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**Julhash Ali Vs. the State of Assam.**

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**Court** : Guwahati

**Decided On :** Aug-31-2010

**Judge** : Mr. Justice Amitava Roy, J.

**Appeal No.** : WP(C) NO. 2991 OF 2009

**Appellant** : Julhash Ali.

**Respondent** : The State of Assam.

**Advocate for Def.** : Mr. UK Goswami; Mr. AM Buzarbaruahl; Mr. SK Deori, Advs.

**Advocate for Pet/Ap.** : Mr. AM Mazumdar; Mr. R Islam, Advs.

**Judgement** :

01. The determination of interse seniority between the petitioner, respondent No. 4 and respondent No. 5 and the arrangement whereunder the respondent No. 4 has been allowed to hold the charge of the office of the Headmistress of the Uttar Barpeta High School, Barpeta (for short hereafter referred to as the School), is the subject matter of scrutiny in the instant proceeding. The order impugned is dated 11. 05. 2009, passed by the Director of Secondary Education, Assam, Kahilipara.

02. I have heard Mr. AM Mazumdar, Senior Advocate assisted by Mr. R Islam, Advocate for the petitioner, Mr. UK Goswami, learned Standing Counsel, Education Department, Assam and Mr. AM Buzarbaruah, learned counsel for the respondent Nos. 4 & 5.

02. A. The recorded facts need be outlined in brief. The petitioner, respondent No. 4 and the respondent No. 5 had joined the School on 19. 02. 1973, 19. 01. 1976 and 22. 05. 1978 respectively. Whereas, at the time of joining, the respondent Nos. 4 & 5 were graduates, the petitioner was an intermediate. He passed the B. Sc. Examination in the year 1979. He, thereafter, acquired B. Ed. degree. The School was provincialized w. e. f. 01. 01. 1984. Consequently the petitioner, the respondent Nos. 4 and 5 started receiving their pay in the graduate scale on and from that date.

In view of a dispute with regard to their interse seniority, the petitioner had earlier approached this Court with WP(C) No. 4286/2008, which was disposed of on 25. 02. 2009, with a direction to the Director of Secondary Education, Assam, to examine the petitioner's case in the light of the relevant Government policy and also decide the question of seniority between the parties. It was, thereafter that, by the impugned order, the respondent Nos. 4 & 5, have been declared to be senior over the petitioner and the respondent No. 4 has been allowed to hold the charge of the office of the Headmistress of the School. In the above factual premise, the aforementioned State authority determined the interse seniority on the basis of the dates of joining as far as the respondent Nos. 4 & 5 are concerned, and that of acquisition of the graduate degree by the petitioner.

03. In his affidavit, the Director of Secondary Education, Assam while endorsing the above determination, has referred to Rule 24 (2) (i) of Assam Secondary Education (Provincialisation) Service Rules, 2003 (hereafter for short referred to as the Rules). The above conclusion has also been affirmed by the respondent No. 4 in her individual counter. She has further averred with regard to Rule 14 (4) (i), in particular, that the criteria of being a graduate in Arts, Science and Commerce together with B. Ed. or BT degree is not indispensably essential for a candidate to be eligible for being considered for the post of Headmaster of a school governed by the Rules and that one with a higher academic qualification sans B. Ed. or BT degree is also entitled to be promoted to that post. She has therefore, asserted against being academically deficient compared to the petitioner to hold the charge of the office of the Headmistress of the School.

04. In his additional-affidavit, the Director of Secondary Education, Assam has apprised this Court that the vacancy in the abovementioned post of the School would be filled up on regular basis in terms of the Rules.

05. Mr. Mazumdar, has urged with particular reference to Rule 14 (4) (i) of the Rules that even assuming without admitting that the respondent Nos. 4 & 5 are senior to the petitioner as per rule 24 (2) (i), as the respondent No. 4 is clearly ineligible to be considered for the post of Headmaster being bereft of the minimum academic qualification prescribed, the impugned order is unsustainable in law and is liable to be interfered with. As the respondent No. 4 is unqualified in terms of Rule 14 (4) (i) being without BT or B. Ed. degree, which is an essential academic qualification prescribed thereby, her seniority alone is not enough to elevate her to the post of Headmistress of the School, he urged. To reinforce his arguments Mr. Mazumdar, has placed reliance on the decision of the Apex Court in R. PRABHA DEVI & ORS. VS. GOVERNMENT OF INDIA & ORS. , (1998) 2 SCC 233 and of this Court in JAGANNATH PEGU VS. STATE OF ASSAM & ORS. , 2007 (3) GLT 389.

06. Mr. Goswami, the learned Standing Counsel is not in issue with the legal proposition putforth on behalf of the petitioner vis-a-vis the essentialities contained in Rule 14 (4) (i) of the Rules.

