

**Badshah Pair Vs. State of Assam and ors.**

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**Court :** Guwahati

**Decided On :** Mar-11-2008

**Judge :** Amitava Roy, J.

**Appellant :** Badshah Pair

**Respondent :** State of Assam and ors.

**Advocate for Def. :** Mr. D.K. Sharma

**Advocate for Pet/Ap. :** Mr. Sikdar

**Disposition :** Petition dismissed

**Judgement :**

**Amitava Roy, J.**

1. Heard Mr. Sikdar, learned Counsel for the petitioner and Mr. Das, learned Standing Counsel, Education Department. Also heard Mr. D.K. Sharma, learned Counsel for the respondent No. 4.

2. Aggrieved by the decision of the High Power Committee constituted in terms of the judgment and order dated 1.9.2003 passed by this Court in a batch of writ petitions, the lead case being Civil Rule No. 1571/1998 Jiban Chandra Deka and Ors. v. State of Assam and Ors. reported in 2008 (3) GLT 229 to consider the cases of eligible dropped teachers for regularisation of their services, negating his

claim, the petitioner is before this Court for redress. Briefly put the petitioners pleaded version is that he, by the resolution of the Managing Committee of the Ismail Hussain High School (hereafter referred to as the School) dated 30.12.1989 was appointed as an Arabic Teacher. Pursuant thereto, he joined the service on 9.1.1990. By order dated 14.8.1992 of the Inspector of Schools, K.D.C. Guwahati, the said school was provincialised w.e.f. 19.11.1991 and in the list of the employees (teachers as well as non-teaching staff), his name was not included therein. According to the petitioner thereafter in compliance or a request of the Inspector of Schools, K.D.C. Guwahati, the Headmaster of the School submitted detailed particulars showing the vacancy position in the institution recommending regularization of the petitioner's services against the vacancy in the post of Arabic Teacher following the retirement of its earlier incumbent Abdul Mozid. Awaiting the final decision, the petitioner however, continued to render his services as before. It was thereafter that his Court delivered the above judgment and order dated 1.9.2003. The petitioner accordingly approached this Court with WP(C) 6083/04 which was disposed of on 31.8.2004 in the same lines. As inspite thereof, the High Power Committee rejected his claim the petitioner is before this Court.

3. The Director of Secondary Education in his counter while admitting that the School was established on 1.1.1978, recognized by the Secondary Education Board of Assam on 14.8.1992 and finally provincialised w.e.f. 19.11.1991 has pleaded that the petitioner had been appointed against the second post of Arabic Teacher in the School. He clarified that in the order of Provincialisation only one post of Arabic Teacher had been approved. According to the answering respondent, in terms of the criteria adopted by the Government for considering the cases of dropped teacher, the petitioner's case did not come within the zone of consideration. However, in terms of the order dated 31.8.2004 passed in WP(C) 6083/04 his case was forwarded to the High Power Committee. The respondent No. 4 while disclosing that the proceeding book of the Managing Committee containing inter alia the resolution appointing the petitioner is misplaced and that the detailed particulars of the teaching and non-teaching staff in the School had not been handed over to him expressed his opinion that the petitioner was to be a genuine dropped teacher deserving to be regularized. According to him, the petitioners appointment was approved by the Inspector of Schools, K.D.C.,

Guwahati on 5.11.1992 for which his name might not have appeared in the detailed particulars forwarded to the High Power Committee for consideration.

4. Mr. Sikdar has urged that as the petitioner's School has been provincialised on 14.8.1992, his case could not have been rejected by the High Power Committee as he had put in the required years of continuous service computed from 9.1.1990.

5. Mr. Das in reply has argued that as the School had been provincialised w.e.f. 19.11.1991 though the order to the said effect was 14.8.1992, for all intents and purposes the period of continuous service has to be calculated backward from that date i.e. 19.11.1991 and not from 14.8.1992. With reference to the notification dated EDN(LC) 26/2002/341/69 dated 13.1.2003 whereby the State Government had outlined the modalities to be adhered to for the purpose of considering the cases of dropped teachers of the Schools at various level in the State, a teacher to be so considered has to put in a minimum of two years of continuous service immediately preceeding the taking over of the concerned schools by the Government.

6. Incidentally this Court in its judgment and order dated 1.9.2003 noticed that this notification had remained unchallenged and in its operative direction contained therein required the consideration of the case of the petitioners in accordance with the norms, criteria and eligibility prescribed thereby. In other words, the norms and stipulations contained in the notification dated 13.1.2003 are of binding effect from which a departure is not permissible.

7. From the records of the proceedings of the High Power Committee produced before this Court, it is apparent that the petitioner's case was considered but not approved at his name and other particulars were not submitted with the original proposal for regularization of the teaching and non-teaching staff of the School pending its provincialisation. This evidently is because the petitioner had not by then completed two years of continuous service as prescribed by the notification dated 13.1.2003. The report of the High Power Committee in categorical terms states that the consideration of the teaching and non-teaching staff has been conducted in terms of the aforementioned notification.

8. In view of the above revelation and recorded facts, it is thus manifest that the petitioner's case was not considered as he was not construed to be eligible in the touchstone of the guidelines contained in the notification dated 13.1.2003. The non-furnishing of his name and particulars along with those of the existing teaching and non-teaching staff of the school before the provincialisation is obviously for his deficiency in length of service prescribed for a teacher to be eligible for regularisation.

In the above view of the matter, the petitioner's grievance is not entertained in law. The petition lacks in merit and is, therefore, dismissed. No costs.

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