

GAHC010205272018



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

Case No. : WP(C)/6393/2018

MUKUL KR. SARMA
S/O. LT. PITAMBAR SARMA, R/O. JAPARKUCHI, NALBARI, P.O. TERECHIA,
P.S. NALBARI, DIST. NALBARI, ASSAM.

VERSUS

THE STATE OF ASSAM AND 7 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, HIGHER
EDUCATION DISPUR, GUWAHATI-781006.

2:THE DIRECTOR OF HIGHER EDUCATION

KAHILIPARA
GUWAHATI-781019.

3:THE DEPARTMENTAL PROMOTION COMMITTEE

REP. BY ITS CHAIRMAN
BAPUJEE COLLEGE SARUKSHETRI
P.O. SARTHEBARI
BARPETA
ASSAM-781307.

4:PRANAB KUMAR SARMA

HEAD OF THE DEPTT. OF ENGLISH
BAPUJEE COLLEGE
SARUKSHETRI
P.O. SATHEBARI
BARPETA
ASSAM-781307.

5:JITENDRA DAS

EX H.O.D.
DEPARTMENT OF ENGLISH
BAPUJEE COLLEGE
SARUKSHETRI
SARTHEBARI
BARPETA
ASSAM-781307.

6:THE GOVERNING BODY OF THE BAPUJEE COLLEGE

SARUKSHETRI
SARTHEBARI
BARPETA
ASSAM-781307.

7:THE BAPUJEE COLLEGE

REP. BY THE PRINCIPAL
SARUKSHETRI
SARTHEBARI
BARPETA
ASSAM-781307.

8:GAUHATI UNIVERSITY

GOPINATH BORDOLOI NAGAR
REP. BY ITS REGISTRAR
GUWAHATI
KAMRUP (M)
ASSAM-781014

Advocate for the Petitioner : MR. S BORA

Advocate for the Respondent : SC, EDU

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 21.04.2023

Heard Mr. A. Ganguly, learned counsel for the petitioner. Also heard Mr. S.

Baruah, learned standing counsel for the Higher Education Department, representing respondent nos. 1 and 2, Mr. J.M. Gogoi, learned counsel for respondent nos. 3 and 6, Mr. B.D. Goswami, learned counsel for respondent no. 7 and Mr. N.D. Sarma, learned counsel for respondent no. 8. None appears on call for respondent nos. 4 and 5.

2. In brief, the case of the petitioner is that on 10.09.1997, he had joined as lecturer in Bapujee College, Sarukshetri, Sarthebari, Barpeta, which was a non-sanctioned post. On 08.01.1998, the petitioner joined the same college in a lien vacancy Lecturer in English Department, which was otherwise a sanctioned post. The petitioner claims that his service was regularised on 18.07.1999 against a permanent post in the same college. On 23.10.1998, the respondent no. 4 was appointed in the same college as Lecturer in English against regular and permanent post. The petitioner claims that based on the date of joining, his name appeared before the respondent no. 4 in all respects. The grievance of the petitioner is that while he was pursuing his Ph.D. Degree from CIEFL, Hyderabad, the authorities of Bapujee College had shown the name of the respondent no. 4 before the petitioner in the English Department. Against the said action, the petitioner had submitted his representation dated 05.11.2011, but the Principal of the said college had not disposed of the said representation. The grievance of the petitioner is that he had been suffering mental harassment from the respondent no. 4, who was made the Head of the Department. To cite a few instances, it has been projected that in the attendance register, the petitioner was marked absent in red-ink for not taking classes in a particular time-slot. It is also alleged that by exerting his influence over the Principal and Governing Body of the said college, the respondent no. 4 had managed to appoint a particular person as subject- expert to secure his

own promotion from the post of Assistant Professor to Associate Professor, which was done on 10.01.2014, the during the vacation of the said college and that the minutes of the Departmental Promotion Committee was written by the respondent no.4 in his own hand-writing. It is also alleged that the subject expert was appointed by the Principal of the college in violation of the letter dated 05.05.2011, issued by the Vice Chancellor of the Gauhati University. Thus, by filing this writ petition under Article 226 of the Constitution of India, the petitioner has prayed for directing the respondent authorities to set-up a mechanism to redress the grievance of the faculty members and students of the college against mental harassment; for the direction to the respondent authorities to take appropriate steps against the respondent no. 4 to prevent him from indulging in mental harassment against the petitioner; for issuance of a direction for mental fitness check in appointing teachers in colleges and to introduce periodic mental check-up of existing teachers to prevent harassment to colleagues and students; for setting aside the minutes dated 10.01.2014 of the Departmental Promotion Committee (DPC for short); for a direction to the respondent authorities to maintain departmental seniority as per date of joining; and for quashing letter dated 25.01.2018.

3. The learned counsel for the petitioner had submitted that the respondents have not contested the writ petition because none of the respondents had filed their respective affidavit- in- opposition and therefore, it has been submitted that the prayers made in the writ petition deserves to be allowed.

4. The learned counsel for the petitioner has not been able to show from the provisions of any act, rules or notification that seniority position

of lecturer has to be counted from the date of joining and not from the date when they were appointed in a vacant and sanctioned post. In the said regard, it is too well settled that the period of service rendered in non-sanctioned post shall not be counted for seniority and/or any other purpose.

