
(2016) 5 GauLJ 586 : (2016) 6 GauLR 403 : (2016) 4 GauLT 541

GAUHATI HIGH COURT

Case No: W.P. (C) No. 5827 of 2014

Laxmi Shankar Prasad

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision: July 12, 2016

Acts Referred:

Constitution of India, 1950 – Article 226

Citation: (2016) 5 GauLJ 586 : (2016) 6 GauLR 403 : (2016) 4 GauLT 541

Hon'ble Judges: Mr. Ujjal Bhuyan, J.

Bench: Single Bench

Advocate: Mr. P.J. Saikia, Advocate, for the Petitioner; Mr. N. Sarma, GA and Mr. A.R. Bhuiya, Advocate, for the Respondents

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Mr. Ujjal Bhuyan, J. – Heard Mr. PJ Saikia, learned counsel for the petitioner, Mr. N Sarma, learned counsel appearing for the Elementary

Education Department, Govt. of Assam and Mr. AR Bhuiya, learned counsel for respondent No. 8.

2. By filing this petition under Article 226 of the Constitution of India, petitioner seeks quashing of order dated 09.10.2014, passed by the Director

of Elementary Education, Assam whereby respondent No. 8 was promoted to the post of Headmaster of Bindhakata ME School in the district of

Dibrugarh. Further prayer made is for a direction to the respondents to consider promotion of the petitioner to the post of Headmaster of the said

Bindhakata ME School.

3. Case of the petitioner is that he has passed High School Leaving Certificate (HSLC/Matriculate) examination and also possess Bisharad degree

in Hindi. Petitioner joined as Hindi Teacher in the Bindhakata ME School, district Dibrugarh (School) on 30.08.1984. Respondent No. 8 had

joined as Assistant Teacher in the said School on 01.03.1990. From the pleadings and documents on record, it appears that following the

superannuation of the incumbent Headmaster of the School on 31.12.2008, there had been some kind of tussle between the petitioner and

respondent No. 8 to hold the post of Headmaster of the said School. This led to filing of writ petition by the petitioner, being W.P. (C) No.

3153/2013. The said writ petition was disposed of by this Court vide order dated 15.05.2014 by directing the Director of Elementary Education,

Assam to verify as to whether prescribed training was provided to the petitioner as well as respondent No. 8. It was made clear that if neither the

petitioner nor the respondent No. 8 had been provided training facility for which they could not undergo such training, the inter-se seniority of the

petitioner, respondent No. 8 and other teachers would be determined and the senior most would be allowed to hold the charge of the Headmaster

of the School till regular selection.

4. Following the aforesaid order of this Court, Director of Elementary Education, Assam passed order dated 06.09.2014 holding that prescribed

training facility was not provided to the petitioner and respondent No. 8. It was stated that petitioner was appointed on 30.08.1984 whereas,

respondent No. 8 was appointed on 01.03.1990; as such, petitioner was held to be senior in service to respondent No. 8. Consequently,

petitioner was allowed to hold the charge of the office of the Headmaster of the School on temporary basis. Thereafter, the impugned order dated

09.10.2014 was passed by the Director promoting respondent No. 8 to the post of Headmaster of the School.

5. Aggrieved, present writ petition has been filed seeking the reliefs as indicated above.

6. This Court by order dated 14.11.2014 had issued notice and passed interim order staying the impugned order dated 09.10.2014.

7. It is stated at the Bar that following the interim order passed by this Court, petitioner has been allowed to continue as in-charge Headmaster of

the School. On the other hand, respondent no. 8 has been made Headmaster of Mederguri ME School vide order dated 03.07.2015 passed by

the Director.

8. Be that as it may, Education Department through the Director of Elementary Education has filed two affidavits. As per the first affidavit filed on

16.03.2016, it is stated that petitioner is a simple matriculate with Hindi Bisharad and he does not have the requisite qualification to be promoted

as the regular Headmaster of an ME School. Being a Hindi Teacher, case of the petitioner would be covered by Clause-7 of the notification dated

02.03.2010, which makes it compulsory for a Hindi Teacher to have training for being eligible to be considered for promotion. Petitioner does not

have the requisite training and as such, he is not entitled to be considered for promotion as per Govt. of Assam, Education (Ele.) Department

notification dated 02.03.2010; therefore, District Level Selection Committee did not select the petitioner for promotion as regular Headmaster. On

the other hand, respondent No. 8 was selected, following which, he was given regular promotion. But in view of interim order of this Court,

petitioner has been allowed to continue as in-charge Headmaster of the School.

