

(2002) 12 GAU CK 0021

Gauhati High Court

Case No: Writ Petition (C) No. 2872 of 1999

Dr. Nirmali Deka

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision: Dec. 20, 2002**Acts Referred:**

- Assam Aided Colleges Employees Rules, 1960 - Rule 9(2)

Citation: (2003) 2 GLR 167 : (2003) 2 GLT 44**Hon'ble Judges:** B. Biswas, J**Bench:** Single Bench**Advocate:** B.P. Katoky, P.P. Baruah and B.K. Das, for the Appellant; G.A. Assam, B.K. Goswamy and P.K. Kalita, for the Respondent**Final Decision:** Dismissed

Judgement

B. Biswas, J.

The dispute relates to fixation of inter-se seniority of the Lecturers of R.G. Baruah College in the stream of Political Science. The Director of Higher Education, Assam by letter dated 9th March, 1998 (Annexure-E) directed computation of seniority from the date when the UGC Scale was given on acquisition of UGC norms. Thus, the writ petitioner who had acquired UGC norms and given scale with effect from 8.2.1991 was placed above the private respondent No. 6 who had acquired the UGC norms on 3.5.1995 and given the UGC scale with effect from that date.

2. The said order of the Director was reviewed by the Commissioner and Secretary to the Government of Assam in the Education Department by the order dated 13.4.1999 (Annexure-1) on application of the private respondent and another Lecturer Smt. Silpi Das, no longer in the service of the College. The Commissioner directed computation of seniority from the date of joining the College. Aggrieved thereby, the petitioner filed this petition for her placement in the gradation list above the respondent No. 6.

The petitioner as well as the respondent No. 6 were appointed as Lecturer as per revised norms of qualification and both of them did not possess the educational qualification as per UGC guidelines. The petitioner joined the College on 1.2.1984 as Honorary (Part Time) Lecturer while the respondent No. 6 joined the College as a regular Lecturer on 1.9.1987.

In the meantime the Government by the notification dated 2nd August, 1990 took over the ad hoc colleges including R.G. Baruah College under deficit system of Grant-in-Aid with effect from 1.4.1990. Since the writ petitioner and the respondent No. 6 did not possess the UGC norms, the Director of Public Instructions by the letter dated 30.4.1992 (Annexure-C) allowed them to continue in service on fixed pay of Rs. 2000 per month with effect from 1.4.1990. The order of the DPI was subject to following conditions :

"(1) The lecturers approved on fixed pay of Rs. 2200 P.M. must obtain M.Phil Degree beyond the Master's Degree within 3 (three) years w.e.f. 1.4.1992.

(2) All the lecturers in the fixed pay of Rs. 2200 P.M. will be allowed to normal scale of pay with incremental benefits only after obtaining M.Phil Degree effective from the date of declaration of results subject to production of certificate from the appropriate authority.

(3) This should not be treated as a general policy and as such no such cases will be approved without the prior approval of the Govt."

3. The writ petitioner had obtained Ph.D Degree in Political Science on 8.2.1991 and accordingly her appointment as Lecturer on regular UGC of pay was approved by the order dated 8.3.1991 (Annexure-B) with effect from 8.2.1991. The respondent No. 6 had obtained her Ph.D Degree in the stream on 3.5.1995 and her appointment as a regular Lecturer was approved in the UGC scale with effect from 3.5.1995.

4. The question to be answered is whether the seniority of the incumbents is to be determined from the date of their initial appointment or from the date when they attained eligibility to get UGC Scale on acquisition of educational qualification.

5. Mr. Kotoki, learned senior counsel for the petitioner relied upon the provisions in Rule 9(2) of the Assam Aided College Employees' Rules, 1960 which provides for determination of inter-se seniority from the date of substantive appointment. Shri Kotoki also relied upon the decisions of the Supreme Court in Vijay Singh Deoria and Ors. v. State of Rajasthan and Anr. (1997) 3 SCC 116 and the decision in Anup Kr. Das (Dr.) v. Sanjib Kataki (Dr.) 2000 (1) GLT 429 in order to bring home the point that seniority under the changed circumstances has to be computed from the date of substantive appointment and not otherwise. Controverting this submission, Shri B.K. Goswami, learned senior counsel argued that determination of inter-se seniority has no nexus with the scale of pay and in all circumstances it has to be with effect from the date of continuous appointment. According to Shri Goswami, the respondent

No. 6 being a regular employee is entitled to seniority with effect from the date of joining the College, i.e., 1.9.1987 and the writ petitioner with effect from 1.4.1990, from which date she was retained in service on taking over of the College, Shri Goswami relied upon the decisions of the Supreme Court in [Vasant Kumar Jaiswal Vs. State of Madhya Pradesh, The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others](#), and [Dr. \(Mrs.\) Pushpa Vishnu Kumar Gurtu Vs. State of Maharashtra and others](#), in order to show that continuous officiation (length of service) shall be the criteria for fixation and determination of seniority.

