

Sreedam Chandra Ghosh

Vs

State of Assam and Others

SLP (C) No. 16986 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

09.09.1996

### ORDER

1. This special leave petition has been filed against the judgment and order of the Gauhati High Court made on 29-5-1996 in W.A. No. 165 of 1996 confirming the order of the learned Single Judge. While the petitioner was working as an Assistant Graduate Teacher in Kahilipara High School, a regular incumbent of the post of headmaster of the high school one Keshablal Kanjilal had retired from service on 11-1-1995. The petitioner being the seniormost Assistant Graduate Teacher was asked to officiate in the post till a new incumbent takes charge. The Inspector of Schools, Kamrup District Circle, Gauhati by his proceedings dated 18-1-1995 asked the petitioner to discharge the additional duties as headmaster in addition to his duty as a School Assistant Graduate Teacher authorising to draw and disbursement of the salaries. One Mukul Chandra Roy, a regular headmaster working in Pranab Bidyapity High School at Lumding of Nagaon District has been transferred by order dated 15-2-1996 to the incumbent (sic) post in which the petitioner is officiating. This transfer order came to be challenged by the petitioner in the High Court contending that he was promoted as headmaster on regular basis, therefore, Mukul Chandra Roy cannot be transferred in his place. The learned Single Judge and the Division Bench had held that there was no order of appointment to the petitioner promoting him on regular basis as headmaster; he was continuing as an officiating headmaster; the petitioner, therefore, has no right to the post as headmaster and that the transfer order, therefore, was held to be implementable. Since the order of transfer was not being complied with, the High Court had directed the Director of Education to take disciplinary action against the persons responsible for non-compliance thereof. Calling that order in question, this special leave petition has been filed.

2. Shri N.N. Kumar, the learned counsel for the petitioner has contended that the Division Bench of the High Court was wrong in placing reliance on Rule 9 of the Secondary Education (Provincialised Service) Rules, 1982. It would apply only in a case where regular recruitment by promotion is to be made. Rule 10(a) would be applicable to the petitioner. The post was upgraded by asking the petitioner to officiate and that, therefore, he is entitled to continue in the post. We find no force in the contention. The learned counsel has read out Rule 10(a) with all the conditions prescribed therein. It is only a procedural part for consideration of the claims of the eligible candidates for promotion to the post of headmaster. The list is to be drawn by the competent authority, with a recommendation to the Public Service Commission or the Committee, as the case may be, to consider the respective claims. After receipt of such list, the claims are to be considered by the Public Service Commission or the Committee, as the case may be, within one month from the date of the receipt of the list and then recommendation is to be made for appointment on regular basis. Thereafter appointment requires to be made in accordance with the rules.

3. Rule 9 prescribes the qualifications and the procedure for appointment by promotion to the post of Headmaster out of the select list of Vice-Principal, Assistant Headmaster and Postgraduate Teachers having 15 years' continuous teaching experience in the service. Admittedly, there is no order of appointment made to the petitioner. As having been seen from the record, it was only a stopgap arrangement made of the petitioner to officiate as headmaster till the regular incumbent assumes office as headmaster. Therefore, he does not have any right to the post to hang on after the regular incumbent has been transferred to the post.

4. It is then contended that the ousting of the petitioner from the post amounts to punishment. The procedure prescribed under the Assam Civil Service (Discipline and Appeal) Rules has not been applied; it amounts to demotion of the petitioner from the service of the headmaster to the post of Assistant Graduate Teacher, therefore, the High Court has overlooked the statutory provision. The learned counsel is wholly misconceived in his conception of the law. The Assam Civil Services (Discipline and Appeal) Rules apply only in a case where disciplinary action is sought to be taken against a government servant in accordance with the principles. In this case, since the petitioner was officiating and regular incumbent has to assume the office and the petitioner has to hand over the charge to the new regular incumbent, it is neither demotion nor a punishment.

5. It is then contended that the impugned order is not a transfer order and it does not contain any direction to Mukul Chandra Roy to take charge or the petitioner has not been served with a notice that he should be demoted. This contention also is wholly misconceived. A reading of the order do indicate that Mukul Chandra Roy was posted in place of retired headmaster and the petitioner who was officiating as headmaster was directed to hand over the charge. Therefore, it is a clear case of transfer of Mukul Chandra Roy who is a regular headmaster. It is then contended that the transfer order does not create any right in favour of Mukul Chandra Roy and it cannot be enforced. He read out judgments of this Court as to exercise of the power of the High Court under Article 226. We fail to appreciate the contention of the learned counsel. This Court has amplified the exercise of power and the self-imposed limitations on the exercise of the power in the given circumstances. In this case, since the petitioner stood in the way of enforcement of transfer order passed by the competent authority, the High Court has given appropriate direction to the Director to enforce the orders and take suitable action against the erring officers.

6. It is then contended that the transfer orders are to be enforced by the Government as per the rules in vogue and the High Court cannot interfere with these orders. We are unable to appreciate this contention also. When the Government views non-compliance of the transfer order as a serious indiscipline on the part of the erring officer and when the person complains of the non-compliance to the court, the court necessarily has to give effect to the order and given directions for the enforcement thereof. Under these circumstances, we do not find any merit in the petition.

7. The petition is dismissed with no order as to costs.