9. In the second affidavit filed on 21.06.2016, it is reiterated that petitioner was not selected for promotion to the post of Headmaster in ME

School by the District Level Selection Committee because his educational qualification is HSLC and Hindi Bisharad and he did not have training.

However, it is admitted that petitioner was not sent for undergoing any training. In so far, respondent No. 8 is concerned, it is stated that though he

was also not sent for training, but since his qualification is BA, the District Level Selection Committee selected him for promotion to the post of

Headmaster, following which the impugned order dated 09.10.2014 was issued. It is also stated that as per interim order of this Court, petitioner is

functioning as in-charge Headmaster of the School. At the same time, respondent No. 8 was given another posting as Headmaster in Mederguri

ME School.

10. Respondent No. 8 has also filed two affidavits supporting the impugned order dated 09.10.2014 and reiterating the stand taken by the

Director. The factum of respondent No. 8 being a graduate and belonging to the Scheduled Tribe category has been highlighted. It is stated that

both petitioner and respondent No. 8 possess the minimum required qualification for promotion to the post of Headmaster and in the seniority list

prepared by the District Elementary Education Officer, Dibrugarh, petitioner was placed at Sl. No. 116 and respondent No. 8 at Sl. No. 231.

However, following the interview conducted by the District Level Selection Committee, respondent No. 8 was recommended for promotion at Sl.

No. 47, but petitioner was not recommended as he had failed to qualify in the interview.

11. Submissions made by learned counsel for the parties are on pleaded lines and, therefore, a detailed reference to the submissions made is

considered not necessary. However, the submissions so made have received the due consideration of the Court.

12. It is admitted at the Bar that the procedure for promotion to the post of Headmaster of ME School/MEM/MV and Senior Basic Schools in the

State of Assam is laid down in the Government notification dated 02.03.2010. As per Clause-1, the post of Headmaster is a promotional post.

Selection for promotion is to be carried out by applying the criteria of seniority-cum-efficiency and on the basis of recommendation made by the

District Level Selection Committee to be constituted by the Director of Elementary Education. Clause-2 provides that the District Level Selection

Committee shall prepare a gradation list of teachers sub-division wise in order of seniority. As per Clause-3, selection for promotion to the post of

Headmaster in such Middle Schools shall be made strictly on the basis of seniority-cum-efficiency. Clause-4 provides that teachers having less than

10 years of continuous service shall not be considered for promotion. As per Clause-5, teachers who have passed at least Matric/HSLC, normal

or have at least intermediate or its equivalent qualification or above and have successfully undergone necessary training as may be prescribed by

the Department shall only be considered for promotion. However, those teachers who have completed minimum 15 years of continuous service,

but could not undergo the training for failure of the department to provide training facilities may also be considered for promotion provided there

are no adverse remarks against them. Clause-6 provides that the District Level Selection Committee shall prepare a panel of selected teacher

which shall remain valid for a period of 1 year from the date of selection. In Clause-7, it is mentioned that in the case of Hindi/Classical/Language

Teachers having required minimum educational qualification and training, they may also be considered for promotion. Finally, as per Clause-8, the

District Level Selection Committee is required to follow the provisions of the Assam Scheduled Castes and Scheduled Tribes (Reservation of

Vacancies in Services & Posts) Act, 1978 and the Rules framed thereunder.

13. An analysis of the provisions contained in the notification dated 02.03.2010 would go to show that the post of Headmaster in a Middle School

is a promotional post. Selection for promotion is to be carried out by the District Level Selection Committee to be constituted by the Director of

Elementary Education. Prior to that a gradation list of eligible teachers is required to be prepared seniority wise. The criteria to be followed while

making the selection is seniority-cum-efficiency. Eligibility requirement of a teacher to be considered for promotion to the post of Headmaster is

having minimum educational qualification of matriculation/HSLC, or intermediate pass or equivalent qualification with minimum 10 years of

continuous service. They are also required to undergo training as may be prescribed by the Department. By way of clarification, Clause-7 clarifies

that Hindi Teachers or Language Teachers or Classical Teachers having minimum educational qualification and the training would also be eligible to

a consideration for promotion to the post of Headmaster. Thereafter, the District Level Selection Committee shall prepare the select list making

necessary recommendation for promotion, which shall remain valid for 1 year. When the scheme of promotion as laid down in the notification

dated 02.03.2010 is read as a whole, it is quite evident that Clauses-5 & 7 supplement each other and, therefore, these two provisions are to be

read conjointly. As is well recognised in administrative law, a document, such as a notification or an Office Memorandum is required to be

considered as a whole i.e., in its entirety having regard to the mischief it seeks to address. A clause cannot be taken out and examined in isolation.