6. The ratio available in the decision relied upon by Shri Goswami relates to the established principle that the seniority is to be determined from the date of appointment. Shri Kotoki submitted that the above principle has no relevance in the instant case as both the writ petitioner and the private respondent were under qualified and retained in service with effect from 1.4.1990 at a fixed pay on condition of acquiring the UGC norms within three years and, as such, seniority has to be computed from the date when they acquired the UGC norms.

7. In Vijay Singh Deora (supra), the Apex Court dealt with the question of seniority of three groups of officers on integration. The Group-A Officers were Graduate Engineers while the Group B Officers were Diploma Holders who had acquired Degree of Engineering subsequently. Group C officers were sub-Engineers with Diploma and appointed as Junior Engineers on acquiring Degree of Engineering.

8. The ratio available is that the seniority should be determined from the date of initial appointment against substantive vacancy. In the absence of substantive vacancy, from the date when substantive vacancy is available. In case of persons appointed by selection without qualification, their seniority requires to be determined with reference to the date on which they acquired qualification or from the date when substantive vacancy became available, whichever occurred later.

9. The law is settled that seniority has to be reckoned from the date of initial appointment against substantive vacancy. Shri Kotok submitted that in the instant case, substantive appointment has to be reckoned from the date when they were given the UGC Scale, an exception the learned counsel is trying to curve out.

10. The petitioner joined the College on 1.2.1984 as part-time Lecturer. She was retained in service as a regular lecturer with effect from 1.4.1990. Therefore, her seniority is to be computed from 1.4.1990 and not prior to that. The respondent No. 6 was appointed as a regular Lecturer by the competent authority with effect from 1.9.1987. Her seniority is to be reckoned from that date. Therefore, the respondent No. 6 having been appointed, as a regular lecturer was senior in service to the writ petitioner. The seniority of the incumbent cannot be wiped out except in exceptional circumstances like, break in service, reduction in rank etc. The College was taken over under Deficit Grant-in-Aid by the order date 2nd August, 1990 (Annexure-A).

Taking over of a College under the deficit system of Grant-in-Aid cannot be intervening circumstances so as to dislodge the respondent No. 6 from her position in the seniority list. On such taking over, the Government sought to introduce UGC scale to those candidates who had qualifications as per UGC norms. The Lecturers having such qualifications were given the scale with effect from 1.4.1990 and the others who did not have were given the fixed pay on condition of acquiring the M.Phil Degree. Both the writ petitioner and the respondent No. 6 have acquired the qualification as per condition in the order dated 30th April, 1992 quoted hereinbefore. The petitioner acquired the qualification within three years as specified whereas the respondent No. 6 acquired the qualification after three years. On expiry of three years from 1.4.1999, as specified in the order dated 30th April, 1992 the authority had the option to terminate her services as per condition specified in the order of taking over dated 2nd August, 1990 (Annexure-A), but they did not do so and allowed her to continue. Therefore, in the considered opinion of this Court, the Respondent No. 6 cannot be dislodged from her position in the gradation list on the ground of delay in acquiring the UGC norms. Taking over of a college under Deficit System of Grant-in-Aid and introduction of UGC Scale cannot be linked with the question of seniority acquired on the premises of appointment against substantive vacancy by the competent authority. This is not a creation of a new cadre. Status of an employee in the Gradation List cannot be varied to her disadvantage merely because the UGC Scale was given to her at a later date.

11. In the facts and circumstances of the case, I do not find any reason to interfere with the impugned order passed by the Commissioner and Secretary to the Government of Assam in the Education Department whereby he has held in tune with Supreme Court decisions that seniority is to be counted from the date of initial appointment.

12. In the result, the writ petition is dismissed. No costs.