

Aftab UddIn and ors. Vs. State of Assam and ors.

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Court : Guwahati

Decided On : Jan-28-2004

Judge : Ranjan Gogoi, J.

Acts : Assam Secondary Education (Provincialisation) Service Rules, 1982 - Rule 2

Appeal No. : WP(C) No. 2968 of 2002

Appellant : Aftab UddIn and ors.

Respondent : State of Assam and ors.

Advocate for Def. : S.N. Sarma and R.K. Borah, Advs.

Advocate for Pet/Ap. : A.S. Choudhury and A.R. Sikdar, Advs.

Disposition : Petition allowed

Judgement :

Ranjan Gogoi, J.

1. An advertisement was published sometime in the year 1996 calling for applications for filling up of about 1,000 posts of Graduate Teachers in the different High Schools/High Madrassas in the State of Assam. A Select List was prepared sometime in the year 1997 pursuant to the selection held and there is no

dispute that all the posts advertised were filled up. However, as usual, a number of persons otherwise selected continued to remain in the Select List without being appointed. Thereafter, it appears that a ban on appointment of teachers was imposed by the Government and the said ban continued till it was lifted by a W.T. Message dated 25.3.2001. The aforesaid W.T. Message was issued to all the Inspectors of Schools in the State requiring them to make appointments on fixed pay without however, calling for fresh applications. A Select List was directed to be prepared from the candidates who had earlier submitted their applications. In so far as the Classical Teachers are concerned, in the W.T. Message, it was directed that the Select List of such teachers should be prepared out of the persons who had applied earlier and who had proficiency in different classical subjects, i.e., Hindi, Arabic, Sanskrit etc.

Thereafter, a second W.T. Message dated 26.3.2001 was issued intimating all the Inspectors of Schools the number of vacancies that were required to be filled in each district. The vacancies indicated in the second W.T. Message dated 26.3.2001 was in respect of the Graduate Teachers as well as Classical Teachers. Acting on the basis of the aforesaid W.T. Messages, a Select List was prepared on 28.3.2001 in so far as the Dhubri district is concerned wherein the names of the 16 petitioners were included under the list of Classical Teachers prepared in respect of the different constituencies of the district. Appointment to each of the petitioners was conferred by identical orders dated 30.3.2001 passed by the jurisdictional Inspector of Schools and each of the petitioners joined service pursuant to the appointment made. On 30.3.2001, another W.T. Message was sent from the State Government to all the Inspectors of Schools intimating them that power of appointment of Classical Teachers has been invested in the Director of Secondary Education and, therefore, the Inspector of Schools ought not to make any appointment against the posts of Classical Teachers, as ordered earlier. As some of the appointments had already been made as in the case of the petitioners, a further communication dated 19.4.2002 was addressed to the Inspectors of Schools asking them to cancel the appointments of Classical Teachers, as may have been made. The aforesaid communication dated 19.4.2002 was issued by the Deputy Secretary to the Government of Assam, Education Department and thereafter, acting on the said basis, the Inspector of Schools, Dhubri District Circle,

by a series of identical orders dated 4.5.2002, cancelled the appointments of the petitioners. Aggrieved, the instant writ application has been filed.

2. I have heard Mr. A.S. Choudhury, learned senior counsel for the writ petitioners as well as Mr. S.N. Sarma, learned senior Standing Counsel, Education Department.

3. Mr. Choudhury, learned counsel for the petitioners by pointing out the W.T. Messages dated 25.3.2001 and 26.3.2001 has contended that the appointments of the petitioners were made in accordance with the norms laid down by the Government itself in the aforesaid W.T. Messages particularly, the W.T. Message dated 25.3.2001. The petitioners are selected candidates and selections have taken place in accordance with the norms prescribed by the W.T. Message dated 25.3.2001. No infirmity can, therefore, be attached to the Select List in which the names of the petitioners have been included. According to the learned counsel for the petitioners, under the provisions of the Assam Secondary Education (Provincialization) Service Rules, 1982, as amended, it is the Inspector of School, who is the competent authority to make appointments of Classical Teachers which posts are included in Grades-IV to VII of the relevant Schedule to the Rules. The power of appointment conferred by the Rules, according to the learned counsel for the petitioners, has been sought to be taken away and conferred on the Director without authority of law. The impugned cancellation made on the basis that it is the Director who is the competent authority to make appointments, would have no legs to stand, according to the learned counsel for the petitioner. It has been also argued by Mr. Choudhury, learned counsel for the petitioners that the cancellations made being without any notice or opportunity is in violation of principles of natural justice.

