

GAHC040009172023



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

Case No. : WP(C)/321/2023

Tapen Konia
S/o Late Tadam Konia,
R/o Gyama Colony, Daporijo, District Upper Subansiri, Arunachal Pradesh.
Mobile 7085680100

VERSUS

THE STATE OF AP and 4 Ors.
Represented through the Commissioner Education Department, Govt. of Arunachal Pradesh, Itanagar. 2:the Secretary
Age: 0
Occupation :

3:the Deputy Director
Age: 0
Occupation :

4:Tapor Garam @ Sorum (PRT)
Age: 0
Occupation :

5:Pokter Rime
Age: 0
Occupation

Advocate for the Petitioner : Khoda Tama

Advocate for the Respondent : Tagum Jamoh

**BEFORE
HONBLE MR. JUSTICE NANI TAGIA**

ORDER

Date : 18.09.2023

Heard Mr. K. Tama, learned counsel for the petitioner.

Also heard Mr. T. Jamoh, learned standing counsel for the Education Department representing the respondents no. 1, 2 & 3 and Mr. T. Garam, learned counsel for the respondent no. 4.

None has appeared for the respondent no. 5 despite service of notice.

This writ petition is directed against the Order, dated 04.07.2023, issued by the Dy. Director of School Education, Upper Subansiri District, Daporijo, the respondent no. 3, vide no. EDN/US/ESSTT/TP-Part III/03/2023-24/2220, whereby, the petitioner, who is a Junior Teacher (J/T) has been released from Coordinator Residential School while assigning the petitioner, the duty of Academic, Health & Hygiene; and, in his place, the respondent no. 4, who is a Primary Teacher (PRT) has been assigned the duty of Coordinator Residential School.

Though various contentions have been raised by the petitioner in assailing the impugned order, dated 04.07.2023, issued by the Dy. Director of School Education, Upper Subansiri District, Daporijo, the primary contention of the petitioner against the impugned order, dated 04.07.2023 is that, in terms of the 9th Executive Committee meeting of SSA Rajya Mission Society, Arunachal Pradesh, held on 22.11.2011 at C/S's Conference Hall, Itanagar, one of the requirement for assigning duty of Coordinator Residential School

in terms of Clause 12, thereof, is that such an incumbent, inter alia, should possess B.Ed/D.El.Ed.

The specific challenge made to the impugned order, dated 04.07.2023, issued by the Dy. Director of School Education, Upper Subansiri District, Daporijo by the petitioner is that the respondent no. 4 does not possess the degree of B.Ed as per Clause 12 of the 9th Executive Committee meeting of SSA Rajya Mission Society, Arunachal Pradesh, held on 22.11.2011 at C/S's Conference Hall, Itanagar; and, therefore, the respondent no. 4 could not have been assigned the duty of Coordinator Residential School vide the impugned order, dated 04.07.2023, issued by the Dy. Director of School Education, Upper Subansiri District, Daporijo.

The case set up by the petitioner has been contested by the respondent no. 4 by filing a detailed counter-affidavit, wherein, in Paragraphs 4 to 16, it has been contended as under; which are reproduced herein below:-

“4. That at the outset the answering respondent no. 4 begs to state that he had changed his name from Tapor Sorum to Tapor Garam in 2018 by executing an affidavit before a Magistrate and the same was also published in a local newspaper. Thereafter, on 12.06.2018 the Director of Elementary Education issued an order wherein it was stated that henceforth the name of the answering respondent no. 4 would be mentioned as “Tapor Garam” instead of “Tapor Sorum” in all official records and correspondences.

5. That before giving paragraph-wise reply to the contentions made in the writ petition, the answering respondent no. 4 would like to state certain facts which would be essential for adjudication of the instant matter.

(i) That the answering respondent no. 4 had obtained BA degree in the year 2005. Thereafter, he was appointed as a Primary Teacher (PRT) on 25.03.2008.

(ii) That while the answering respondent no. 4 was in service he did his Masters in Political

Science.

(iii) That thereafter in 2015, the answering respondent no. 4 submitted an application to the authorities in the Education Department seeking permission to undergo B.Ed course from Teacher Training College, Aalo and the same was allowed vide order dated 27.08.2015 issued by the Director of Elementary Education. Subsequent thereto the answering respondent no. 4 completed the B.Ed course in 2017.

(iv) That having been awarded B.Ed degree, the answering respondent no. 4 submitted his B.Ed degree to the authorities in the Education Department and the qualification details of the answering respondent no. 4 have been accordingly updated.

(v) That further the Deputy Director of School Education, Upper Subansiri District has issued a certificate dated 14.07.2023 wherein it is categorically stated that the answering respondent no. 4 has obtained B.Ed Degree while he was in service.

