

GAHC010021952022



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

Case No. : WP(C)/725/2022

ANJU MONOWARA KHATUN
W/O. SURAT JAMAL, VILL. CHAKIR BHITHA, P.O. KHABLAR BHITHA, DIST.
BARPETA, ASSAM, PIN-781352.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, SECONDARY
EDUCATION DEPTT., DISPUR, GUWAHATI-06.

2:THE DIRECTOR OF SECONDARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI-19.

3:THE INSPECTOR OF SCHOOLS

BARPETA
P.O. BARPETA
DIST. BARPETA
ASSAM
PIN-781301.

4:MAZIBAR RAHMAN

S/O. LT. NAHED UDDIN MUNSHI
ASSTT. TEACHER OF CHAKIR BHITHA HIGH SCHOOL
P.O. KHABLAR BHITHA
DIST. BARPETA
ASSAM
R/O. VILL. JARABARI

P.O. JARABARI
DIST. BARPETA
ASSAM
PIN-791316

Advocate for the Petitioner : MR. N J DUTTA

Advocate for the Respondent : SC, SEC. EDU.

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

09-02-2023

Heard Mr. N. Ahmed, learned counsel for the petitioner and Mr. S.M.T. Chistie, learned Standing counsel, Department of School (Secondary) Education, Assam for the respondent Nos. 1 to 3. Also heard Mr. M.R. Khandakar, learned counsel for the respondent No. 4.

Matter pertains to the charge of Headmaster in-Charge of Chakir Bhitha High School, District-Barpeta, a provincialised Secondary School of the State.

Said Chakir Bhitha High School, District-Barpeta hereinafter referred to as said High School, was a venture educational institution and on 26.07.2013, the same was brought under provincialisation under the provisions of the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 as amended in 2012. Pursuant to the same, the service of the petitioner as well as that of the respondent No. 4 was provincialised w.e.f. 01.01.2013 and brought under the Assam Secondary Education (Provincialised Schools) Service.

As the regular Headmaster, namely, Amar Ali of said High School retired from service on 31.10.2020 on attaining the age of superannuation at 60 years, the Director of Secondary Education (DSE), Assam by order No. GB-EST/Apptt/ FP/36/2018/96 dated 04.11.2020 allowed the petitioner, an Assistant Teacher of said High School to hold the charge of Headmistress in-charge along with its financial power to draw and disburse the salary etc. of the staff of said School in addition to her normal duties as Assistant Teacher under FR 49 (C) clarifying that the same is purely temporary

arrangement. Accordingly, she continued to serve as a Headmistress in-charge of said High School.

However, the DSE, Assam by another order No. GB-EST/Apptt/FP/3/ 2016/181 dated 18.01.2022 allowed the respondent No. 4, another Assistant Teacher of said High School to hold the charge of Headmaster in-charge along with its financial power to draw and disburse the salary etc. of the staff of said High School in addition to his normal duties as Assistant Teacher under FR 49 (C), relieving the petitioner from the charge of Headmistress of said School and cancelling the earlier order dated 04.11.2020, whereby the petitioner was given the charge of Headmistress in-charge of said High School clarifying that the same is purely temporary arrangement.

Being aggrieved with such action on the part of the DSE, Assam in issuing the order dated 18.01.2022, the petitioner has preferred this writ petition praying amongst others to set aside and quash the impugned order dated 18.01.2022 and to allow her to continue as a Headmistress of said High School till appointment of a regular incumbent to it.

The contention of the petitioner is that she being the only eligible candidate to hold the post of Headmaster of said High School at the time of retirement of its regular Headmaster, Amar Ali on 31.10.2020, the respondent authorities in the Secondary Education Department rightly allowed her to hold the charge of Headmistress of said High School along with its financial power to draw and disburse the salary etc. of the staff of said High School.

The petitioner submitted that the respondent No. 4 obtained his B.Ed. degree later than her. As such, he was not qualified to hold the charge of Headmaster of said High School as on 31.10.2020 and the respondent authorities did not allow him to hold the charge of Headmaster in said High School.

According to the petitioner, as she is the senior most eligible Post Graduate Teacher with B.Ed. degree having rendered her service as an Assistant Teacher, the respondent authorities could not have allowed the respondent No. 4 to hold the charge of Headmaster of said High school stating that the impugned order dated 18.01.2022 of the DSE, Assam allowing the respondent No. 4 an Assistant Teacher to hold the charge of Headmaster of said school relieving her, being arbitrary and discriminatory, needs to be set aside and quashed.

The respondent No. 4 by filing an affidavit in the matter stated that the School Managing Committee of said High School on 25.01.1988 appointed him as an Assistant Teacher in that school, pursuant to which, he joined the said High School on 01.02.1988 and is serving in it till date, whereas

the petitioner joined her service only on 20.10.2010 more than 12 years later than him.

It is also stated by the respondent No. 4 that the services of the teaching and non-teaching staff including the petitioner and him were provincialised under the provisions of said 2011 Act as amended w.e.f. 01.01.2013 and that he obtained his B.Ed. degree in the year 2021 and having the requisite qualification to hold the post of Headmaster in-charge of said High School, he filed an application before the DSE, Assam to consider his case for holding the charge of Headmaster in-charge of said High School and accordingly, the DSE, Assam issued the order dated 18.01.2022 allowing him to hold the charge of Headmaster in-charge in said High School.