07. Mr. Buzarbaruah, as against this, has argued that having regard to the language employed in Rule 14 (4) (i) of the Rules B. T. or B. Ed. degree ought to be construed to be merged in that of graduation in Arts, Science and Commerce and that therefore, any candidate possessed of a higher academic qualification, namely, PG degree, even without BT or B. Ed. , cannot by any means be deemed to be ineligible for being considered for the post of Headmaster of a school governed by the Rules. Had it been so, the rule making authority would have employed word "and" in place of "with", in Rule 14 (4) (i) he urged. Referring to the Rules since substituted by the present, the learned counsel has sought to impress upon this Court that the prescription of academic qualification as prima facie appears to have been made by Rule 14 (4) (i), having led to discrimination and exclusion of candidates with higher degree, a literal construction thereof ought to

be eschewed. Attention of this Court in this regard has also been drawn to Rule 12 (d) to emphasise that for the post of the Principal of a school governed by the Rules, insistence for B. T. or B. Ed. degree is missing. Mr. Buzarbaruah has also argued that having regard to the date on and from which the Rules have been brought into force, persons with higher degree, but also in service who has not acquired B. T. or B. Ed. degree, would stand excluded from being promoted to the post of Headmaster, if the interpretation as sought to be provided by the petitioner is accepted. On the other hand, the learned counsel by referring to the primary rules of interpretation of statutes, has urged that a harmonious construction to the provisions of the Rules, namely, 12 (d) and 14 (4) (i) ought to be accorded, so much so that the acquisition of B. T. or B. Ed. degree is not to be insisted upon as an indispensable academic qualification to prefer a graduate to a post graduate in a given fact situation.

08. The pleadings on record and the arguments advanced on the basis thereof have received the due consideration of this Court. From the issues focused upon, it is obvious that the aspect of interse seniority is not being very seriously pursued by the petitioner. The emphasis as is conspicuous from the arguments advanced on his behalf is on his eligibility in terms of Rule 14 (4) (i) to be credited a preference over the respondent No. 4 for holding the post of the Headmistress of the School. Admittedly, the petitioner out of the three is the only Assistant Teacher of the School, who presently is possessed of a B. Ed. degree. In terms of the plain language of Rule 14 (4) (i), if the interpretation sought to be extended on behalf of the respondent No. 4 is not accepted, he is the only candidate eligible to be considered for the said post.

09. The academic curricula for the B. T. and B. Ed. courses are distinctly different from that for the bachelor degree in Arts, Science and Commerce. The candidates concerned would have to first graduate in any one of the above disciplines to be eligible to pursue the B. T. or the B. Ed. course. In view of the clear distinction in curricula of these two courses, the plea that B. T. or B. Ed. degree when acquired by a Graduate in Arts, Science and Commerce ought to be treated to have been integrated therewith, appears to be unconvincing. The fine distinction sought to be introduced vis-a-vis the word "with" and "and", having regard to the text of Rule 14

(4) (i) also lacks persuasion. The rule makers were fully aware of the difference in the two degrees vis-a- vis the curricula and therefore, had consciously applied the language as is embodied in the above provision of the Rules. A graduate degree therefore, essentially has to be treated to be separate and distinctly different from that of B. T. and B. Ed. degree. True it is that a post graduate is possessed of an academic degree higher than that of a graduate degree in the same channel of study, but without having also acquired B. T. or B. Ed. degree, such a candidate cannot be said to be more eligible as per the requirements of Rule 14 (4) (i). Though, Rule 14 (4) (i) when read in juxtaposition with Rule 12 (d), it seems that for the post of Headmaster, the Rule making authority had insisted on the B. T. or B. Ed. degree, the instant proceeding being not one to test the vires of the provision involved, neither any judicial legislation nor any process of interpretation as suggested on behalf of the respondent No. 4 ought to be undertaken. Seemingly two different sets of requirements have been prescribed by the Rules qua the post of Headmaster and that of the Principal of the Schools governed by the Rules. The varying perspectives as suggested by Mr. Buzarbaruah, may result in differential treatments in some factual settings, but these are not enough for this Court, in the instant proceeding, to embark upon a process of interpretation of the relevant provisions of the Rules to read down the conditions of eligibility as embodied in Rule 14 (4) (i), so as to render the requirement of B. T. or B. Ed. degree otiose.

10. In the above view of the matter, this Court is of the unhesitant opinion that the B. T. or B. Ed. degree mentioned in Rule 14 (4) (i) have to be read in addition to a graduate degree in Arts, Science and Commerce, so much so that acquisition of post graduate degree simpliciter would not efface the requirement of a B. T. or B. Ed. degree as prescribed by the said provision of the Rules.

11. The Apex Court in R. PRABHA DEVI & ORS. (Supra), has in unequivocal terms relegated seniority behind eligibility for the purpose of promotion. According to their Lordships, the question of seniority for the purpose of promotion is relevant only amongst eligible candidates.

12. This Court in JAGANNATH PEGU (Supra), has underlined that a candidate eligible for promotion to a post of Headmaster on regular basis of a school governed by the Rules, cannot be overlooked even for the purpose of temporary arrangement like the one as it obtains in the facts of the present case.

13. In the above view of the matter as well as the findings recorded vis-a-vis the requirement of Rule 14 (4) (i) of the Rules, this Court is constrained to hold that the impugned order dated 11. 05. 2009 passed by the Director of Secondary Education, Assam, cannot be sustained vis-a-vis the arrangement by which the respondent No. 4 has been allowed to hold the office of the Headmistress of the School. As the respondent No. 4 in terms of Rule 14 (4) (i) of the Rules being lack in B. T. or B. Ed. degree and is ineligible there under for being considered for promotion to that post, the impugned order dated 11. 05. 2009 to that effect cannot be sustained and is thus interfered with. It is, however, made clear that this determination would not have any impact on the decision of interse seniority between the parties as made by the said order. The writ petition is allowed to the extent indicated hereinabove. The concerned State authority would do the needful without delay. No costs.

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