

WP(C) 1282/2014
BEFORE
THE HON'BLE MR JUSTICE B.K. SHARMA

JUDGMENT & ORDER (Oral)

Heard Mr. D.K. Sarmah, learned counsel for the petitioner and Mr. A. Dek a, learned standing counsel, Education Department. Also heard Mr. A. Bhattachar ya, learned counsel representing the respondent Nos.5 and 6 and so also Mr. S. B orthakur, learned counsel representing the respondent No.7.

[2] The petitioner is aggrieved by the Annexure-13 order dated 26th February , 2014 issued by the Director of Secondary Education, Assam, by which a finding has been recorded that the respondent No.7 having joined the school as Assistant Teacher on 20th September, 2004 as against the petitioner's joining on 1st March, 2006, he would rank senior to the petitioner.

[3] On a bare perusal of the said order, there is absolutely no manner of doubt that the same is cryptic and non speaking. For a ready reference, the order is reproduced below:-

Seen and read the Hon'ble Court's order dated 28/10/2013 passed in WP(C) 6141/2013, filed by Rina Devi -Vs- State of Assam and others and also read the particulars of staff of 2 class Lakshitara Girls High School submitted by the Headmaster for provincialisation.

A hearing was conducted on 10-12-2013 in the office chamber of Joint Director of Secondary Education, Assam, Sri Niranjana Tamuly, Head master, Sri Munindra Kalita, AT and Sri Rina Devi, AT of the School were present. Thereafter a hearing held on 7-2-2014 in the office chamber of Director of Secondary Education, Assam, The Head master of the school attend the said hearing.

Sri Munindra Kalita, AT of the school joined on 20-9-2004 and Sri Rina Devi AT Joined on 1-3-2006. Hence Sri Munindra Kalita AT is Sr. to Sri Rina Devi AT.

This is in compliance with the Hon'ble Court's order dated 28-10-2013 passed in WP(C) No.6141/2013.

[4] The aforesaid order has been passed pursuant to the direction of this Court dated 28th October, 2013 passed in WP(C) No.6141/2013, which was filed by the present petitioner. By the said order, it was provided that the Director of Secondary Education, Assam would examine the seniority dispute by and between the petitioner and the respondent No.7.

[5] As against the aforesaid order dated 26th February, 2014 determining the seniority of the respondent No.7 above the petitioner, it is the case of the petitioner that the respondent No.7 was never appointed in the school and that everything has been manipulated to show that he was appointed in 2004. In this connection, the petitioner has also referred to the certificates issued by the Gaon Buhras and also the representation of the ex-students stating therein that the respondent No.7 was never seen in the school. It is also the case of the petitioner that his name did not appear in anyone of the attendance registers. By order dated 19th June, 2014, the respondents were directed to produce the finding for perusal of the Court:-

- (i) The relevant proceeding books relating to the appointment of the petitioner and the respondent No.7.
- (ii) The attendance registers of the teachers for the years 2004, 2005 and 20

06.

(iii) The record of the financial assistance, if any, granted to the school, reflecting the names of the teachers, to whom it is paid.

(iv) Inspection reports submitted by the Inspecting Officer for the years 2000 to 2008, and

(v) The proceeding of the District Scrutiny Committee, recommending the names of the teaching and non-teaching staff of Lakhitara Girls High School.

[6] Mr. Deka, learned standing counsel, Education Department has produced the relevant documents including the attendance registers pertaining to the years 2004-05; 2005-06 and 2006-07. On perusal of the said attendance registers, the name of the respondent No.7 is not to be found. However, it is the submission of the learned counsel appearing for the respondent Nos.5 and 6 and 7 that since the respondent No.7 was appointed against a particular section in Class-VIII(B), he had maintained a separate attendance register. It is not understood as to how a separate attendance register could have been maintained for the respondent No.7.

