

GAHC010011032021



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

Case No. : WP(C)/578/2021

PRAN KRISHNA BARMAN
ASSTT. TEACHAR TENGAPARA HIGH SCHOOL, KOKRAJHAR BTAD, S/O
KARUNA KANTA BARMAN,
R/O PO AND DIST KOKRAJHAR BTR, 783370

VERSUS

THE BODOLAND TERRITORIAL COUNCIL AND 3 ORS
REPRESENTED BY THE SECRETARY EDUCATION DEPARTMENT, BTC
KOKRAJHAR,

2:DIRECTOR OF EDUCATION

BODOLAND TERRITORIAL COUNCIL
KOKRAJHAR
R/O PO AND DIST KOKRAJHAR
BTR
783370

3:THE INSPECTOR OF SCHOOL
KDC
KOKRAJHAR
R/O PO AND DIST KOKRAJHAR
BTR
783370

4:SUBRATA CHAKRABORTY
IN CHARGE HEADMASTER
TENGAPARA HIGH SCHOOL
KOKRAJHAR BTR
S/O LATE CHITTARANJAN CHAKRABORTY
R/O PO AND DIST KOKRAJHAR BTR
783370

5:THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM
EDUCATION (SECONDARY) DEPARTMENT
DISPUR
GUWAHATI-6

Advocate for the Petitioner : MR. M J BARUAH

Advocate for the Respondent : SC, BTC

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

22-06-2023

Heard Shri M. J. Baruah, learned counsel for the petitioner. Also heard Shri U. Sarma, learned Standing Counsel for the Secondary Education Department; Ms. R. B. Bora, learned Standing Counsel, BTC and Shri R. Islam, learned counsel for respondent no. 4.

2. Considering the nature of the grievance and the facts and circumstances, this writ petition is taken up for disposal at the admission stage.

3. The challenge is with regard to the action of the respondent authorities in removing the petitioner from the post of In-charge, Head Master of the Tengapara High School in the district of Kokrajhar and appointing the respondent no. 4 as In-charge Head Master of the same School.

4. The facts projected in the petition is that the Tengapara High School was in a venture stage when the petitioner was appointed as an Assistant Science Teacher on 02.08.1992. The School was recognized by the Board of Secondary Education, Assam in the year 1993 and on 21.08.2013, the School was provincialised *w.e.f.* 01.01.2013. It is the case of the petitioner that the Tengapara ME School was amalgamated with the Tengapara High School in the year 2017 whereafter a gradation list was prepared in which according to the petitioner, he was shown to be senior to the respondent no.

4. On 14.09.2020, an order was passed by which the petitioner was made In-charge, Head Master. Since the said arrangement was objected to by the respondent no. 4, both the respondent no. 4 and the petitioner had filed detailed representations before the authorities who vide an order dated 11.12.2020 had come to a finding that it is the respondent no. 4 who may be allowed to hold the post of In-charge Head Master of the School. The said order passed by the Secretary, BTC also records that the provisions of Rules 14(1) and 14 (2)(b) of the ***Assam Secondary Education (Provincialised Schools) Service Rules, 2018*** and the criteria fixed therein including the teaching experience as Graduate Teacher were taken into consideration. The aforesaid order was followed by another impugned order dated 24.12.2020 passed by the Director of Education, BTC whereby the order dated 14.09.2020 by which the petitioner was made In-charge Head Master was cancelled and the respondent no. 4 was made the In-charge Head Master of the School.

5. Shri Baruah, the learned counsel for the petitioner has submitted that such action by replacing the petitioner as In-charge Head Master of the School by the respondent no. 4 is absolutely unreasonable and has been passed without taking into consideration the relevant materials. He submits that the respondent no. 4 had joined the Tengapara M. E. School on 27.06.2015 on his own request and he was neither an Assistant Head Master nor a founder teacher. He has also drawn the attention of this Court to certain materials to show that the respondent no. 4 had joined the Tengapara M. E. School from the Choutara M. E. School on his own request. Shri Baruah, learned counsel has also relied upon an order of this Court dated 03.06.2014 passed in WP(C) No. 13/2005 (*Budheswari Das Vs State of Assam & Ors*).

6. On the other hand, Ms. R. B. Borah, learned Standing Counsel, BTC submits that there is no error in the impugned order which has been passed by taking into consideration all the relevant materials including the Rules holding the field namely the Rules of 2018.

7. Shri U. Sarma, learned Standing Counsel, Secondary Education Department submits that the decision is taken at the level of the BTC and he would endorse the stand of the learned Standing Counsel, BTC.

8. Shri R. Islam, learned counsel for the respondent no. 4 however refutes and categorically denies all the allegations made in the writ petition. He submits that in the affidavit-in-opposition filed on 15.02.2022, the averments made in the writ petition have not only been denied but the action of the respondent authorities have also been justified and defended. He submits that the projection made by the petitioner on facts is not be correct, as it is not a case that the post of Head Master had to be filled up when the School is amalgamated. In fact a vacancy had arisen on the retirement of the earlier incumbent holding the post of the Head Master of the High School after its amalgamation whereafter, initially the petitioner was given charge and after re-consideration of the matter when it was found that the respondent no. 4 was more eligible, the speaking order dated 11.12.2020 followed by the order dated 14.12.2020 were passed. He submits that since the aforesaid orders have taken into consideration all the relevant materials and contain cogent reasons, those are not required to be interfered by this Court in exercise of its extra-ordinary jurisdiction under Article 226 of the Constitution of India.

9. After hearing the parties and on perusal of the materials on records, this Court is however of the view that the action challenged in this proceeding is only the arrangement of holding charge of the Head Master of the School which is of temporary nature. The order dated 24.12.2020 which has been impugned categorically states that the respondent No. 4 was allowed to hold charge of the School in addition to his normal duties.

10. While normally, an *ad hoc* arrangement is not to be replaced by another *ad hoc* arrangement, in the instant case, it is seen that the impugned order dated 24.12.2020

is preceded by a Speaking Order dated 11.12.2020 as per which the respondent no. 4 was recommended to be given the charge of the post of Principal.

11. However, without dilating any further on the *inter se* merits of the respective parties, interest of justice as well as public interest would be served if a direction is given to fill up the post of Head Master of the Tengapara High School on regular basis by a regular Head Master as an *ad hoc*/In-charge arrangement cannot continue for perpetuity.

12. In that view of the matter, this writ petition is disposed of by directing the authorities, more particularly the BTC to initiate and complete the process for appointment of the Head Master of the Tengapara High School on regular basis. The said process is directed to be completed expeditiously and within an outer limit of 60 (sixty) days from the date of receipt of the certified copy of the order.

13. It is needless to state that in such selection process, the eligibility of the petitioner, respondent no. 4 or for that matter all intending candidates are to be determined and thereafter the selection can be made in accordance with law.

14. For a smooth running of the School, it is however observed that till the selection and appointment is made within the stipulated period of 60 (sixty) days, the present arrangement by which the respondent no. 4 is discharging his duties as Head Master, In-charge in addition to his normal duties shall continue.

JUDGE

Comparing Assistant