

GAHC010083722019



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2553/2019

JATIN DAS
SON OF KANLARA DAS, R/O. VILL.- HUZ GAON, P.O.- DHAKUAKHANA, P.S.
DHAKUAKHANA, DIST. LAKHIMPUR, ASSAM, PIN- 787055.

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REP. BY THE SECY. TO THE GOVT. OF ASSAM, ELEMENTARY EDUCATION
DEPTT., DISPUR, GUWAHATI, PIN- 781006, KAMRUP METROPOLITAN
DISTRICT, ASSAM.

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KHANAPARA
GUWAHATI
PIN- 781022
KAMRUP METROPOLITAN DISTRICT
ASSAM.

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER
LAKHIMPUR
NORTH LAKHIMPUR
ASSAM
PIN- 787001.

4:THE DY. INSPECTOR OF SCHOOLS

DHAKUAKHANA
DIST.- LAKHIMPUR
ASSAM
PIN- 787055

B E F O R E
Hon'ble MR. JUSTICE SANJAY KUMAR MEDHI
JUDGMENT & ORDER

Advocate for the petitioner : Shri P.K. Munir, Advocate

Advocates for respondents : Shri P.K. Borah, SC, Elementary Education Department,
Ms. D. Das. Barman, State Counsel.

Date of hearing : 12.06.2023

Date of judgment : 12.06.2023

1. Heard Shri P.K. Munir, learned counsel for the petitioner. Also heard Shri P.K. Borah, learned Standing Counsel, Elementary Education Department as well as Ms. D Das Barman, learned State Counsel.

2. Considering that this matter is pending since the year 2019 and also the fact that pleadings have been exchanged, this writ petition is taken up for disposal at the admission stage.

3. The case projected by the petitioner is that he is a Grade-IV employee (Chowkidar) in the establishment of the Deputy Inspector of Schools, Dhakuakhana in the district of Lakhimpur. It is submitted that he had joined the said post in the year 1994 and has completed more than 25 years in the said post (at the time of filing of the writ petition). He further submits that the petitioner was the senior-most Grade-IV

employee and was also eligible for promotion to the post of Junior Assistant and accordingly vide an order dated 19.12.2017 issued by the Director, Elementary Education, Assam, the petitioner was promoted to the said post of Junior Assistant.

4. However, vide an order dated 28.03.2019 issued by the Director, Elementary Education, the order of promotion dated 19.12.2017 was cancelled and the petitioner was reverted back to the original post of Grade-IV. The aforesaid cancellation was purportedly on the basis of a Government Notification dated 15.10.2015 as per which for holding the post of Grade-III, an incumbent is required to be a Graduate.

5. Shri Munir, the learned counsel for the petitioner has assailed the impugned order dated 28.03.2019, mainly on two grounds:

(i), the Rules which have been applied namely, the Assam Ministerial District Establishment Service Rules, 1967 is not applicable in the present case and therefore, the impugned order is not sustainable and;

(ii) the impugned order has been passed in gross violation of the principles of natural justice.

6. Elaborating on the first ground, the learned counsel for the petitioner, by referring to the definition of District Establishment appearing in Rule 2 (4) of the Rules of 1967 submits that the same would not include the establishment of the Deputy Inspector of Schools and therefore, recourse to the said Rules is without any basis.

7. As regards the second ground, the learned counsel has submitted that apparently no notice was issued or opportunity afforded to the petitioner before passing of the impugned order dated 28.03.2019.

8. The learned counsel for the petitioner accordingly prays for interference with the said order.

9. Shri P.K. Borah, learned Standing Counsel, Elementary Education by referring to the affidavit-in-opposition dated 17.05.2019 has submitted that there is no separate Statutory Rules or Executive instructions for promotion from Grade-IV to Grade-III under the Establishment of the Deputy Inspector of Schools and therefore, the Rules of 1967 are being followed. He submits that it is not an isolated case where the Rules are taken recourse to for the petitioner but all such cases are dealt with by adhering to the said Rules. The learned Standing Counsel further submits that the requirement in the Rules are neither unreasonable nor arbitrary wherein a minimum educational qualification has been laid down by an amendment which is to be a Graduate to hold a Grade-III post and the said requirement is being uniformly followed.

10. As regards the ground of violation of the principles of natural justice, Shri Borah, the learned counsel has submitted that the opportunity of notice would be a useless formality wherein the impugned action is only on the ground of educational qualifications and not on any other allegations. He submits that since such interference with the promotion order has been taken on an objective basis, affording of an opportunity cannot have any effect on the decision making process.

11. Ms. D. Das Barman, learned State Counsel endorses the submissions of Shri Borah, the learned Standing Counsel and submits that the writ petition is without any merits.

12. The rival submission made by the learned counsel for the parties have been duly considered and the materials placed before this Court have been carefully examined.

13. The grounds projected by the petitioner, as narrated above are in connection with the Rules as per which the impugned action has been taken and also the requirements of giving any notice or opportunity.