If Clauses-5 & 7 are read as a whole, it would be abundantly clear that a Hindi Teacher or a Language Teacher or a Classical Teacher would also

be entitled to a consideration for promotion provided he has the minimum educational qualification and the requisite training. A teacher cannot go

or attend the training on his own. Clause-5 provides that the training may be as prescribed by the Department. If the Department do not provide

for any such training, it would not be possible for a teacher to undergo such training. To ensure that such a situation does not lead to any

inequitable consequences, Clause-5 itself provides that those teachers who have completed minimum 15 years of continuous service, but could not

undergo the training as because facilities were not provided for such training would also be entitled to a consideration for promotion provided there

is nothing adverse against such a teacher.

14. The Supreme Court as well as this Court in a catena of judgments have explained as to what would constitute the criteria of seniority-cum-

efficiency or seniority-cum-merit. The criteria of seniority-cum-efficiency is essentially a seniority based criteria though merit or efficiency cannot

altogether be ruled out. To test the merit of the competing candidates, the authorities ordinarily prescribe certain bench marks. Once these merit

based bench marks are achieved, seniority takes over. In other words, once the bench mark of merit is achieved, the senior even though less

meritorious than the juniors but having made the qualifying bench mark would get precedence.

15. Having noticed the legal position as above, the facts of the present case may now be adverted to.

16. In the two affidavits filed by the Department, the stand taken is that petitioner is a Hindi Teacher having qualification of matriculation and

Bisharad. He has not undergone the prescribed training; therefore, his case was not considered and recommended by the District Level Selection

Committee. This explanation by the Department is wholly untenable and cannot be accepted in the light of the clear provisions contained in the

Government notification dated 02.03.2010 as discussed above.

17. The said notification does not provide for grant of any weightage to a teacher having qualification higher than the prescribed minimum

qualification, such as BA. There is no bar for a Hindi Teacher or for that matter a Language Teacher to be considered for promotion. The disability

of not having training has been taken care of in Clause-5 itself, which says that even if a teacher does not have the training because of failure of the

departmental authorities to provide for such training, he can still be considered for promotion provided he has minimum 15 years of continuous

service and there is nothing adverse against him.

18. There is no dispute that petitioner had the minimum 15 years of continuous service on the date of consideration. There is also no dispute about

seniority of petitioner vis-à-vis respondent No. 8. The State respondents have also not come up with the stand that there is something adverse

against the petitioner. In such circumstances, non-consideration of the case of the petitioner by the District Level Selection Committee cannot be

legally sustained.

19. Having said that, Court must also bear in mind about the subsequent development which has taken place. As already noticed above, by order

dated 03.07.2015, passed by the Director of Elementary Education, Assam, respondent No. 8 has been promoted as Headmaster of Mederguri

ME School while continuing with the petitioner as in-charge Headmaster of the said School.

20. That being the position, Court is of the view that without disturbing the present arrangement, namely, holding of the office of the Headmaster of

the School on in-charge basis by the petitioner and holding of the office of the Headmaster of Mederguri ME School on regular basis by

respondent No. 8, case of the petitioner is required to be reconsidered by the District Level Selection Committee as on date his juniors were so

considered and recommended. While quashing the impugned order dated 09.10.2014, Director of Elementary Education, Assam is directed to

place the case of the petitioner before the District Level Selection Committee, Dibrugarh to reconsider his case for promotion to the post for

Headmaster with effect from the date his juniors were so considered. The District Level Selection Committee while reconsidering the case of the

petitioner shall keep in mind the discussions made in this order. Let the reconsideration be carried out within a period of 3 months from the date of

receipt of a certified copy of this order by the Director of Elementary Education, Assam.

21. Writ petition is accordingly allowed, but without any order as to costs.