

GAHC010010442016



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

Case No. : WP(C)/1458/2016

MRS. RUPA RANI DEVI
W/O SRI PRADIP BORTHAKUR, R/O ASEB COLONY, GARMUR, P.O. JORHAT
ENGINEERING COLLEGE, DIST- JORHAT, ASSAM, PIN-785001

VERSUS

THE STATE OF ASSAM and 5 ORS.
REP. BY THE COMMISSIONER and SECY. TO THE GOVT. OF ASSAM,
EDUCATION DEPTT., SECO, DISPUR, GHY-6

2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GHY-19

3:THE CHAIRMAN
STATE SELECTION BOARD
GOVT. OF ASSAM
EDUCATION SECONDARY DEPTT.
DISPUR
GHY-6

4:THE INSPECTOR OF SCHOOLS
JORHAT DISTRICT CIRCLE
JORHAT
ASSAM
PIN-785001

5:THE HEADMISTRESS
BDS MEMORIAL HIGH SCHOOL
JORHAT
P.O. and DIST- JORHAT

ASSAM
PIN-785001

6:MRS. SURANJANA KAKOTI
HEADMISTRESS
VIDYADHAR SARMA MEMORIAL HIGH SCHOOL
JORHAT
P.O. and DIST- JORHAT
ASSAM
PIN-78500

Advocate for the Petitioner : MR.A DEY

Advocate for the Respondent :

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

ORDER

02.03.2023

Heard Ms. A Devi, learned counsel for the petitioner and Ms. D Mushahary, learned Standing counsel, Department of School Education, Assam for the respondent Nos. 1 to 4. Also heard Mr. H K Baishya, learned counsel appearing for the respondent Nos. 5 & 6.

2. Both, the petitioner and the respondent No. 6 were teachers of Bidya Dhar Sarma Memorial (BDSM) High School, Jorhat, a provincialised school of the State, wherein the petitioner was a Hindi Teacher and the respondent No. 6 was an Assistant Teacher.

3. The Director of Secondary Education (DSE), Assam pursuant to the approval of the State Government in the Secondary Education Department vide order dated 30.03.2022 amalgamated said Bidya Dhar Sarma Memorial High School with Jorhat Gitarthee Vidyalaya, where said Jorhat Gitarthee Vidyalaya was made the base school.

4. Before such amalgamation of BDSM High School with Jorhat Gitarthee Vidyalaya, the respondent No. 6 was serving as the Headmistress of said BDSM High School, Jorhat, whereas the petitioner was the Assistant Headmistress of the said

school.

5. On being recommended by the selection committee constituted by the Government vide Notifications dated 10.12.2010 and 25.12.2010 and on being approved by the State Government on 07.07.2011, the Director of Secondary Education (DSE), Assam vide order dated 20.07.2011 promoted the respondent No. 6 to the post of Headmistress in said Gitarthee Vidyalaya, Jorhat. Accordingly, the respondent No. 6 joined her service as Headmistress in said Gitarthee Vidyalaya, Jorhat.

6. The petitioner has filed this writ petition on 29.02.2016, challenging said promotion of the respondent No. 6 to the post of Headmistress in said Gitarthee Vidyalaya, Jorhat, alleging that the respondent No. 6 had break in service, as out of the total period of her leave of 74 days, the Inspector of Schools, Jorhat have cancelled 37 days.

7. The respondent Nos. 5 & 6 have filed their joint affidavit in the matter, clarifying that though the petitioner alleged that the Inspector of Schools, Jorhat while considering and granting Earned Leave to the respondent No. 6 on medical ground under Rule 13 (a) (i) of the Revised Rules of 1934 as amended for a period of 74 days (Annexure-H to this petition) cancelled 37 days leaves, but placing a copy of the order of the Inspector of Schools, Jorhat issued under Memo No. PRGH-Leave/Pt/09/50/1748-51 dated 13.01.2011 (Annexure R-4 to the affidavit in opposition of the respondent Nos. 5 & 6) stated that there is no such observation of the Inspector of Schools, Jorhat that 37 days leaves of the respondent No. 6 had been cancelled.

8. On perusal of Annexure-H annexed to this petition on the basis of which the petitioner claimed the break in service of the respondent No. 6 as well as on perusal of the copy of the order dated 13.01.2011 of the Inspector of Schools, Jorhat regarding granting of leave to the respondent No. 6 on medical ground (Annexure R-4 to the affidavit in opposition of the respondent Nos. 5 & 6), it can be seen that the Annexure-H annexed by the writ petitioner is without any signature of the Inspector of Schools, Jorhat and without any Memo No. and merely a typed copy, whereas, Annexure R-4 to

the affidavit in opposition of the respondent Nos. 5 & 6 is a copy of the order dated 13.01.2011 of the Inspector of Schools, Jorhat bearing signature of the said authority, that was forwarded to the Headmaster of BDSM High School, Jorhat.

9. In this writ petition, the petitioner has annexed her B.Ed. Pass Certificate No. 1400993 issued on 02.01.2016 by the authorities of Dibrugarh University (Annexure E to the petition), which goes to show that the petitioner qualified for her B.Ed. Degree from said Dibrugarh University in the Annual Examination held in the year 2014.

10. The petitioner has also annexed the advertisement dated 02.11.2010 issued by the Director of Secondary Education cum Member Secretary of the State Level Selection Board, wherein amongst others, at Sl. No. 3, advertisement was made for the posts of Headmaster/Headmistress/ Superintendent of High School/High Madrassa, observing that the posts shall be filled up by promotion from the school wise seniority list of Assistant Teachers and the selection shall be based upon the seniority and satisfactory Annual Confidential Report for three consecutive years and the minimum qualification of Graduate in Arts, Science or Commerce with B.T./B.Ed. degree having at least 10 years of experience as Graduate Teacher, specifying that the intending and eligible candidates as per prescribed qualification may submit their applications along with the relevant documents/papers in support of their candidature to the respective Inspector of Schools within 20.11.2010.

11. By the said advertisement dated 02.11.2010, the Director of Secondary Education, Assam clarified that all the posts advertised shall be filled up as per the provisions of the Assam Secondary Education (Provincialised) Service Rules, 2003.

12. The petitioner herself contended that she obtained her B.Ed. Degree from Dibrugarh University in the year 2014 and the respondent No. 6 on being selected was promoted the post of Headmistress of said BDSM High School, Jorhat in terms of her selection pursuant to the advertisement dated 02.11.2010 where the last date of filing application was 20.11.2010 and on the said last date of submission of application on 02.11.2010, the petitioner was not at all eligible to apply for the post of Headmistress in the said BDSM High School, Jorhat as she did not obtain her B.Ed. Degree on or

before said 20.11.2010 and she herself stated that she had obtained her B.Ed. Degree only in the year 2014.

13. Though the petitioner and the respondent Nos. 5 & 6 in their petition/affidavit/rejoinder etc. have made allegations against each others in their services, but without going to those aspects, it can be seen that the petitioner was not at all eligible for the post of Headmistress in said BDSM High School, Jorhat in terms of the advertisement dated 02.11.2010 issued by the Director of Secondary Education, Assam on the basis of which, the respondent No. 6, who possessed the eligibility and on being selected was appointed as the Headmistress of the said High School.

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

JUDGE

Comparing Assistant