5. In this case, the petitioner claims that he was initially appointed in a non-sanctioned post. It is not known whether the requisite formalities, required for making appointment by usual process of making public appointment was followed or not. In the said context, the petitioner cannot claim that his appointment to non-sanctioned post was legal. The Supreme Court of India, in the case of *State of Bihar & Ors. v. Devendra Sharma*, (2020) 15 SCC 466, had observed as follows:-

“44. In view of the aforesaid judgments, it cannot be said that the appointment of the employees in the present set of appeals were irregular appointments. Such appointments are illegal appointment in terms of the ratio of Supreme Court judgment in Secretary, State of Karnataka v. Uma Devi, (2006) 4 SCC 1. As such appointments were made without any sanctioned post, without any advertisement giving opportunity to all eligible candidates to apply and seek public employment and without any method of recruitment. Such appointments were backdoor entries, an act of nepotism and favoritism and thus from any judicial standards cannot be said to be irregular appointments but are illegal appointments in wholly arbitrary process.”

6. However, as the legality of the appointment of the petitioner in non-sanctioned post is not under challenge, the Court would not like to make any comment thereon.

7. It may be mentioned that in paragraph 4 of the writ petition, the petitioner has admitted as follows - “... That there is no dispute that respondent no. 4, Sri Pranab Kumar Sarma joined the Department against a regularized post before the writ petitioner making the respondent no. 4 senior

to the writ petitioner for getting promotional benefits before the petitioner. ..."

Thus, in the absence of any material on record to show that seniority can be reckoned from the date of appointment in a non-sanctioned post, the seniority of the petitioner in service must be counted from 18.07.1999, the date on which his service was regularized against a permanent post. In this regard, if one wants an authority on the point, the case of *Nand Kumar Manjhi v. State of Bihar & Ors.*, (2019) 14 SCC 67, may be referred to wherein the Supreme Court of India had held that seniority of the appellants therein can be reckoned only from the date of regularisation of their services and not from the date of their initial appointment as claimed by them.

8. Similarly, in the case of *Dr. M.A. Haque v. Union of India*, (1993) 2 SCC 213, the Supreme Court of India had held to the effect that seniority of direct recruits should be determined according to the dates of their regular appointment.

9. Few other issues raised by the petitioner must be referred to. The petitioner alleges that for not holding classes at the stipulated time-slot, the respondent no. 4 had marked him absent. In this regard, the Court is of the considered opinion that being a lecturer in the college, the petitioner is bound to attend his classes at the allotted period and he cannot have a vested right to take classes as per his wishes and desire, so long he is in service and wishes to continue to serve in a college. The greater interest of the students must give way desire of the petitioner to take classes as per his own whims and fancies. As the Head of English Department, it was permissible for the respondent no.4 to mark the petitioner as absent in red-ink if the petitioner did not attend his allotted classes on time and therefore, the grievance of the petitioner that he

was marked absent has no merit at all.

10. One of the prayer of the petitioner is that there should be periodical mental check-up of existing teachers. However, the petitioner has not been able to show any act, rules or notification of the Government of Assam whereby provision has been made for periodical mental check-up of the existing teaching staff and therefore, the Court would have no power to direct that one class of Government employees, specifically the teaching staff of college, to undergo periodical mental check-up as there are no material to presume that teaching staff of colleges require periodical mental check-up. The Court strongly deprecates such a prayer made by the petitioner. However, as the petitioner has made such a prayer, the Court is of the opinion that the petitioner may not mind to practice what he preaches and therefore, he would set an example to others by voluntarily have his own periodical mental check-up done out of his own volition and free will and to submit his periodical medical report to the Principal of Bapujee College, where he is presently serving. In the event any such reports are submitted by the petitioner, the Principal of Bapujee College shall retain it in the file of the petitioner for record.

11. In this case the petitioner has questioned the appointment of one H.C. Haloi as Vice Chancellor's nominee. However, as the said person has not been impleaded as a respondent, it would not be proper for the Court to examine his appointment without putting him to notice.

12. The petitioner has questioned the DPC as it was held to examine the case of the respondent no. 4 alone. Admittedly, the respondent no. 4 was senior to the petitioner and therefore, the DPC held for examining the candidature of the respondent no. 4 would not prejudice the petitioner in any

manner, as the petitioner has not been able to show that the respondent no. 4 was otherwise not entitled to be recommended for the post of Associate Professor and to be placed in a higher pay-band. The petitioner has not been able to show any act, rule or notification which prohibits DPC to be held for examining the candidature of a single candidate, if he was other eligible.

13. Thus, the petitioner has miserably failed to demonstrate that he has been mentally harassed in any manner whatsoever. The claim of being mentally harassed is held to be false and frivolous and tainted with malice because the petitioner thinks that he should have been appointed as the Head of English Department of Bapujee College. It appears to the Court that because of professional rivalry, the petitioner has dragged the respondent no. 4 and others to Court.

14. In view of the discussions above, this writ petition is found to be without any merit, rather this writ petition is held to be frivolous and vexatious and is an abuse of the process of Court. Accordingly, this writ petition stands dismissed.

15. Under the circumstances, the petitioner is held liable to pay a token cost of Rs.10,000/- (Rupees Ten thousand only), to be paid by the petitioner to the office of the Bapujee College to be utilized for purchasing books for the library of Bapujee College. If the petitioner does not deposit such cost within a period of one month from the date of the order, it would be open to the competent authority of Bapujee College to deduct the said amount from the salary of the petitioner.

16. Before parting with the records, it may be mentioned that the

learned counsel for the respondent no.7 had submitted that some time after the writ petition was filed, the petitioner had also been promoted to the post of Associate Professor. We do not make any comment thereon as the same has not been brought on record by filing affidavit.

JUDGE

Comparing Assistant