

GAHC010010142021



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

Case No. : WP(C)/346/2021

ASIT KUMAR BHOWMIK
S/O LATE DINESH BHOWMIK, VILL. CHILAMARI, P.O. KHOIRABARI, DIST.
UDALGURI, B.T.C., ASSAM, PIN 784522

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECY. TO THE GOVT. OF
ASSAM, ELEMENTARY EDUCATION DEPTT., DISPUR, GUWAHATI 781006

2:THE DIRECTOR OF ELEMENTARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI 781019

3:THE PRINCIPAL SECY.
BTC
KOKRAJHAR
P.O. AND DIST. KOKRAJHAR
BTAD
ASSAM
PIN 783370

4:THE DIRECTOR OF EDUCATION
BTC
KOKRAJHAR
P.O. AND DIT. KOKRAJHAR
ASSAM
PIN 783370

5:THE DIST. ELEMENTARY EDUCATION OFFICER
UDALGURI

ASSAM
DIST. UDALGURI
ASSAM
PIN 784509
6:THE BLOCK ELEMENTARY EDUCATION OFFICER
KHOIRABARI
DIST. UDALGURI
ASSAM
PIN 784522
7:SUNIL KUMAR DAS
S/O HARENDRA CH. DAS
R/O VILL. GURIHATI
P.O. KHOIRABARI
DIST. UDALGURI
ASSAM
PIN 78452

Advocate for the Petitioner : MR P BHARDWAJ

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

14.03.2023

Heard Mr. A M Ahmed, learned counsel for the petitioner and Mr. SMT Chistie, learned Standing counsel, Department of School Education, Assam for the respondent Nos. 1 & 2. Also heard Mr. S R Rabha, learned Standing counsel, BTC for the respondent Nos. 3 to 6 as well as Mr. H Das, learned counsel for the respondent No. 7.

On approval of the Director of BTC under No. DE/BTC/Apptt-206/2012/403 dated 17.12.2020 the District Elementary Education Officer (DEEO), Udalguri by Order under No. DEU/ic/HM/144/Pt-III/2014/501 dated 30.12.2020 promoted the respondent No. 7 as the Headmaster of Kacharidag M.E. School of Khoirabari Education Block of District-Udalguri w.e.f. 29.12.2020 in the Scale of Pay of Rs. 14,000/- to Rs. 49,000/- plus grade pay of Rs. 8,700/- per month and other allowances as admissible under the Government Rules.

Being aggrieved with said promotion of the respondent No. 7, the petitioner has preferred this writ petition on 18.01.2021, praying amongst others, (i) to set aside the Gradation List dated 22.01.2018 issued by the In-charge Block Elementary Education

Officer, Khoirabari Education Block, respondent No. 6, whereby the respondent No. 7 was placed above him in the Gradation List of Kacharidag M.E. School; (ii) to set aside the Order No. DE/BTC/WP(C) 1933/2019/108-A dated 07.01.2020 issued by the Director of Education, BTC, whereby the respondent No. 7 was held to be senior than the petitioner and (iii) to declare him as the senior most Teacher of Kacharidag M.E. School above the respondent No. 7 and to promote him to the post of regular Headmaster of said M.E. school.

It is to be noted herein that the petitioner was serving in Kacharidag M.E. School since January, 1989 from its venture stage.

The petitioner's appointment as Additional Assistant Teacher in said Kacharidag M.E. School along with other teaching staff of said school was approved by the District Elementary Education Officer, Darrang, Mandal dai on 27.01.1990.

Pursuant to the orders of the State Government in the Elementary Education Department as well as the Director of Elementary Education, Assam, the services of four Assistant Teachers of said Kacharidag M.E. School were provincialised w.e.f. 19.11.1991. However, the petitioner was left out from such provincialisation.

Pursuant to the order passed by a Division Bench of this Court in Writ Appeal No. 474/1997, the service of the petitioner was regularized in Kacharidag M.E. School w.e.f. 24.04.1998 in the Scale of Pay of Rs. 1185/- to Rs. 2395/- per month and other allowances as admissible under the Government Rules.

In pursuance of the Scheme of 'Siksha Khetra' of the State Government in the Education Department pertaining to amalgamation and merger of different schools, the District Elementary Education Officer (DEEO), Udalguri vide Order under Memo No. DEU/Amalgamation/100/Pt-I/11/609 dated 22.01.2018 amalgamated Kacharidag Lower Primary School of Khoirabari Education Block of District- Udalguri with Kacharidag M.E. School of the same education block as both the Lower Primary school as well as the said M.E. school are situated in the same campus in the Udalguri District having the approvals of the State Government on 31.07.2017 and 19.12.2017 and further, for such amalgamation concurrence was also given by the Finance Department of the State on 18.11.2017.

