

GAHC010005362019



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

Case No. : WP(C)/208/2019

SASADHAR MAHANTA
S/O- LATE AKALU MAHANTA, PRESENTLY SERVING AS I/C PRINCIPAL
CUM ASSTT TEACHER AT RCBP HS SCHOOL, RAJABAZAR, DIST- CACHAR,
ASSAM, PIN- 788107

VERSUS

THE STATE OF ASSAM AND 7 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM,
DEPTT OF SECONDARY EDUCATION, DISPUR, GUWAHATI, ASSAM, PIN-
781006

2:THE DIRECTOR OF SECONDARY EDUCATION
CUM MEMBER SECRETARY
STATE SELECTION BOARD
ASSAM
KAHILIPARA
GUWAHATI
ASSAM
PIN- 781019

3:THE INSPECTOR OF SCHOOLS
CDC
CACHAR
SILCHAR
ASSAM
PIN- 788001

4:THE SCHOOL SELECTION COMMITTEE
OF RCBP HS SCHOOL
REP. BY ITS MEMBER SECRETARY
JOYPUR RAJABAZAR

DIST- CACHAR
ASSAM
PIN- 788107

5:CHAIRMAN
SCHOOL SELECTION COMMITTEE
CUM PRESIDENT OF THE SCHOOL MANAGEMENT AND DEVELOPMENT
COMMITTEE
JOYPUR
RAJABAZAR
DIST- CACHAR
ASSAM
PIN- 788107

6:THE CHAIRMAN
STATE SELECTION BOARD FOR THE POST OF PRINCIPAL CUM JOINT
SECRETARY TO THE GOVT OF ASSAM
DEPTT OF SECONDARY EDUCATION
ASSAM
DISPUR
GUWAHATI
ASSAM
PIN- 06

7:H KAMAL KUMAR SINGHA
S/O- H CHURACHAND SINGHA
R/O- VILL- SRIBAR AWANG LEIKAI
P.O- LALANG PART-II
DIST- CACHAR
ASSAM
PIN- 788098

8:REGIONAL DIRECTOR
EASTERN REGIONAL COMMITTEE
NATIONAL COUNCIL FOR TEACHER EDUCATION (NCTE)
15
NILA KANTA NAGAR
NAYAPALLI
BHUBANESWAR
ODISHA
PIN-751012

Advocate for the Petitioner : MR. A SARMA

Advocate for the Respondent : SC, EDU

**BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK**

ORDER

23.01.2023

Heard Mr. K Kalita, learned counsel for the petitioner and Ms. D Mushahary, learned Standing counsel, Department of School (Secondary) Education, Assam for the respondent Nos. 1, 2, 3, 5 & 6. Also heard Mr. S Ali, learned counsel appearing for the respondent No. 7 and Mr. I Alom, learned Standing counsel, NCTE for the respondent No. 8.

2. Matter pertains to selection and appointment to the post of Principal of Ram Chandra Barman Public (RCBP) Higher Secondary School, Joypur, Rajabazar in the district of Cachar, a provincialised secondary school of the State.

3. The petitioner stated that he is a graduate as well as a master degree holder in the subject of Political Science and has also obtained B.Ed. degree and was appointed as an Assistant Teacher of Assamese Language on 22.10.1987 in said RCBP Higher Secondary School, District-Cachar wherein he has also served as an In-charge Principal in pursuance of the order of the Director of Secondary Education (DSE), Assam dated 03.11.2017, whereby he was allowed to hold the charge of said Higher Secondary School along with financial powers to draw and disburse the salary etc. of the staff of the said H. S. School in addition to his normal duties as the Assistant Teacher under F.R. 49 (C) on retirement of earlier In-charge Principal of the said H. S. School Sri Jadumani Sharma on 30.09.2017.

4. The respondent No. 7 is serving as a Post-graduate Teacher of Mathematics in Earle Higher Secondary School, Lakhipur in the district of Cachar.