6. That the statement made in paragraph 1 of the writ petition that the petitioner is presently serving as 5 Resident School Co-ordinator is wholly incorrect, baseless, misconceived and an prima-facie false statement made on oath. Although the petitioner was temporarily attached to the office of the DPO, Upper Subansiri District to look after the works of a Residential School Co-ordinator, however, he was never regularly appointed to such post. Moreover, vide impugned order dated 04.07.2023, the petitioner has been relieved from the post of Residential School Co-ordinator and the answering respondent no. 4 has been appointed to the said post. Further, subsequent thereto, the answering respondent no. 4 was released from his earlier place of posting on 05.07.2023 and considering the fact that the petitioner was on leave during such period, the answering respondent no. 4 was allowed to take ex-parte charge vide order dated 06.07.2023. Thereafter, the answering respondent no. 4 assumed ex-parte charge as Co-ordinator, Residential Schools in the Office of the Deputy Director of School Education, Daporijo on 07.07.2023. These facts have been deliberately suppressed by the petitioner and on this count alone the writ petition is liable to be dismissed.

7. That the statements made in paragraph 2 of the writ petition are incorrect, baseless and misconceived. Hence, the same are categorically denied by the answering respondent no. 4. The answering respondent no. 4 categorically denies that he does not possess B.Ed Degree.

The answering respondent no. 4 is a B.Ed qualified PRT and as such, he is qualified to be appointed as a Residential School Co-ordinator. The statements made to the contrary are wholly incorrect, baseless and misconceived. The petitioner is seeking to deliberately mislead this Hon'ble Court. Such an action on the part of the petitioner is a clear abuse of the process of this Hon'ble Court as well as an abuse of the process of law. Hence, the writ petition is liable to be dismissed on this count alone. Further, although the petitioner has alleged malafide against the respondent no. 5 in the paragraph under reply, however, the petitioner has not even annexed a single document to substantiate such allegation. The answering respondent no. 4 humbly begs to submit that malafide, if alleged, has to be substantiated by placing materials on record. In the instant case, the petitioner has miserably failed to establish the malafide in the impugned decision making process and hence, this Hon'ble Court may be pleased to reject such a contention. Moreover, in the paragraph under reply, the petitioner has contended that he could not have been transferred since he had not even completed the normal tenure of 2 years as has been prescribed by way of the notification dated 19.12.2008. In response to the aforesaid contention, the answering respondent no. 4 humbly begs to submit that the notification dated 19.12.2008 is merely a guideline and it does not confer any enforceable right upon the petitioner. Moreover, the petitioner was only temporarily attached to the post of Co-ordinator, Residential Schools vide order dated 17.10.2022 and as such, he does not have any indisputable right to continue in the said post. Apart from the above, the answering respondent humbly begs to submit that the petitioner having been relieved from the post of Co-ordinator, Residential Schools and being directed to look after Academic, Health and Hygiene aspects of the schools in the district is a decision taking in administrative exigencies and as such, the same may not be interfered by this Hon'ble Court in exercise of its extra-ordinary powers under Article 226 of the Constitution of India.

8. That the statements made in paragraph 3 of the writ petition being matters of record, the answering respondent no. 4 refrains from making any comments thereon. The answering respondent no. 4, however, denies anything that is contrary to the records.

9. That the statements made in paragraphs 4 and 5 of the writ petition are incorrect, baseless and misconceived. Hence, the same are categorically denied by the answering respondent

no. 4. The petitioner has made a deliberate false statement in the paragraph under reply. In the paragraph under reply, the petitioner has stated that Co-ordinators from all interventions should be from Head Master Middle School or Senior most J/T with B.Ed. However, a perusal of the notification dated 14.09.2006 would reveal that such a requirement is not all mandatory. It has been stated in the notification dated 14.09.2006 that Co-ordinators may be selected from H.M. Middle Schools etc. As such, the petitioner has deliberately tried to mislead this Hon'ble Court by trying to portray a mere directory requirement as mandatory. Moreover, the said requirement has subsequently been modified in the 9th the Executive Committee meeting of SSA held on 22.11.2011 (Annexure 2, Pg 22 of the writ petition). In the said meeting it was decided that Co-ordinators would be appointed from teachers with sound academic background having 10 years teaching experience with B.Ed/D.El.Ed qualification. The answering respondent is a teacher with B.Ed degree with more than 10 years of teaching experience and hence he is qualified in all the above respects and as such, his appointment as Co-ordinator, Residential 9 Schools cannot be said to be illegal on any count whatsoever.