Earlier the respondent No. 7 was allowed to hold the charge of In-charge Headmaster of said Kacharidag M.E. School, which was challenged by the petitioner in WP(C) No. 6657/2018.

However, the DEEO, Udalguri by order dated 15.12.2018 withdrew the said order allowing the respondent No. 7 to be the Headmaster In-charge of said Kacharidag M.E. School.

Accordingly, said WP(C) No. 6657/2018, preferred by the petitioner was dismissed being infructuous.

Petitioner again preferred a writ petition, being WP(C) No. 1147/2019 to allow him to be the Headmaster In-charge of Kacharidag M.E. School and the said writ petition was accordingly disposed of vide order dated 20.02.2019, directing the DEEO, Udalguri to consider the petitioner's representation dated 26.12.2018 and to pass appropriate order thereon.

The DEEO, Udalguri by order dated 27.02.2019 allowed the petitioner to be the In-charge Headmaster of said Kacharidag M.E. School, which was challenged by the respondent No. 7 in WP(C) No. 1933/2019.

However, the respondent No. 7 on 20.03.2019 withdrew the said WP(C) No. 1933/2019, with liberty to make representation before the Director of Education, BTC.

The Director of Education, BTC pursuant to the order dated 20.03.2019 passed in said WP(C) No. 1933/2019 allowed the Block Elementary Education Officer (BEEO), Khoirabari to be the In-charge Headmaster of Kacharidag M.E. School in addition to his normal duties for functioning the school administration temporarily till further arrangement.

Thereafter, the petitioner preferred another writ petition, being WP(C) No. 6909/2019 being aggrieved with the order of the Director of Education, BTC, whereby the BEEO, Khoirabari was allowed to hold the charge of Headmaster of said Kacharidag M.E. School.

The Court by order dated 13.09.2019 disposed of said WP(C) No. 6909/2019 directing that the charge of the Headmaster of said Kacharidag M.E. School shall continue till appropriate decision is taken by the Director of Education, BTC deciding the seniority

between the petitioner and the present respondent No. 7 whereby the said Director was directed to pass a fresh order of making of In-charge appointment of the Headmaster of the said school till regular appointment is made.

From the order dated 07.01.2020 issued by the Director of Education, BTC in compliance of the order dated 13.09.2019 passed in WP(C) No. 6909/2019, it is seen that the respondent No. 7 was found to be senior than the petitioner.

After the said order dated 07.01.2020, the Director of Education, BTC allowed the respondent No. 7 to be the In-charge Headmaster of said Kacharidag M.E. School, which the petitioner challenged in WP(C) No. 2033/2020.

But in the meanwhile, as the respondent No. 7 was made the regular Headmaster of Kacharidag M.E. School by the impugned order dated 30.12.2020, noted above, said WP(C) No. 2033/2020 being infructuous was disposed of on 02.02.2021.

Respondent No. 7 has filed his affidavit in the matter, to which the petitioner has filed his reply.

As noted above, we have seen that Kacharidag Lower Primary School was amalgamated with Kacharidag M.E. School by order dated 22.01.2018 issued by the DEEO, Udalguri.

From the perusal of the Siksha Khetra Scheme, it is seen that each of the Teachers shall be the Teachers of the Higher School after amalgamation/merger and their status will be revised. After amalgamation/merger, the Gradation List of the school/district, as the case may be, is required to be revised by incorporating the names of the Teachers against the Higher School in accordance with his/her qualification and status and the incumbents will get their seniority as before and accordingly, the name of the incumbent is to be placed in appropriate place in such a way that the said incumbent does not lose his/her seniority.

The State Government in the Elementary Education Department on 08.03.2022 issued a Notification under No. AEE.509/2019/45, specifying the procedures for promotion to the post of Headmaster of M.E./M.E Madrassa/M.V./Senior Basic Schools of the State.

The said Notification provides that the Headmaster of M.E./M.E Madrassa/M.V./Senior Basic Schools shall be promotional posts and appointment to the

posts shall be made on the basis of Seniority-cum-Efficiency and the recommendation of the District Level Selection Committee to be constituted by the authority concerned, where the committee shall prepare a sub division wise gradation list separately for M.E./M.E.M/M.V./Senior Basic Schools in order of seniority showing date of appointment, educational qualification, year of passing of training, age on the date of appointment, date of retirement which should be communicated to the incumbents with copies to all the concerned authorities for information, where the selection to the post of Headmasters in such schools shall be made strictly on the basis of Seniority-cum-Efficiency.

The said Notification also provides that the Teachers having less than 10 (ten) years of continuous service shall not be considered for promotion. Further, the said Notification also provides that the committee shall prepare a panel of selected Teachers which shall remain valid for one year from the date of selection and that the committee shall follow the Assam Scheduled Caste and Scheduled Tribe (Reservation of Vacancies in Service and Posts) Act, 1978 and the Rules framed thereunder for preparation of the panel of Teachers for the post of Headmaster/Headmistress of M.E./M.E.M/M.V./Senior Basic Schools.

