

Jiban Ch. Deka and ors. Vs. State of Assam and ors.

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Court : Guwahati

Decided On : Sep-01-2003

Judge : Ranjan Gogoi, J.

Appellant : Jiban Ch. Deka and ors.

Respondent : State of Assam and ors.

Advocate for Pet/Ap. : Mr. D. Majumdar

Prior history : Ranjan Gogoi, J. 1. The petitioners in this group of cases except in WP(C) No. 6619/03, 3634/01 and 4794/2000, are teachers of different L.P. Schools, M.E/M.V., High and Higher Secondary Schools of the State of Assam, who were appointed by the managing Committee prior to taking over of the schools under the provisions of the Assam, Elementary Education (Provincialisation) Act, 1974 and the Assam Secondary Education (Provincialisation) Act, 1977. On such take over being effected, the services

Judgement :

Ranjan Gogoi, J.

1. The petitioners in this group of cases except in WP(C) No. 6619/03, 3634/01 and 4794/2000, are teachers of different L.P. Schools, M.E/M.V., High and Higher Secondary Schools of the State of Assam, who were appointed by the managing Committee prior to taking over of the schools under the provisions of the Assam,

Elementary Education (Provincialisation) Act, 1974 and the Assam Secondary Education (Provincialisation) Act, 1977. On such take over being effected, the services of the petitioners have not been provincialised. They, therefore, claim to be 'dropped teachers'. The petitioners in the 3 other writ petitions mentioned above, are similarly situated members of the non-teaching staff of the schools in question. The relief of regularisation of services is the essence of the relief claimed in the present bench of cases that have been grouped together.

2. In view of the common thread that is discernible in each of the cases which give rise to a distinctly identifiable common question of law, it will hardly be necessary to traverse the factual matrix in each of the cases except to put on record that all the petitioners claim long years of service rendered either on notional pay or even on honorary basis. Each of the petitioners claim continuity of service since their initial appointment and further assert that such continuation, which continues till date, have been with the knowledge and concurrence of the District Level Officer of the Education Department. There is need for the posts held by the petitioners, it is claimed, a claim sought to be fortified by the documents brought on record, which in must cases, would go to show that the recommendations made by the Managing Committee have been duly supported by the request made by different District Level Officers, for sanction of the posts and for appointment of the petitioners on regular basis against the said posts. A legal right to a fair consideration of their cases for regularization is, therefore, claimed in each of the writ petitions.

3. The Respondent State has filed an affidavit in WP(C) No. 5399/03 with a prayer to treat the same as reflecting a common stand in all the cases. The State has not been unmindful of the plight of the 'dropped teachers', claims the State. Over 6000 such teachers have been adjusted against regular posts in accordance with the norms, policy and guidelines introduced from time to time. Such norms and policy have been periodically reviewed in the light of the experiences gained and the ever changing commitments and constraints of the State. The State, in the affidavit filed, has enclosed a policy document dated 13.1.2003, which has now been introduced to cover the cases of the 'dropped teachers'. Such cases will be dealt with by the State in accordance with the said policy and all those, who are found to

be eligible will be regularized in a phased manner as indicated in the policy. The policy, it is conceded, would apply to members of the non-teaching staff also, whose cases will be similarly dealt with.

4. The policy document dated 13.1.2003 is not under challenge in any of the cases. Learned Counsels for the petitioners have also not raised any question with regard to the validity of any of the norms prescribed by the aforesaid policy document, in course of the oral arguments advanced. However, Mr. D. Majumdar, learned Counsel for the petitioners in WP(C) 5627/2000, in course of his arguments, has contended that, perhaps, some suitable adjustment in Condition Nos. 1 and 2 of the policy document would make the policy introduced more broadbased and fair, a position agreed to by Mr. S.N. Sarma, learned Senior Standing Counsel appearing for the Respondents. Condition No. 1, the Respondents agree, may be read as covering the cases of all 'dropped teachers' in service as on the date of provincialisation of the concerned school, whereas, the requirement of approval of the appointments made by the Managing Committee as embodied in Condition No. 2, as agreed by the respondents, could be reflected by any document acknowledging rendering of service by 'dropped teachers'. Furthermore, in the affidavit filed, the State while stating that the regularisations when made, would be prospective, has agreed to give the benefit of previous service rendered for the purpose of pension and retirement dues.

Since this policy has been framed to deal with the cases of the 'dropped teaching it is axiomatic that all such cases be dealt with in terms of the policy adopted.

5. In view of the above, this bunch of cases will stand now disposed of with the following directions:

(i) The cases of the petitioners in each of the cases will be considered in accordance with the norms, criteria and eligibility conditions prescribed by the policy document dated 13.1.2003 subject to the modification in Condition Nos. 1 and 2, as stated above.

(ii) The Chief Secretary to the Government of Assam, shall within 7 days from today, constitute a Committee to examine the cases of the petitioners in the

present bunch of cases and such other cases, as may be referred to the said Committee, from time to time, by this Court. As the said Committee will be executing and implementing the policy decision taken by the state, this Court considers it appropriate to leave it to the discretion of the Chief Secretary to the Government of Assam to decide on the composition of the Committee with the suggestion that the Committee may be a high powered Committee consisting of 3 members and the present Secretary to the Government of Assam, Education Department may act as the Member-Secretary.

(iii) The Committee, upon due verification of the cases before it, shall within 6 months from the date of its constitution, prepare district wise list of 'dropped teachers' eligible for regularisation in terms of the norms and criteria laid down as per direction No. 1 above. The eligible persons, on being identified, shall be arranged in the district wise lists, in order of seniority.

(iv) Suitable adjustments in the placements assigned in the district wise lists, as may be required, upon consideration of such other cases which may be referred to the Committee in the future shall be made by the Committee.

(v) Appointment against available posts in each district shall be made on the basis of the lists prepared.

(vi) All appointments made would be prospective but will carry the benefit of past services for the purpose of computation of pensionary benefits.

6. All the writ petitions shall stand closed in terms of the above directions.

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