10. That the statements made in paragraph 6 of the writ petition being matters of record, the answering respondent no. 4 refrains from making any comments thereon. The answering respondent no. 4, however, denies anything that is contrary to the records.

11. That with regard to the statements made in paragraph 7 of the writ petition, the answering respondent no. 4 humbly begs to state that the petitioner was only temporarily allowed to look after the charge of Co-ordinator, Residential Schools on the request of the Hon'ble MLA, 26th S/T Constituency, Dumporijo dated 29.09.2022. In fact, in the said UO note it was categorically stated that the petitioner may be attached as Co-ordinator, Residential Schools till appointment of a regular Co-ordinator, Residential Schools. Accordingly, the petitioner was temporarily attached in the post of Co-ordinator, Residential Schools. The petitioner has no right to continue in the said post. Moreover, the answering respondent no. 4 is wholly eligible to hold the post of Co-ordinator, Residential Schools and his appointment has been made in administrative exigencies. As such, there is no illegality in the impugned order dated 04.07.2023. The answering respondent no. 4 further begs to state that 10 the post of Co-ordinator under the Samagra Siksha Abhiyan is

not a cadre post under the Education Department. The Samagra Siksha Abhiyan is a centrally funded scheme which aims at holistic development of school education and for such purpose various aspects of school education are monitored. It is for proper implementation of the scheme that teachers working under the Education Department of the State are temporarily required to work at various capacities under the Samagra Siksha Abhiyan. There is no right that can be accrued upon any teacher to work as Co-ordinator since it is neither a cadre nor a promotional post. As such, no right of the petitioner is violated by relieving him from the post of Co-ordinator and entrusting him a different responsibility. It is pertinent to state that the petitioner is still working under the Deputy Director of School Education, Daporijo and there has been no change in his place of work but merely his responsibilities have changed. As such, in the humble submission of the answering respondent no. 4 there is no illegality in the impugned action and hence, this Hon'ble Court may not be pleased to interfere in the same.

12. That the statements made in paragraph 8 of the writ petition are incorrect, baseless and misconceived. Hence, the same are categorically denied by the answering respondent no. 4. It is categorically denied that the answering respondent no. 4 does not possess a B.Ed degree and that he is not eligible to hold the post of Co-ordinator, Residential Schools. The answering respondent no. 4 begs to state that as has been stated in the preceding paragraphs, the answering respondent no. 4 has a B.Ed degree and also has the requisite qualification and experience to hold the post of Co-ordinator, Residential Schools. In the humble submission of the answering respondent no. 4 the petitioner has resorted to blatant falsehood and suppressed relevant and material facts from this Hon'ble Court thereby disentitling him of any relief at the hands of this Hon'ble Court. It is no longer *res integra* that a petitioner approaching the court under Article 226 has to come with clean hands by placing all the relevant and material facts before the Hon'ble Court. Suppression of relevant and material facts that have a bearing on the outcome of the case is a clear abuse of the process of law as well as the process of this Hon'ble Court. In the instant case, the petitioner deliberately suppressed the fact about the educational qualification of the answering respondent no. 4. Moreover, he has also tried to mislead this Hon'ble Court with regard to the eligibility for appointment as 12 a Co-ordinator. As such, in view of such conduct of the petitioner, this Hon'ble Court may be pleased to dismiss the writ petition by

imposing exemplary cost upon the petitioner.

13. That the statements made in paragraph 9 of the writ petition are incorrect, baseless and misconceived. Hence, the same are categorically denied by the answering respondent no. 4. The answering respondent no. 4 humbly begs to state that notification dated 19.12.2008 is a mere guideline and the same does not confer any enforceable right upon the petitioner. The petitioner being a government servant he can be transferred in administrative exigencies at any time and he has to obey such transfer. Moreover, as is evident from the order dated 17.10.2022, the petitioner merely temporarily attached to the post of Co-ordinator, Residential Schools and as such, he now cannot claim right to hold such post.

14. That the statements made in paragraph 10 of the writ petition are incorrect, baseless and misconceived. Hence, the same are categorically denied by the answering respondent no. 4. The answering respondent no. 4 categorically denies that he was transferred by flouting the norms. It is categorically stated that the impugned transfer order is valid and legal. Although the petitioner has alleged malafide on 13 the respondent no. 5, however, he has not placed any material on record to substantiate such allegation. It is no longer res integra that a person who alleges malafide has to substantiate the same by producing cogent materials from which it could be inferred that there was indeed malice involved in the action impugned. In the instant case, the petitioner has miserably failed to establish malafide. As such, this Hon'ble Court may be pleased to reject the claim of malafide in the impugned decision making process.