Notice in this case was issued on 02.02.2021, but the respondent authorities in the BTC, in spite of granting time, have not filed their affidavit(s) in the matter.

From the order dated 07.01.2020 issued by the Director of BTC, noted above, it can be seen that the respondent No. 7 had joined his service as an Assistant Teacher of Kacharidag L.P. School on 01.11.1993 and then he was transferred to Mohilakhat L.P. School and then to Nichilamari L.P. School on 30.08.1994 and consequently to Kacharidag L.P. School on 29.05.2009.

The Director of BTC found that the service of the petitioner was regularized on 24.04.1998, as such, he joined the M.E. School on 24.04.1998 and thereafter he was transferred to Nichilamari L.P. School and again transferred to Kacharidag M.E. School on 31.08.2016.

Said Kacharidag L.P. School was amalgamated with Kacharidag M.E. School pursuant to the orders of the State Government dated 31.07.2017 and 19.12.2017.

It is seen that the respondent No. 7 joined his service on 01.11.1993 and before

amalgamation he was found to be the senior most Teacher amongst the teaching staff of Kacharidag L.P. School, whereas the petitioner joined his service in the Kacharidag M.E. School only on 24.04.1998 and therefore, the respondent No. 7 was found senior above the petitioner after amalgamation of those two schools.

From the affidavit in opposition filed by the respondent No. 7, it is found that he is silent with regard to his order of appointment, order of transfer from one school to another as specified in the order dated 07.01.2020 of the Director of BTC.

The respondent authorities including the authorities in the BTC in absence of any such appointment order of the respondent No. 7, his transfer order etc. could not verify about the service career of the respondent No. 7.

However, respondent No. 7 born in the cadre of M.E. School only after said order of amalgamation dated 22.01.2018 passed by the DEEO, Udalguri. As such, though the respondent No. 7 allegedly on his selection, appointed as the Regular Headmaster in Kacharidag M.E. School vide order dated 30.12.2020 issued by the DEEO, Udalguri, but the said respondent No. 7 did not complete 10 years of continuous service as a Teacher in the M.E. School for selection to the post of Headmaster of any such provincialised M.E. Schools of the State in terms of the Notification dated 08.03.2022, noted above.

From the order of the Division Bench of this Court passed earlier in Writ Appeal No. 474/1997, it can be seen that in the order by which the service of the petitioner was regularized w.e.f. 24.04.1998, the petitioner was found to be a dropped Teacher at the time of provincialisation of said Kacharidag M.E. School.

Considering the entire aspect of the matter, the Order dated 22.01.2018 issued by the In-charge Block Elementary Education Officer, Khoirabari Education Block, respondent No. 6 determining the seniority of the respondent No. 7 above the petitioner in said Kacharidag M.E. School; the Order No. DE/BTC/WP(C) 1933/2019/108-A dated 07.01.2020 issued by the Director of Education, BTC, whereby the respondent No. 7 was held to be senior than the petitioner; the Order of the Director of BTC issued under No. DE/BTC/Apptt-206/2012/403 dated 17.12.2020 as well as the Order No. DEU/ic/HM/144/Pt-III/2014/501 dated 30.12.2020 of the DEEO, Udalguri promoting the respondent No. 7 as the Regular Headmaster of Kacharidag M.E. School are hereby set

aside and quashed. Further the Director of Education, BTC is directed to re-determine the seniority of the petitioner vis-a-vis the respondent No. 7 on the basis of consideration of the Appointment Orders and other relevant orders, giving opportunity of hearing to both the petitioner as well as the respondent No. 7 after due verification of the Appointment Orders of the petitioner as well as that of the respondent No. 7.

After such determination of the seniority between the petitioner and the respondent No. 7, the Director of Education, BTC shall do the needful for promotion to the post of Headmaster of said Kacharidag M.E. School, District-Udalguri.

Till such determination of the seniority, as noted above, the BEEO, Khoirabari Education Block of District-Udalguri shall continue to serve as the In-charge Headmaster of said Kacharidag M.E. School in addition to his normal duties and as the Drawing and Disbursing Officer (DDO) for payment of salaries etc. to the teaching and non-teaching staff of the said amalgamated M.E. school.

The Director of Education, BTC shall determine the seniority between the petitioner and the respondent No. 7 within a period of 60 (sixty) days from the date of receipt of certified copy of this order, to be furnished by the petitioner obtaining necessary acknowledgment from the said authority in that regard, intimating the petitioner and the respondent No. 7 about the outcome of the same.

With the above observation and direction, this writ petition stands disposed of.

JUDGE

Comparing Assistant