5. Pursuant to the communication No. DSC/SSB/Principal/VP/HM.AHM/31/ 2017/5 dated 25.08.2017 of the DSE, Assam; the petitioner being the In-charge Principal of said RCBP Higher Secondary School on 01.12.2017 issued an Advertisement for the post of the Principal of said RCBP Higher Secondary School informing and requesting all the eligible candidates to submit their application forms along with all their necessary documents on or before 08.12.2017 stating that the interview for the said post shall be held on 11.12.2017 in the premises of the said school from 11 AM onwards. The School Selection Committee of said R.C.B.P. Higher Secondary School on 11.12.2017 conducted the

selection to the post of regular Principal in which the petitioner along with the respondent No. 7 and other candidates being eligible participated. Through the Inspector of Schools, Cachar District Circle, Cachar, the school authorities of said RCBP H.S. School on 13.12.2017 forwarded the panel of three candidates selected by the said committee for the said advertised post of Principal of the said school, placing the petitioner at 1st position and the respondent No. 7 at 2nd position, to the State Selection Board for its necessary consideration for appointment to the post of Regular Principal of said RCBP Higher Secondary School, District-Cachar.

6. However, the respondent authorities in the State Government in the Secondary Education Department approved the name of the respondent No. 7 though he was at merit position No. 2 for the post of Principal of said RCBP H.S. School, being selected and recommended by its School Selection Committee in the selection for the said post that was held on 11.12.2017.

7. Being aggrieved, the petitioner has preferred this writ petition on 09.01.2019 challenging the selection of the respondent No. 7 as the Principal of said RCBP Higher Secondary School, District-Cachar in terms of the Advertisement dated 01.12.2017.

8. The Court while issuing notice to the respondents on 11.01.2019 considered another order dated 19.11.2018 passed by a Co-ordinate Bench of this Court in a writ petition, WP(C) No. 6907/2018 that was preferred by the petitioner, wherein the Court observed that pendency of the said WP(C) No. 6907/2018 shall not be a bar on the part of the respondent authorities to further proceed with the process of appointment of the Principal of said RCBP H.S. School, as per law.

9. While issuing notice in the present matter on 11.01.2019, the Court observed that the interim prayer of the petitioner shall be considered on the next date, based upon the instructions that may be placed by the departmental Standing counsel on behalf of the respondents in the Secondary Education Department.

10. However, the Court in the case in hand did not pass any interim order regarding selection and appointment of the respondent No. 7 as the regular Principal of said RCBP Higher Secondary School, District-Cachar.

11. During the deliberation of the matter perused the order dated 04.06.2019, passed

earlier in the present proceeding which is as follows –

“Notice in this case was issued on 11.01.2019, but the respondents are yet to file their affidavits.

For proper adjudication of this case, NCTE is a necessary party. As such petitioner is allowed to implead the NCTE as respondent No.8 and to correct the cause title by hand.

Registry shall reflect the name of SC, NCTE in the cause list for the newly impleaded respondent No.8.

Matter relates to selection and appointment to the post of regular Principal in Ram Chandra Barman Public Higher Secondary School, Joypur, Rajabazar in the district of Cachar, a provincialised Higher Secondary School of the State.

Rule 12 and 13 of the Assam Secondary Education (Provincialisation) Service Rules, 2003 as amended, a statutory Rule under Article 309 of the Constitution of India, prescribes the Procedure for Selection and Recruitment of Principals in provincialised HS School/HS and Multipurpose School and the required qualification of a candidate for the said post as well as the Procedure for Selection of Principals.

Rule 13(1) of the said 2003 Rules provides that the Member Secretary of the School Selection Committee shall invite applications from the intending eligible candidates through advertisement to be published at least in two widely circulated local news papers.

Rule 13(2) of the said 2003 Rules stipulates that on receipt of applications from the eligible candidates, the School Selection Committee under Rule 8(4) of said 2003 Rules, after scrutiny of the applications, shall hold an interview and prepare a panel of names of three candidates on the basis of qualities such as leadership skills, administrative ability, integrity and commanding personality.

From the annexures appended to the writ petition it is seen that the School Selection Committee consisting of the Chairman of the SMDC of said HS School, the Member Secretary of the said SMDC and 2 members of the Schools Selection Committee of the said HS School on 11.12.2017 recommended only two names i.e., the names of the respondent No.7 and that of the petitioner to the post of regular Principal in said HS School. From amongst these two, the State Selection Board on 05.11.2017 selected the respondent No.7 to the post of regular Principal in the said HS School, whereas the State Government in the Secondary Education Department by its order under No.ASE.82/2014/Pt-IV/18 dated 29.12.2018 accorded approval of selection of the respondent No.7 as regular Principal in said HS School.