14. Though Shri Munir, the learned counsel for the petitioner appears to be correct in contending that the definition of District Establishment appearing in Rule 2 (4) does not include the Establishment of the Deputy Inspectors of Schools, the contention made on behalf of the Department that the said Rules of 1967 are being uniformly followed in absence of any Statutory or Executive Instructions cannot be overlooked. The said contention has also been put on record in the affidavit-in-opposition dated 17.05.2019 which is extracted herein below:

“7. That the deponent begs to state that for promotion from Grade-IV to Grade-III is governed by the provisions of the Assam Ministerial District Establishment Service Rules, 1967, as there is no Statutory Rules or Executive Instructions with regard to promotion and appointment to the Grade –III posts from Grade-IV posts. As per the said Rules of 1967, the minimum educational qualification was fixed at HSLC passed till 16.10.2015. After that, said Rules of 1967 was Amended vide Notification dated 15.10.2015. Subsequently, it was published vide Gazette Notification dated 16.10.2015, called as "The Assam Ministerial District Establishment Service (Amendment) Rules, 2015. According to the said Amendment, the qualification is now fixed as Degree w.e.f. 16.10.2015. As per Rule 6(B) of the Rules of 1967, the promotional quota is earmarked as 10% of the vacancies in the concerned District Educational Establishments. Therefore, the promotion of the petitioner vide order dated 19.12.2017 from Grade-IV to Grade-III was made wrongly, which

was in violation of the amended Rule of the Rules of 1967. The deponent on coming to know about the mistake, rectified the same by issuing the order dated 28.03.2019. Hence, the question of considering the petitioner for promotion to the post of Jr. Assistant (LDA) and / or to allow him to continue to work against the said post of Grade-III does not arise as the petitioner is not a Graduate.”

15. This Court has also examined the said Rules and the requirement introduced by the amendment of 2015 whereby the qualification of “Graduation” has been introduced for holding a Grade –III post. Such qualification cannot be held to be unreasonable or arbitrary as an incumbent holding a Grade- III post would be discharging duties which would require certain skills and minimum qualification. This Court has further observed that the Rules of 1967 has been uniformly followed in all such appointments / promotion in the Establishment under the Deputy Inspector of Schools of the Education Department which cannot be said to be unreasonable stand of the Department, more so, in absence of any independent Rules or executive instructions. Further, the promotion in question was in the year 2017 when the amended provision of Rules were already operating.

16. With regard to the contention of violation of the principles of natural justice, this Court finds force in the contention made by the Department that since the decision is based on certain objective standards, namely the educational qualification to hold such post, granting of an opportunity could only be a useless formality. The Hon’ble Supreme Court in the case of ***Aligarh Muslim University Vs. Mansoor Ali Khan***, reported in **(2000) 7 SCC 529** has clearly explained the “useless formality theory” in the context of adherence to principles of natural justice. For ready reference the relevant paragraphs are extracted herein below:

“23. Chinnappa Reddy, J. in *S.L. Kapoor* case laid down two exceptions (at SCC p. 395) namely, if upon admitted or indisputable facts only one conclusion was possible, then in such a case, the principle that breach of natural justice was in itself prejudice, would not apply. In other words if no other conclusion was possible on admitted or indisputable facts, it is not necessary to quash the order which was passed in violation of natural justice. Of course, this being an exception, great care must be taken in applying this exception.

24. The principle that in addition to breach of natural justice, prejudice must also be proved has been developed in several cases. In *K.L. Tripathi v. State Bank of India*⁵ Sabyasachi Mukharji, J. (as he then was) also laid down the principle that not mere violation of natural justice but *de facto* prejudice (other than non-issue of notice) had to be proved. It was observed, quoting Wade’s *Administrative Law* (5th Edn., pp. 472-75), as follows: (SCC p. 58, para 31)

“[I]t is not possible to lay down rigid rules as to when the principles of natural justice are to apply, nor as to their scope and extent. ... There must also have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the facts and circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with, and so forth.”

Since then, this Court has consistently applied the principle of prejudice in several cases. The above ruling and various other rulings taking the same view have been exhaustively referred to in *State Bank of Patiala v. S.K. Sharma*⁶. In that case, the principle of “prejudice” has been further elaborated. The same principle has been reiterated again in *Rajendra Singh v. State of M.P.*⁷

25. The “useless formality” theory, it must be noted, is an exception. Apart from the class of cases of “admitted or indisputable facts leading only to one conclusion” referred to above, there has been considerable debate on the application of that theory in other cases. The divergent views expressed in regard to this theory have been elaborately considered by this Court in *M.C. Mehta*¹ referred to above. This Court surveyed the views expressed in various judgments in England by Lord Reid, Lord Wilberforce, Lord Woolf, Lord Bingham, Megarry, J. and Staughton, L.J. etc. in various cases and also views expressed by leading writers like Profs. Garner, Craig, de Smith, Wade, D.H. Clark etc. Some of them have said that orders passed in violation must always be quashed for otherwise the court will be prejudging the issue. Some others have said that there is no such absolute rule and prejudice must be shown. Yet, some others have applied *via media* rules. We do not think it necessary in this case to go deeper into these issues. In the ultimate analysis, it may depend

on the facts of a particular case.”

17. A writ court in exercise of its discretionary powers would only look into the decision making process and in the instant case, the considerations on which the decision has been taken appear to be relevant and germane and therefore, this Court is of the opinion that no case for interference is made out.

18. At this stage, Shri Munir, the learned counsel for the petitioner submits that since there would be stagnation in the promotional aspect of the petitioner, a direction may be given for the benefits under the Modified Assured Career Progression Scheme for getting stagnation benefits. It would be open for the petitioner to apply for such benefits under the aforesaid Scheme, if applicable, with justified reasons and if the same is done, the authorities would consider the same in the proper perspective.

19. Accordingly the writ petition stands dismissed.

JUDGE

Comparing Assistant