15. That the statements made in paragraphs 11 and 12 of the writ petition are incorrect, baseless and misconceived. Hence, the same are categorically denied by the answering respondent no. 4. It is categorically denied that the answering respondent no. 4 is not eligible to be appointed as Co-ordinator, Residential Schools. The answering is qualified as per the minutes of the 9th Executive Committee meeting of SSA (Annexure 2 of writ petition) wherein it has been specifically provided that teachers with sound academic background with 10 years teaching experience and possessing B.Ed degree shall be appointed as co-ordinators. The answering fulfils the above eligibility and as such, he is eligible to be appointed as a co-ordinator. Even assuming but not admitting that the

answering respondent is not eligible, even in such a case, the petitioner cannot assail his appointment since he does not have any locus to do so. In the humble submission of the answering respondent no. 4 no right of the petitioner has been violated by appointment of the answering respondent no. 4 as Co-ordinator, Residential Schools. As such, the present writ petition is without any merit and hence liable to be dismissed by this Hon'ble Court.

16. That the statements made in paragraphs 13, 14, 15, 16, 17, 18 and 19 of the writ petition are incorrect, baseless and misconceived. Hence, the same are categorically denied by the answering respondent no. 4. The answering respondent no. 4 categorically denies that he is not eligible to hold the post of Co-ordinator, Residential Schools. As has been clearly demonstrated herein above, the answering respondent is eligible to be appointed as Co-ordinator, Residential Schools and hence, there is no illegality in the impugned order dated 04.07.2023. The petitioner has no right to claim retention in the post of Co-ordinator, Residential Schools. Moreover, no right of the petitioner has been violated by the impugned action thereby necessitating interference under Article 226 of the Constitution of India. In the humble submission of the answering respondent no. 4, the writ petition is devoid of any merit and hence liable to be dismissed.”

Though, the respondent no. 4 has contested the case of the petitioner by filing a detailed counter-affidavit, yet, in view of the specific contention of the petitioner that the respondent no. 4 does not possess B.Ed degree, thus, ineligible for posting as Coordinator Residential School, the original records containing the service book of the respondent no. 4 was directed to be produced by the learned standing counsel for the Education Department vide Orders, dated 26.07.2023 and 03.08.2023. Pursuant thereto, the learned standing counsel has produced the service book, in original, of the respondent no. 4.

On perusal thereof, it is noticed that though the respondent no. 4 possess the degree of B.Ed since 2017, however, the said fact was not

reflected in the service book of the respondent no. 4, until, 4th August, 2023, on which date, an entry was made in the service book of the respondent no. 4 that the respondent no. 4 had completed B.Ed degree in the year 2017 from Rajiv Gandhi University.

From the above, it is evident that on 04.07.2023, when the respondent no. 3, the Dy. Director of School Education, Upper Subansiri District, Daporijo had issued the impugned order dated 04.07.2023, assigning the respondent no. 4 the duty of Coordinator Residential School, there was no material in the service book of the respondent no. 4 that the respondent no. 4 possess the B.Ed degree.

If, B.Ed degree is one of the requirements for assigning the duty of Coordinator Residential School in terms of Clause 12 of the 9th Executive Committee meeting of SSA Rajya Mission Society, Arunachal Pradesh, held on 22.11.2011 at C/S's Conference Hall, Itanagar, the respondent no. 3, the Dy. Director of School Education, Upper Subansiri District, Daporijo, could not have assigned the duty of Coordinator Residential School to the respondent no. 4 vide the impugned order, dated 04.07.2023, in the absence of material on record on 04.07.2023 to show that the respondent no. 4 does possess B.Ed degree.

In view of the findings recorded herein above, this Court has no option, but, to interfere with the impugned order, dated 04.07.2023 issued by the Dy. Director of School Education, Upper Subansiri District, Daporijo, vide no. EDN/US/ESSTT/TP-Part III/03/2023-24/2220, assigning the respondent no. 4 the duty of Coordinator Residential School on the ground that the same has been issued on 04.07.2023 in violation of Clause 12 of the 9th Executive

Committee meeting of SSA Rajya Mission Society, Arunachal Pradesh, held on 22.11.2011 at C/S's Conference Hall, Itanagar.

Accordingly, the Order, dated 04.07.2023, issued by the Dy. Director of School Education, Upper Subansiri District, Daporijo, vide no. EDN/US/ESSTT/TP-Part III/03/2023-24/2220, insofar it assigns the respondent no. 4 the duty of Coordinator Residential School is hereby, set aside and quashed.

The writ petition is allowed to the extent indicated above and stands disposed of.

JUDGE

Comparing Assistant