From written instruction placed before the Court by the State respondents it is seen

that the State Selection Board on 23.08.2018 verified only the Academic testimonials of the petitioner and the respondent No.7 so as to select the candidate for the post of regular Principal of said HS School. But the State Selection Board did not make any quarry nor inquired as to why the School Selection Committee of said RCBP HS School on 11.12.2017 empanelled only 2 candidates for the post of Principal in the HS school instead of three candidates as required under Rule 13(2) of said 2003 Rules. Moreover, the State Selection Board also did not enquire whether the Member Secretary of the said HS School made such advertisement for the post of Principal in the said HS School in two widely circulated local newspapers as required under Rule 13(1) of said 2003 Rules.

On the next date fixed, the respondent No.1 Commissioner and Secretary, Secondary Education Department as well as the respondent No.2, Director of Secondary Education, Assam being the Member Secretary of the State Selection Board shall apprise the Court whether they are empowered to deviate from the stipulated conditions of Rule 12 and 13 of said statutory 2003 Rules, noted above, while selecting the candidate to the post of Principal in a provincialised HS School of the State.

List on 21.06.2019.

A copy of this order be furnished to Mr. C. Bhattacharya, learned Standing counsel, Secondary Education Department for his necessary use."

12. Though time was granted to the respondents in the Secondary Education Department, but till date the respondents did not file their affidavit(s) in the matter.

13. However, the respondent authorities placed the communication dated 22.01.2019 of the Director of Secondary Education, Assam along with copies of the recommendation dated 05.11.2018 of the State Level Selection Committee recommending the respondent No. 7 to the post of Principal of said RCBP Higher Secondary School, District-Cachar to the Government for approval of his name for the post of regular Principal of said RCBP Higher Secondary School, District-Cachar, stating the reasons for consideration of the case of the said respondent No. 7 and not that of the petitioner and the same is perused.

14. The petitioner claims that the School Selection Committee during the selection held on 11.12.2017 duly recommended his name in the 1st position and that of the respondent No. 7 in the 2nd position, but the respondents in the Secondary Education Department committed illegality in recommending the name of the respondent No. 7 for the post of Principal of said RCBP Higher Secondary School, District-Cachar in terms of the

Advertisement dated 01.12.2017 disregarding his better claim.

15. However, from the relevant written information placed before the Court along with copies of the records of the State Selection Board for the post of Principal of RCBP Higher Secondary School, District-Cachar, it is seen that the concerned State Selection Board did not consider the recommendation of the School Selection Committee dated 11.12.2017 with regard to the petitioner though he was placed at Serial No. 1 for the post of Principal of said RCBP H.S. School on the ground that the petitioner obtained his Master Degree from SAM Higginbottom Institute of Agriculture Technology and Sciences Agriculture University (formerly Allahabad University) through distance mode, without having any study centre in the State of Assam and as such, the said Selection Board on 05.11.2018 recommended the name of the respondent No. 7, empanelled at Serial No. 2 and sought approval from the Government for appointment of the said respondent No. 7 to the post of Regular Principal of said RCBP Higher Secondary School, District-Cachar.

16. From the written information submitted by the Director of Secondary Education, Assam dated 22.01.2019 it is seen that pursuant to the order of the Court passed in WP(C) 6907/2018 preferred by the petitioner, the State Selection Board in its meeting held on 23.08.2018 verified the academic testimonials of both, the petitioner as well as that of the respondent No. 7 in their presence and thereafter, the said Board recommended the name of the respondent No. 7 for appointment to the post of Principal of said RCBP Higher Secondary School finding that the petitioner obtained his M.A. degree from SAM Higginbottom Institute of Agriculture Technology and Sciences Agriculture University (formerly Allahabad University) through distance mode, without having its study centre in the State of Assam.

