

GAHC010171442020



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

Case No. : WP(C)/5163/2020

ABDUS SALAM
S/O ROBICHAN BEPARI, RESIDENT OF BHAGNAMARI, RS BHAGNAMARI,
DIST NALBARI, ASSAM 781126

VERSUS

THE STATE OF ASSAM AND 5 ORS
TO BE REPRESENTED BY THE COMMISSIONER AND SECRETARY , GOVT.
OF ASSAM, ELEMENTARY EDUCATION DEPARTMENT, DISPUR GUWAHATI
6

2:THE DIRECTOR
ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI 19

3:THE DEPUTY INSPECTOR OF SCHOOL
NALBI DISTRICT CIRCLE
NALBARI ASSAM 781101

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER
NALBARI
ASSAM 781101

5:THE BLOCK ELEMENTARY EDUCATION OFFICER
BARKHETRI
NALBARI
ASSAM 781101

6:MD. SHAHIDUR RAHMAN SARKAR
S/O MAHMUDUR RAHMAN SARKAR
RESIDENT OF BHAGNAMARI

RS BHAGNAMARI
DIST NALBARI
ASSAM 78112

Advocate for the Petitioner : MR. N AHMED

Advocate for the Respondent : SC, ELEM. EDU

Linked Case : WP(C)/720/2021

SHAHIDUR RAHMAN SARKAR
S/O LATE MAHMUDUR RAHMAN SARKAR
R/O BHAGNAMRI
P.S. BHAGNAMARI
DIST. NALBARI
ASSAM
PIN 781126

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S/O ROBICHAN BEPARI
R/O BHAGNAMARI
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DIST. NALBARI
ASSAM
PIN 781126
PIN 781126

Advocate for : MR. R ISLAM
Advocate for : SC
ELEM. EDU appearing for THE STATE OF ASSAM AND 5 ORS

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

Date : 30-01-2023

Heard Mr. N Ahmed, learned counsel for the petitioner in WP(C) No. 5163/2020 and respondent No. 6 in WP(C) No. 720/2021. Also heard Mr. R Islam, learned counsel for the petitioner in WP(C) No. 720/2021 and respondent No. 6 in WP(C) No. 5163/2020. Also heard Mr. NJ Khataniar, learned counsel appearing for the Elementary Education Department.

2. As the issue pertains to whether the petitioner in WP(C) No. 5163/2020 or the petitioner in WP(C) No. 720/2021 is to hold the charge of Incharge Headmaster of Nawbazchar M.E. Madrassa, both the writ petitions are being disposed of by this common order. For easy disposal of the case, the cause-title with respect to WP(C) No. 5163/2020 and the parties arrayed therein is being

applied.

3. The petitioner and the respondent No. 6 in WP(C) No. 5163/2020 joined the Nawbazchar M.E. Madrassa in Nalbari district on 24.04.1998 as Assistant teachers. The petitioner besides being a graduate also acquired D.El.Ed. degree. The respondent No. 6 on the other hand was a simple graduate.

4. The vacancy to the post of Headmaster occurred on 30.09.2020 and the respondent No. 6 was allowed to hold the post of Incharge Headmaster of the said Madrassa vide order dated 09.10.2020.

5. Being aggrieved, the petitioner filed WP(C) No. 5163/2020, stating that the respondent No. 6 could not have been appointed as Incharge Headmaster, as he did not have the essential qualification of D.El.Ed. degree, while the petitioner had the said degree. This Court, vide order dated 21.12.2020 stayed the order dated 09.10.2020, appointing the respondent No. 6 as Incharge Headmaster of the said Madrassa. The petitioner was then made to hold the post of Headmaster vide order 07.01.2021.

6. The respondent No. 6 thereafter filed WP(C) No. 720/2021, stating that the respondent No. 6 had the required qualification for holding the post of Incharge Headmaster. The stand of the respondent No. 6 was that in terms of the Office Memorandum dated 02.03.2010 issued by the Under Secretary to the

Government of Assam, Education Elementary Education, a teacher who serves a period of 15 years and who is not given an opportunity to undergo the Basic Teacher Training Course during his tenure, can be promoted to the post of Headmaster. The case of the respondent No. 6 was that he was senior to the petitioner and in view of the Office Memorandum dated 02.03.2010, there was no infirmity with the State respondents appointing him to the post of Incharge Headmaster.

7. Mr. N Ahmed, learned counsel for the petitioner submits that as per the letter No. 10931 dated 09.03.2021 issued by the District Elementary Education Officer, Nalbari, the respondent No. 6 was not given any opportunity to undergo the Basic Teachers Training Course during his tenure as a teacher and as such, he could not have acquired the D.El.Ed. degree, which was the essential qualification required for promotion to the post of Headmaster. He fairly submits that the respondent No. 6 was senior to the writ petitioner by virtue of his date of birth being earlier in time to that of the writ petitioner.

8. Mr. R Islam, learned counsel for the respondent No. 6 submits that as the respondent No. 6 is senior to the writ petitioner and as he had been working for more than 15 years without being given him an opportunity of acquiring the D.El.Ed. degree, there was no infirmity with the appointment of the respondent

No. 6 as Incharge Headmaster.

9. Mr. NJ Khataniar, learned counsel for the Elementary Education Department submits that no opportunity was given to the respondent No. 6 to undergo the Basic Teachers Training Course during his tenure as a teacher and as he was senior to the petitioner, the respondent No. 6 has to be appointed as Incharge Headmaster of the said Madrassa.

10. I have heard the learned counsels for the parties.

11. The fact that the respondent No. 6 is senior to the writ petitioner is due to the fact that the respondent No. 6's date of birth is earlier than the date of birth of the petitioner, though they were appointed and joined the post of Assistant Teacher on the same day.

12. The letter No. 10931 dated 09.03.2021 issued by the District Elementary Education Officer, Nalbari states as follows:-

“With reference to the subject cited above, I have the honour to inform you that as per report received from the BEEO, Barkhetri vide his letter No. Nal/Brk/court case/24/2019/1175 dtd. 09/03/2021 Md. Shahidur Rahman Sarkar, Asstt. teacher nawbezchar M.E.M. was not availed any opportunity to undergo the Basic Training course during his tenure as a teacher.

This is for favour of your kind information and necessary action."

13. In view of there being no dispute with regard to the seniority of the respondent No. 6 over the petitioner and as the Office Memorandum dated 02.03.2010 provides that a teacher serving continuously for a period of 15 years and who was not given an opportunity to undergo the Basic Teachers Training Course can be promoted to the post of Headmaster, this Court does not find any infirmity with the order dated 09.10.2020, allowing the respondent No. 6 to hold the post of Incharge Headmaster of the Madrassa.

14. Consequently, in view of the reasons stated above, WP(C) No. 5163/2020 is hereby dismissed and WP(C) No. 720/2021 is allowed. Consequently the impugned order dated 07.01.2021 is hereby set aside. Interim order passed earlier stands vacated.

15. The writ petitioner in WP(C) No. 5163/2020 is accordingly directed to give charge of the post of Incharge Headmaster of the said Madrassa to the respondent No. 6 immediately.

JUDGE

Comparing Assistant