

GAHC010000832019



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

Case No. : WP(C)/184/2019

DEEPA BARUAH
W/O LATE CHITRA MEDHI
PRINCIPAL OF KUJIDAH H.S. SCHOOL,
R/O SATI RADHIKA ROAD,
P.O. HAIBARGAON
DIST. NAGAON, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
EDUCATION (SECONDARY) DEPARTMENT,
DISPUR, GUWAHATI- 781006.

2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI - 781019.

3:THE SECRETARY

SCRUTINY COMMITTEE FOR SELECTION OF PRINCIPALS OF HIGHER
SECONDARY SCHOOL
ASSAM C/O COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
EDUCATION (SECONDARY) DEPARTMENT
DISPUR
GUWAHATI- 781006.

4:THE INSPECTOR OF SCHOOLS

NAGAON DISTRICT CIRCLE

NAGAON

Advocate for the Petitioner : MR A C BORBORA

Advocate for the Respondent : SC, SEC. EDU.

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

07-06-2023

Heard Shri A. C. Borbora, learned Senior Counsel assisted by Shri M. Smith, learned counsel for the petitioner. Also heard Shri U. Sarma, learned Standing Counsel, Secondary Education Department.

Considering the facts and circumstances and the development which has taken place in the meantime, this writ petition is taken up for final disposal. This Court has further been apprised that during the pendency of this writ petition, the petitioner has retired from her service on 30.04.2022 and till date the post-retirement benefits have not been given to her. The facts of the case were recorded in an Order of this Court dated 11.01.2019 and to avoid repetition, the said order is extracted herein below:-

“Heard Shri A. C. Borborah, learned Senior Counsel, assisted by Shri N. Saikia, learned counsel. Also heard Shri S. P. Bhattacharjee, learned Standing Counsel, Secondary Education Department appearing on behalf of the respondents No. 1, 2, 3 and 4 as well as Shri R. Goswami, learned counsel for the respondent No. 5/Caveator.

The case projected by the petitioner is that she was the senior most Assistant Teacher in the Kujidah H.S. School in the District of Nagaon and was selected and appointed as the Regular Principal of the said school. However, while serving in the aforesaid capacity, the said appointment was cancelled on the ground that the respondent No. 5 had secured equal marks in the interview, a fact which was not within the knowledge of the appropriate authorities initially.

The aforesaid action was the subject matter of the WP(C)4577/2017 instituted by the petitioner, which was disposed of by this Court vide order dated 24.07.2018 directing for reconsideration of the matter afresh and till such time to allow the petitioner to

continue of the said post of Principal. Thereafter, the matter was dragged without making any fresh exercise and suddenly, vide an order dated 21.12.2017, the said respondent was allowed to hold the charge of the Principal. Though the learned senior counsel submits that the said order is apparently back dated, it appears that there is some typographical error as the signature appearing on the said letter is dated 21.12.2018.

Be that as it may, the private respondent No.5 has also in the meantime, superannuated from his services on 31.12.2018. Shri R. Goswami, learned counsel for the said respondent No.5 has submitted that on such retirement, his client has handed over the charge to another teacher and not to the petitioner.

Issue notice of motion, this notice be made returnable by 8(eight) weeks.

Shri S. P. Bhattacharjee, learned Standing Counsel for the Secondary Education Department accepts notice on behalf of the respondents No. 1 to 4 whereas, Shri R. Goswami, learned counsel accepts notice for the respondent No.5/Caveator. Extra copies of the writ petition may be served.

Heard the learned counsel on the interim prayer. When the petitioner was found to have secured the highest marks in the selection along with the marks secured by the respondent No.5 and was also previously allowed to discharge the duties and function as the Regular Principal, it is failed to be understood as to why on the retirement of the respondent No.5, the charge of the school was not handed over to the petitioner.

Keeping in view of the aforesaid facts and the materials on record, it is directed that until further orders, the charge of the school should be handed to the petitioner.

The respondents may come up for modification/alteration/vacation of the interim order, if so advised."

The Senior Counsel for the petitioner has submitted that there was no application for modification/alteration/vacation of the interim order and the petitioner continued to function as Regular Principal. Further, the incumbent, who was connected with the impugned order had also retired in the meantime and the petitioner continued as the Regular Principal of the College. Learned Senior Counsel has submitted that till the date of retirement i.e. 30.04.2022, the petitioner was paid the regular scale of pay admissible to a Regular Principal.

This matter was taken up thereafter on a number of occasions and this Court in the order dated 13.05.2022 has recorded the submission that the respondents were

taking a rectification process and in the meantime, the respondent no. 5 had retired and the petitioner was continuing in her service as the Regular Principal. The matter was thereafter listed on three more occasions on which further time was taken by the Department.

The learned Senior Counsel for the petitioner has referred to the additional affidavit filed on 17.03.2023 and has submitted that though the petitioner had retired from her service on 30.04.2022, till date, no post-retirement benefits have been given to the petitioner. The Senior Counsel also referred to a NOC/Non-Liability Certificate dated 13.02.2023 issued by the Principal In-charge of the School certifying that the petitioner was free from all financial liabilities.

It is submitted that though there may not be any further requirement to adjudicate the principal issue of this writ petition raised at the time of filing, in view of the developments, the connected issue of payment of post-retirement benefit is required to be decided as the petitioner cannot be left high and dry after her retirement.

Shri U. Sarma, the learned counsel for the Department however, submits that the petitioner may file a representation which would be considered in accordance with law.

This Court after hearing the parties is of the opinion that in a matter pending since the year 2019 in which the principal issue has become almost otiose and the petitioner has also retired from service more than a year back, directing consideration of a representation may not be in the interest of justice.

Accordingly, this Court after taking into account the facts and circumstances narrated above and the developments which have taken place during the pendency of this writ petition more particularly the fact of superannuation of the petitioner from service on 30.04.2022 and the grievance that no post-retirement benefits have been paid to her, this writ petition is disposed of by directing the Department as well as the Directorate to immediately take up the issue to facilitate disbursement of the post-

retirement benefits to the petitioner.

It is needless to state that such post-retirement benefit are to be reckoned by taking the petitioner to have retired as a Regular Principal as she was given the regular scale of pay till the date of her retirement. The petitioner may accordingly submit a certified copy of this order to the concerned authority, namely, respondent nos. 1 & 2 and if any steps are required to be taken by the petitioner, the same would be intimated to her within a period of 15 (fifteen) days from the date of receipt of the certified copy of this order. After fulfillment of such requirement, the matter relating to the pension of the petitioner be finalized within a period of 2 (two) months from the said date.

Writ petition stands disposed of.

JUDGE

Comparing Assistant