4. The arguments advanced on behalf of the writ petitioners have been resisted by Mr. S.N. Sarma, learned senior Standing Counsel for the department. Learned Sr. Standing Counsel has vehemently argued that the appointments of the petitioners are acts of perversity inasmuch as the selection of the petitioners had been made without any test or interview. How the persons could be selected without a selection being held, according to the learned Standing Counsel, defies all logic

and such an exercise must be deprecated. Learned Standing Counsel has further pointed that the petitioners did not even apply for the post of Classical Teachers; they had applied for the post of Graduate Teachers and instead, they have been selected and appointment as Classical Teachers and that too, without holding of any selection. In such a situation, according to the learned Standing Counsel, when perversities are apparent on the face of the record, no opportunity is required to be afforded as the facts speak for themselves. Learned Standing Counsel, therefore, has argued that this Court must uphold the validity of the cancellation and dismiss the writ petition.

5. The arguments advanced on behalf of the rival parties have been duly considered. It is a fundamental principle of judicial discipline that the scrutiny of the Court must be necessarily confined to the issues that arise for determination and the validity of the action impugned must be judged with reference to the reasons stated and not by what is subsequently brought on record in support of the decision. In the instant case, the cancellation of the appointments of the petitioners have been made on the ground that the Inspectors of Schools who had appointed the petitioners, were not the competent authority to make the appointments as the power of such appointment has been vested in the Director. The validity of the cancellations made by the impugned orders must be decided from the aforesaid standpoint and not on the basis of what has been contended by the learned Standing Counsel for the department by placing reliance on the affidavit filed by the Director, as noted above.

6. A perusal of the provisions of the Rules in force, i.e., the Assam Secondary Education (Provincialization) Service Rules, 1982, as amended in 1991, would go to show that in so far as posts in Grade-II and III cadres are concerned, the Director is the appointing authority and in respect of the posts included in Grade-IV to VII of the cadres of the service, the Inspector of Schools is the appointing authority. The posts of Senior Classical Teachers are included in Grade-IV and V whereas those of Junior Classical Teachers are included in Grade-VI and VII. Therefore, under Rule 2 (b) of the Rules, in respect of the Classical Teachers, the Rules contemplate the jurisdictional Inspector of Schools to be the appointing authority. Nothing has been placed before the Court to show that the aforesaid

Rules have in any way been altered. The W.T. Message conferring the power of appointment of Classical Teachers in the Directorate, though apparently contrary to the Rules, have been sought to be justified by contending that such a decision has been taken in the best interest of the administration. It will be difficult for this Court to recognize the Director as the competent authority for appointment with regard to posts in Grade-IV to VII cadres of the service in view of the expressed provisions of the Rules. The appointments having been made by the Inspector of Schools must be understood to have been made by the competent authority. In view of the aforesaid conclusion reached, the cancellations made by the impugned order dated 4.5.2002 must be held to be contrary to law. All the aforesaid terminations, therefore, shall stand set aside and interfered with.

7. Before parting with the records, this Court would like to make it clear that the facts antecedent to the appointments of the petitioners, as pointed out by the learned senior Standing Counsel, are matters with which this Court is in no way concerned in the present proceeding. It must however, be understood and made clear that the Court has not expressed any opinion on any of the said questions raised by the learned senior Standing Counsel and the State is left with the option to proceed in the matter on the aforesaid basis, if so advised. Naturally any further action in the matter will be in strict accordance with law and after giving a full and adequate opportunity to all such persons who may be affected by any such action that may be initiated. The above has been specifically recorded in the present order so as to make it clear that this Court has not put any restraint on the actions of the State in this regard.

8. The writ petition shall stand allowed as indicated above.

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