

(1993) 09 GAU CK 0017

Gauhati High Court

Case No: Civil Rule Nos. 298 and 808 of 1993

Monmohan Das ; Munindra Nath
Borgohain

APPELLANT

Vs

State of Assam and Ors.

RESPONDENT

Date of Decision: Sept. 10, 1993

Citation: (1994) 1 GLJ 280

Hon'ble Judges: S.K.Homchaudhuri, J

Bench: Single Bench

Advocate: D.N.Choudhary, R.Das, M.Z.Ahmed, B.P.Kataki, B.Banerjee, A.K.Phukan,
A.C.Buragohain, P.Prasad, Advocates appearing for Parties

Judgement

1. The common question as regards appointment of the Principal of the DHSK. Commerce College, Dibrugarh, is involved in both the petitions and the petitions are therefore disposed of by the common judgment.

2. The petitioner of Civil Rule No. 298 of 1993, Sri Monmohan Das has been working as the Vice Principal of the DHSK Commerce College, Dibrugarh since 1.4.89 while the petitioner in Civil Rule No. 808 of 1993, Dr. MN Borgohain is the Head of the Department of Political Science of Sibsagar Girls College. The petitioners of both the writ petitions have been selected by the State Selection Board constituted under the provisions of Assam Education Selection Rules, 1981, for appointment to the post of Principal of any of the Aided Colleges in Assam. The post of Principal of the DHSK Commerce College hereinafter mentioned as "the College" having fallen vacant, the Governing Body of the college with a view to filling up the post of Principal advertised for the post inviting applications from the eligible candidates. Petitioners of both the petitions as well as others offered their candidature in response to the advertisement. The Governing Body of the college constituted Selection Board to select the Principal from amongst the applicants. The Selection Board after consideration of the relative merit and experiences etc of the candidates, made selection and submitted a Select List in order of merit and in that list petitioner of

Civil Rule No.298 of 1993, Sri MM Das, got first preference and petitioner in Civil Rule No.898 of 1993, Dr.MN Borgohain got second preference. The Governing Body of the college, thereafter in its meeting dated 5.6.92 considered the appointment of the Principal of the college as per the Select List submitted by the Selection Board and pass the following resolution :

"The Governing body read and discussed the report threadbare. There was want of unanimity among the members in view of dissent recorded by two members (Teachers Representative).

In the circumstances, resolved that the Director of Public Instruction of Assam be requested to decide on the appointment of the Principal in reference to the recommendations of the Selection Board and intimate prior approval for the appointment of the incumbent at early convenience, so that the appointed Principal may take over charge on 30th June, 1992 from Dr. GD Misra, Principal Incharge and Secretary who is due to retire on 30th June, 1992."

The Governing Body forwarded aforesaid resolution to the Director of Public Instruction, Assam with other materials for consideration. The President as well as 4 members of the Governing Body of the college having resigned from the Governing Body, in the meantime, Govt. of Assam in the exercise of power under Rule 3 of the Aided College Management Rules by order dated 9.9.92 constituted a Special Body of the college for management of the college. The Special Body of the college in its meeting dated 17.12.92, resolved to select the Principal of the college afresh as per guide lines issued by the Director of Public Instructions and in pursuance to the said resolution, the President of the Special Board of the college invited applications from eligible candidates by making advertisement in "Dainik Janambhumi" a focal daily paper in its issue dated 21.12.92. But the Director of Public Instruction (in short DPI), Assam by letter dated 19.12.92 intimated the Special Body of the college that the question of approval for appointment of the Principal of the college conveyed as per resolution of the then Governing Body dated 6.6.92, was under examination and requested Special Body not to make fresh advertisement for the post of Principal of the college. In response to the advertisement dated 21.12.92 the petitioners of both the writ petitions offered their candidature. The Special Body of the college, in its meeting dated 21.1.93, decided to go ahead with the selection of Principal from amongst the candidates who applied for the post in pursuance to the advertisement dated 21.12.92 and fixed 12.2.93 for interview of the candidates.

3. In view of the pendency of the matter of appointment of the Principal of the college before the DPI, Assam the petitioner of Civil Rule No. 298 of 1993, Sri MM Das, approached this Court in the writ petition challenging the advertisement dated 21.12.92 and proposed selection of Principal on the basis thereof. This Court while issuing rule in Civil Rule No. 298 of 1993, by order dated 11.2.93 stayed the proposed interview to be held on 12.2.93 for selection of the Principal of the college in pursuance to the advertisement dated 21.12.92. During the pendency of the Rule,

DPI by order dated 29.3.93 accorded approval of appointment of the petitioner Sri MM Das, to the post Principal of the college. The order dated 29.3.93 is as follows :

"To

The President, SB

DHSK Commerce College, Dibrugarh.

Sub : Approval of appointment of Principal Ref: Your letter dated 8.6.92.

Sir,

With reference to your letter on the subject cited above, I have the honour to say that in view of GB's Resolution No. 1 dated 5.6.92 the appointment of Sri MM Das Vice Principal and Head of the Deptt of English of your College as Principal. DHSK Commerce College. Dibrugarh is hereby approved.

Joining report of Sri MM Das may be submitted to this office at an early date for necessary action.

Yours faithfully,

Sd/

Director of Public Instruction,

Assam Kahilipara, Guwahati 19."

This order dated 29.3.93 has been impugned in Civil Rule No. 808 of 1993.

4. After the aforesaid order dated 29.3.93 was passed, the Deputy Commissioner, Dibrugarh, who was the President of the Special Body, by order dated 1.4.93 asked the respondent No. 5, of Civil Rule No. 298 of 1993, Shri G.Adhikary, the Principal Incharge of the college, to handover charge to the petitioner of Civil Rule No. 298 of 1993, Shri MM Das, and to allow him to assume charge of the post of Principal of the college with immediate effect.

