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(2000) 12 GAU CK 0007

Gauhati High Court

Case No: Civil Rule No. 5567 of 1995

Bimen Bordoloi		APPELLANT
	Vs	
State of Assam and Others		RESPONDENT

Date of Decision: Dec. 11, 2000

Citation: (2001) 2 GLT 108

Hon'ble Judges: P.G. Agarwal, J

Bench: Single Bench

Advocate: Y.K. Phukan, D. Das, H.K Mahnata, B.N. Sarma and M. Sarma, for the Appellant; V.M. Thomas, for the Respondent

Judgement

P.G. Agarwal, J.
Heard Dr. Y K Phukan, learned counsel for the petitioner and Mr. VM Thomas, learned counsel for the respondent Nos. 5 and 6.

2. The petitioner Shri Rimen Bordoloi was initially appointed as lecturer in the department of Zoology at Sibsagar College for a period of 3 months w.e.f. 19.1.1990 on consolidated pay. The said temporary appointment was extended from time to time and while he was working, he was appointed as a temporary lecturer to fill up a lien vacancy upto 12.6.1991 on approved scale of pay subject to the approval of D.P.I. Thereafter, the Inspector of Colleges approved the appointment of the petitioner on a Hen vacancy from 13.6.1991 to 12.6.1992. The said vacancy arose when Dr. SP Biswas, Professor in the department of Zoology opted to proceed to Dibrugarh University. Later on, Dr. Biswas informed the authority that he is not returning back. After expiry of the said appointment, petitioner was again appointed as temporary lecturer with effect from 16.12.1992 (Annexure-7 to the writ petition). In the meantime, when permanent vacancy arose in the department of Zoology in Sibsagar College, applications were invited for the post. The petitioner and other candidates duly submitted applications and interview was scheduled to be held on 3.11.1993 to 5.11.1993. The petitioner, in the meantime, submitted representations

before the Secretary to the Government of Assam, Education Department claiming that he is working in the College and his appointment was approved and as such the said advertisement be cancelled and service of the petitioner should be regularised. The petitioner also approached this Court in Civil Rule No. 422/1994. This Court directed the respondent state to dispose of the representation. Thereafter, the application of the petitioner was disposed of. The Commissioner Education Department ordered that the petitioner be appointed as Lecturer in Zoology Department at Sibsagar College, however, that order was not complied with and the respondent Governing Body of the Sibsagar College proposed to proceed with the appointment on regular basis. Hence, the present writ petition.

3. The case of the respondent Sibsagar College is that as per existing rules governing appointment of Lecturer in Government aided college, the Governing Body of the College is required to invite applications for the post and thereafter, a Selection Committee is constituted and the Selection Committee processes the matter and after interview etc. a panel list is recommended to the Governing Body. The Governing Body, thereafter, considers the recommendation of the Selection Committee and forwarded the list of the candidates to the Director, Public Instruction, who approves the appointment. No appointment of the lecturer in the College is permissible without approval of the concerned competent authority. According to the respondent, the initial appointment of the petitioner was against a lien vacancy which expired on 12.6.1992. Approval given by the authority was also till that date and the permanent vacancy of the department arose afterwards only and thereafter, respondent is required to invite applications under the rules inviting application, the Government has no authority to cancel the interview or direct appointment of the petitioner.

4. In this case, there is no dispute at the bar that the petitioner was not selected against the permanent vacancy. As a matter of fact, the process of selection was stopped by the Education Department of the State Government in a cavalier fashion. They have no authority under the rules to do so. Dr. Phukan submits that as the petitioner was appointed against the lien vacancy for one year and his appointment was approved by D.P.I., no fresh selection process should be required. I hardly find any force in the above submission. When the post was advertised for lien vacancy for a period of one year only, eligible candidates may not have applied for the post as they were not interested for short-term appointment. There is nothing to say that there was any declaration that the post may/will continue after expiry of one year. When the post fell vacant permanently, advertisement was made as per rules and even the petitioner did apply for the post along with other eligible candidates, there is hardly any basis for regularisation of the petitioner''s services on the basis of his ad hoc appointment. In the earlier letters providing for ad hoc appointment, it was specially mentioned that the petitioner has to be selected by the State Selection Board and appointment will be governed by existing rules and regulations of the College. It is nowhere provided in the Rules that ad hoc appointee is exempted from

participating in the selection process and his services is required to be regularised. It is, therefore, held that the Government''s direction for appointing the petitioner to the post of Lecturer, Zoology in Sibsagar College was issued without jurisdiction and has got no legal force and the same stands set aside.

5. The post of Lecturer, Zoology in Sibsagar College is required to be filled up as per provisions of the Rules. Mr. VM Thomas has submitted that earlier advertisement was made 5/6 years back and as such the College may be allowed to make fresh advertisement. The respondent College is directed to proceed with the selection and make fresh advertisement. The entire process should be completed within a period of 4(four) months. The petitioner is entitled to participate in the said selection. In case the petitioner is found to be over aged, necessary relaxation be given as regards his age considering the facts and circumstances of the case.