of the Memo of Appeal), to say that these three persons are similarly situated as that

of the appellant, in that, they were also appointed as Lecturers against non-sanctioned posts in respective colleges after 17.07.2004. Contention made

is that the appellant is entitled to similar benefit. We are afraid that the contention put forth cannot be entertained as the same, if allowed, would stand

contrary to the directions made by the Full Bench of this Court in Mizanor Rahman (supra). This Court will, at all times, shy away from perpetuating

an illegality.

9. For the discussions and findings above, we find no infirmity in the order of the learned Single Judge. The present appeal being devoid of merits,

stands accordingly dismissed, however, without any order as to cost.