5. I have heard Mr. P. Prasad, learned counsel for the petitioner in Civil Rule No.298 of 1993 and Mr. DN Choudhury, learned counsel for the Special Body of the college and Mr. AK Phukan, learned counsel for the petitioner in Civil Rule No. 808 of 1993 and Mr. Buragohain, learned Govt. Advocate.

6. Mr. Prasad submits that, it is apparent that in the meeting dated 5.6.92, majority members of the then Governing Body approved the petitioner's selection. However, as there was no unanimity, the Governing Body did not consider it expedient to pass any resolution recommending the petitioner of Civil Rule No. 298 of 1993 for appointment to the post of Principal and left the matter exclusively to the DPI by the resolution dated 5.6.92. Since as per the provisions of Assam Aided College Management Rules, no appointment of Principal of the college can be made without

prior approval of the DPI, the order dated 29.3.93 does not suffer from any infirmity.

7. Mr. Phukan learned counsel for the petitioner of Civil Rule No. 808 of 1993 submits that as per provisions of the Assam Aided College Management Rules (in short the Rules) the Governing Body or the Special Body of the college is to select and recommend the candidate for appointment to the post of Principal of the college and thereafter the DPI is to accord approval. Unless the Governing Body or the Special Body of the college, as the case may be, selected and recommended his appointment to the post of Principal of the college, question of approval of the appointment of Sri MM Das petitioner of Civil Rule No. 298 of 1993 to the post of Principal, by the DPI could not and did not arise. Apparently the Governing Body of the college by the resolution dated 5.6.92 did not recommend Sri MM Das (the petitioner of Civil Rule No. 298 of 1993) for appointment to the post of Principal of the college and, as such, the impugned order dated 29.3.93 purporting approve the appointment of Mr. Das, the petitioner of Civil Rule No. 298 of 1993 is unwarranted, illegal and without jurisdiction and cannot be sustained.

8. Mr. DN Choudhury, learned counsel for the Special Body had drawn my attention to the provisions of Rule 18 of the Rules and submits that as per provisions of the Rules in the case, appointment of the Principal of the Aided College, Governing Body or Special Body of the college is to make selection and thereafter to recommend the appointment of an incumbent in that post to the Director Public Instructions for according approval and thereafter DPI on consideration of the resolution of the Governing Body/ Special Body of the college recommending the appointment of the incumbent to the post of Principal or teaching staff as well as connected materials is to accord approval. In the instant case no such recommendation was made by the Governing Body of the college and left the matter for final selection and approval to the DPI. As such the impugned order dated 29.3.93 has been passed purporting to approve the appointment of the petitioner of Civil Rule 298 of 1993 in the post of Principal of the college without recommendation of the Governing Body or the Special Body.

9. I have considered the submissions made on behalf of the petitioner of Civil Rule No. 298 of 1993 and petitioner of Civil Rule No. 808 of 1993 and the learned counsel for the Special Body. I have perused the materials on record. As per provisions of Rule 18 of the Rules, the final decision regarding appointment, promotion, suspension, termination, removal or dismissal of teaching and nonteaching staff including the Principal of the Aided College should be taken by the Governing Body of the college without prior approval of DPI. In the instant case, it is not disputed that the Selection Board constituted by the Governing Body of the college submitted the select list and the Governing Body of the college in its meeting dated 5.6.92 considered the question of recommending the candidates from amongst the select list for approval of the DPI and out of 10 (ten) members, 8 (eight) members were in favour of the appointment of the petitioner of Civil Rule No. 298 of 1993, who

secured first position of the select list. But the other two members raised objection on the ground that the petitioner of Civil Rule No. 298 of 1993 was not selected by the State Selection Board constituted under the provisions of Assam Education Department Selection Rules for appointment to the post of Principal of the Aided College of Assam and was not eligible. Although, in fact the petitioner was selected by the State Selection Board, Assam for appointment as Principal under different Aided Colleges of Assam by notification No. EPG 575/89/97 dated 9.12.91 and the said notification was duly published in the Assam Gazettee. Because of the objection raised by 2 members, the Governing Body of the college considered it expedient to leave the entire matter to the DPI. The power of giving prior approval conferred on the DPI is not an empty formality. The DPI before according approval is required to apply his mind to entire materials on grounds and that for resolving the stalemate, power to accord prior approval, may extend to pass order for appointment of the Principal of the Aided College. In the instant case Selection Board constituted by the Governing Body of the college having given first preference to the petitioner of Civil Rule No. 298 of 1993 for appointment and 8 out of 10 members of the Governing Body having been in favour of appointing him to the post of Principal, the impugned order dated 29.3.93 passed by the DPI approving the appointment the petitioner of Civil Rule No. 298 of 1993 to the post of Principal of the college, has caused no failure of justice. In my opinion, this Court will not be justified in interfering with the order dated 29.3.93 in exercise of the powers under Article 226 of the Constitution of India, on super technical ground that there was no formal recommendation of the Governing Body for appointment of the petitioner of Civil Rule No. 298 of 1993 to the post of Principal of the college.

For the reasons stated above, the Civil Rule No. 298 of 1993 is allowed and the Civil Rule No. 808 of 1993 is dismissed. The Special Body of the college is directed not to proceed with the selection of the Principal of the college afresh as per advertisement dated 21.12.93 and to give full effect of the order dated 29.3.93 passed by the DPI. The respondents particularly the respondent No. 4 and 5 of the Civil Rule No. 298 of 1993, are directed to allow the petitioner Shri MM Das to take over charge of the Principal of DHSK Commerce College, Dibrugarh without any further delay at any rate within 15 days from the date of receipt of this order. I make no order to cost.