[7] As regards the proceeding book that has been produced by Mr. Deka, on perusal of the same it appears that page No.81 said to be in continuation of page No.80 is a pasted one over the original page. The handwritings are also different. Significantly, although the resolution is said to be of 10th September, 2004 but the same was approved by the President of the Managing Committee of the School on 18th February, 2006. On further perusal of the said proceeding book, it appears that on 18th February, 2006, there was another meeting in which the resolution was adopted for appointment of the petitioner on compassionate ground on expiry of her husband, who was the founder teacher of the school. In resolution No.3, the names of the teachers appear. While upto serial No.9, the teachers names are in the same handwriting but the name of the respondent No.7 is in different handwriting. While the petitioner is placed at serial No.9, the respondent No.7 is placed at serial No.10.

[8] In the counter affidavit filed by the respondent No.7, he has enclosed the Annexure-3 purported photocopy of the letter dated 1st October, 2004 of the Inspector of Schools, KDC, Guwahati, showing approval of the appointment of the respondent No.7 as an Assistant Teacher against the section Class-VIII(B).

[9] Mr. Sarmah, learned counsel for the petitioner submits that apart from the fact that everything has been manipulated to show appointment of the respondent No.7, even assuming that the respondent No.7 was appointed but such appointment being against only an additional section of particular class, i.e. Class-VIII(B), he cannot be regarded as a regular teacher of the school, so as to claim seniority over the petitioner. He further submits that in the Assam Venture Educational Institutions (Provincialisation of services) Act, 2011, there is no provision for provincialisation of a teacher working against an additional section. It is against the seniority, which is to be counted and not the working experience against a particular section.

[10] Apart from the fact that all the above aspects of the matter have not been dealt with by the Director of Secondary Education while passing the impugned order, it is also found that in the counter affidavit filed by him, he has admitted about the manipulation of records by making the following statement:-

In compliance of the Hon'ble Court's Order dated 28.10.2013, a hearing was conducted. The petitioner, the private respondent No.7 and the Headmaster of the school were present in the hearing on 10.12.2013. The deponent on the basis of date of joining of the petitioner and the Respondent No.7 came to a conclusion that the Respondent No.7 is senior and passed a speaking order dated 26.2.2014 (Annexure-13/page-54 to the writ petition).

In this regard, the deponent begs to state that admittedly, the Respondent

nt No.7 has not put his signature in the Attendance Register of staffs and his name does not figure in the same submitted by the school authority on the date of hearing on 10.12.2013.

In respect of certificates of two Gaonburahas and representation of some of the students of the school, which states that the Respondent No.7, never served the school, the deponent states that the concerned Headmaster and the concerned Managing Committee of the school are responsible for submission of false, fabricated documents to the Scrutiny Committee and also before the Department.

The deponent further begs to state that as per report dated 7.4.2014 submitted by the Inspector of Schools (IS), Kamrup District (Rural), it appears that in the proceeding book the Respondent No.7 was shown to be appointed as per resolution of the School Managing Committee held on 18.2.2006, thus the date of appointment of the Respondent No.7 (Munindra Kalita) shown to be made in 2004 is quite impossible. The IS, Kamrup (R) also informed that the proceeding book is manipulated and fabricated, which shows that the handwriting of the proceeding book is different in the same resolution in respect of appointment of the Respondent No.7, the proceeding book is also said to be manipulated with change in paper etc., therefore, the appointment of the respondent No.7 is made through back door policy in an illegal manner. The Headmaster of the concerned school also submitted wrong information and false documents to this Directorate.

The Headmaster and the President of the Managing Committee are solely responsible for this kind of irregular and illegal activities.

[11] In view of the above submissions, it was incumbent on the part of the respondent No.2 to pass an appropriate order towards review of his earlier order.

However, Mr. Deka, learned standing counsel, Education Department submits that the said course of action has not been adopted by him in view of the pendency of the present proceeding.

[12] In view of the above, the writ petition is disposed of setting aside the impugned order dated 26th February, 2014 (Annexure-13) and remand the matter back to the Director of Secondary Education, Assam, to pass appropriate order consistently with the observations made above. Let the order be passed in reference to the records, referred to above, as expeditiously as possible preferably within the second week of September, 2014. While passing the order, opportunity of being heard may be provided to the parties concerned.