17. The Advertisement dated 01.12.2017 for the post of regular Principal of said RCBP Higher Secondary School, District-Cachar amongst others, clearly indicated that the candidate must be M.A./M.Sc./M.Com with B.T/B.Ed. degree from any recognized university having uniform good academic career and that the candidate must have rendered at least 15 years of service as Post Graduate Teacher or Vice Principal or both in any of the provincialised Higher Secondary School or the candidate must have 17 years of teaching experience as Graduate Teacher in any provincialised Higher Secondary School.

18. After such recommendation of the State Selection Board, the State Government in

the Secondary Education Department on 29.12.2018 approved the recommendation of the respondent No. 7 for his appointment to the post of Principal of said RCBP Higher Secondary School and accordingly, the Director of Secondary Education, Assam by order No. GB-EST/DSE/Principal Aptt/20/2017/96 dated 10.01.2019, appointed and posted the respondent No. 7 as the regular Principal of said RCBP Higher Secondary School of district-Cachar against the existing vacant post with effect from the date of his joining in the scale of pay of Rs. 30,000/- to Rs. 1,10,000/- with Grade pay of Rs. 13,300/- per month and other allowances as admissible as per Rule superseding any order that might have been issued from the Office of the Director of Secondary Education, Assam for placing the regular Principal of the said RCBP Higher Secondary School.

19. Accordingly, the respondent No. 7 on 11.01.2019 submitted his joining report as the Principal of said Ram Chandra Barman Public Higher Secondary School, Joypur, Rajabazar, District-Cachar before the Inspector of Schools, Cachar District Circle, Cachar that was duly accepted by the said Inspector of Schools.

20. Ms. D Musahary, learned Standing counsel, Department of School (Secondary) Education, Assam also placed before the Court a copy of the common Judgment and Order dated 13.02.2020 passed by the Hon'ble Division Bench of this Court in Writ Appeal No. 55/2019 (*Sri Bijon Nath -Vs- The State of Assam and Ors.*) and Writ Appeal No. 76/2019 (*Sri Asit Baran Paul -Vs- The State of Assam and Ors.*) upholding the Common Judgment and Order dated 13.02.2019 passed by a Co-ordinate Bench of this Court in WP(C) No. 2706/2017 (*Geetashree Das -Vs- The State of Assam and Ors.*) and WP(C) No. 2983/2017 (*Purnendu Sekhar Debnath -Vs- The State of Assam and Ors.*) confirming the order that — *a person who has obtained degree from a study centre operating outside the State where University is located would not be a valid degree for purpose of considering eligibility for the post of Principal.* In the said Judgment dated 13.02.2020 the Hon'ble Division Bench have also upheld that *said Sri. Bijon Nath, appointed as Principal of Swarna Lakshmi Higher Secondary School, Narasingpur, Salepur, District-Cachar who obtained his M.A. degree is from an Off Campus Study Centre of SAM Higginbottom University at Silchar, Assam; whereas the Study Centre of said SAM Higginbottom University is located at Allahabad, Uttar Pradesh and therefore, his said degree, obtained by him from Study Centre located outside the State where the concerned university is located, cannot be said*

to have been issued by UGC recognized University.

21. Considering the above, as the petitioner obtained his Master Degree of Political Science from SAM Higginbottom Institute of Agriculture Technology and Sciences Agriculture University (formerly Allahabad University) in the year 2014 through distance mode education programme from an Off Campus Study Centre of said University at Silchar, Assam being not a valid UGC recognized Master Degree, therefore, as has been upheld by the Hon'ble Division Bench of this Court by common Judgment and Order dated 13.02.2020, noted above, said Master Degree obtained by the petitioner cannot be considered for the purpose of holding the post of Principal of any Provincialised Secondary School of the State.

22. For the reasons above, the Court is of the opinion that the impugned decision of the State Government in the Secondary Education Department in selecting, approving and appointing the respondent No. 7 as the regular Principal of said Ram Chandra Barman Public Higher Secondary School, Joypur, Rajabazar in the district of Cachar does not call for any interference of the Court under writ jurisdiction of Article 226 of the Constitution.

23. Accordingly, this writ petition, being devoid of merit stands dismissed.

JUDGE

Comparing Assistant