

WP(C) 5266/2007

BEFORE

HON'BLE MR. JUSTICE B.K. SHARMA.

Heard Mr. B. Goswami and Mr. A. Khan, learned counsel appearing for the petitioners in the respective writ petition as well as Mr. S. Rahman, learned counsel appearing for the private respondent in the second writ petition. I have also heard Mr. S.K. Das, learned Standing Counsel, Education Department. Both the writ petitions pertain to determination of seniority of the petitioners. The petitioners are stated to be Graduate Classical Teachers. The petitioners approached this Court when they were deprived of their seniority from the date of their initial appointment on the strength of Rule 24 (2) (ii) of the Assam Secondary Education (Provincialization) Rules, 2003.

The petitioner in the second writ petition was appointed as Headmaster of the school. When his seniority was adversely affected by operation of the said rule, he approached this Court by filing the instant writ petition. By order dated 10.10.2007, his service interest was protected.

In the first writ petition, by operation of the aforesaid rule, the petitioner has not been assigned the seniority from the date of his initial appointment. It is submitted that presently, the Inspector of Schools is holding the charge of Principal of the school. According to Mr. Goswami, learned counsel for the petitioner, he has been deprived of the charge of Principal by adversely operating the aforesaid rule.

Learned counsel for the parties have drawn my attention to the Full Bench decision determining the issue relating to seniority of classical teachers. The issue was decided by judgment and order dated 25.6.2009 passed in a number of writ appeals and writ petitions, one of which is Writ Appeal No.144/2002 (Smti. Rukmini Bora v. State of Assam and others). By the said judgment, it has been held that the provisions of Rule 24(2)(ii) of the Assam Secondary Education (Provincialization) Rules, 2003 is unconstitutional and, therefore, invalid.

In view of the above, both the writ petitioners claim seniority from the date of their initial appointment. The present position relating to seniority of the classical teacher with graduation is that they are entitled to seniority from their initial date of appointment at par with that of the general graduate teachers.

In the second writ petition, the petitioner is holding the charge of Headmaster. He was sought to be adversely affected by Rule 24 (2) (ii) of the Rules. By virtue of the interim order passed, he is continuing to hold the charge of Headmaster.

So far as the first writ petition is concerned, it is the case of the petitioner that he being the senior most graduate teacher of the school, he is entitled to hold the charge of Principal. However, he was denied of such entitlement in view of Rule 24 (2) (ii) of the Rules. Now, in view of the aforesaid Full Bench decision, the petitioner is entitled to seniority from the initial date of appointment i.e. he shall be entitled to seniority at par with that of other general graduate teacher. His claim for Principal-ship will have to be decided by the authority taking into account the aforesaid Full Bench decision. Such decision shall be taken as expeditiously as possible but at any rate, not later than 31st August, 2009. The petitioners shall obtain a certified copy of this order and produce the same before the authority for their appropriate order in terms of the provisions made in this order.

Both the writ petitions are disposed of.