The DSE, Assam also filed an affidavit in the matter stating that by order dated 04.11.2020, the DSE, Assam allowed the petitioner to hold the charge of Headmistress in-charge in said High School and that after completion of his B.Ed. degree on deputation during the year 2021, the respondent No. 4 approached the Directorate of Secondary Education, Assam to allow him to act as a Headmaster in-charge of said High School.

As such, considering his seniority as well as the requisite qualification, the Inspector of Schools, Barpeta District Circle, Barpeta vide letter No. E-A-13/2021/7426 dated 12.11.2021 submitted a proposal for the said purpose. On examination of the seniority of the petitioner and the respondent No. 4 and finding that the said High School was provincialised w.e.f. 01.01.2013, the date from which both of them received the Graduate Scale of Pay, considering the dates of birth as well as the dates of joining of both the petitioner as well as the respondent No.4, the Director concerned by the impugned order dated 18.01.2022 allowed the respondent No. 4 to hold the charge of Headmaster in-charge of said High School.

The petitioner by filing her rejoinder rebutted the affidavits of the DSE, Assam as well as that of the respondent No. 4.

This Court in the case of *Jagannath Pegu Vs. State of Assam and others* reported in 2007 (3) GLT 389 decided on 02.01.2007 have held that even to hold a post given for the purpose of any temporary arrangement concerning to that post, an incumbent must have the eligibility to hold that post i.e., the requisite eligibility criteria for the post of promotion to the post of Headmaster in a Secondary Schools of the State on regular basis and that the same cannot only be overlooked even for the purpose of any temporary arrangement concerning to that post of Headmaster.

The Assam Secondary Education (Provincialised Schools) Service Rules, 2018, a statutory Rule

under Article 309 of the constitution of India regulating the recruitment and the conditions of service of the teaching and non-teaching employees appointed to the Assam Secondary Education (Provincialised Schools) Service came into force w.e.f. 10.10.2019 from the date of publication of said Rules in the Assam Gazette Extraordinary.

Rule 14 of the said 2018 Rules relates to "Recruitment to the post of Headmaster of High School/Superintendent of High Madrassa and Procedure thereof."

As per the provisions of said 2018 Rules, the seniority of Graduate Teacher for the purpose of promotion to the post of Headmaster/Superintendent of High School/High Madrassa as the case may be, is to be determined from the date of receiving Graduate Scale of Pay by the respective Assistant Teacher.

The eligibility for the post of Headmaster/Superintendent in High School/High Madrassa as the case may be, are that:

(i) *The incumbent must be graduate with BA/B.Sc./B.Com with B.T./B.Ed. degree from any recognize University. In respect of Hindi Teacher having degree qualification, the Hindi 'Parangat' and 'Nishanar' shall be considered instead of B.T./B.Ed;*

(ii) *The incumbent must have at least 10 years of teaching experience as Graduate Teacher:*

Provided that the Graduate Teacher shall include the cadre of Assistant Headmaster for the purpose of selection to the post of Headmaster and the seniority of the Assistant Headmaster shall be counted from the date of joining as Graduate Teacher with graduate scale of pay:

Provided further that in case of amalgamated High School where ME/MV school has been amalgamated, the Assistant Headmaster is eligible for selection as Headmaster subject to the condition that the incumbent should have at least 15 years of teaching experience as graduate teacher including the period of service in the erstwhile ME/MV School.

Rule 24 of the said 2018 Rules relates to "Seniority."

Sub-Rule 3 of Rule 24 of said 2018 Rules provided that " *the seniority of a member of the*

service in a cadre who joins in a school otherwise than by direct recruitment i.e. on transfer or otherwise shall be determined as per the date of joining in the school in the concerned cadre. If a member joins in the school through transfer from school of other district, the seniority shall be determined from the date of his joining in the school in the concerned cadre and the seniority in earlier school of other district or in the same school in a different cadre shall not be taken into account."

Rule 24 (7) of said 2018 Rules provides that "*between two or more member of service in a cadre, the inter-se-seniority shall be determined taking into account their date of birth.*"

From the order under No. PC/Sec/90/2013/17 dated 26.07.2013 of the DSE, Assam annexed to this petition by the petitioner, it is seen that while provincialising the teaching and non-teaching staff of said High School, District-Barpeta w.e.f. 01.01.2013 as per the approval of the State Government in the Secondary Education Department, one post of Headmaster, three posts of Graduate Teacher (Arts), two posts of Graduate Teacher (Science), one post of Arabic Teacher, one post of Sanskrit Teacher, one post of Junior Assistant and one post of Grade-IV were sanctioned for the said High School.

Further, pursuant to the Government's letter No. ASE. 86/2013/Pt.II/286 dated 25.07.2013, the respondent authorities in the Secondary Education Department provincialised the services of the concerned incumbents including the petitioner and the respondent No. 4 showing them to be Assistant Teachers of Arts where the date of joining of the respondent No. 4 was shown as 01.02.1988 and that of the petitioner as 20.10.2010.

It is already noted above that the service of the petitioner as well as the respondent No. 4 was provincialised w.e.f. 01.01.2013 and since 01.01.2013, both of them, received Graduate Scale of Pay.

As noted above, the eligibility for the post of Headmaster of High School/Superintendent of High Madrassa as the case may, the concerned incumbent must have 10 years of teaching experience as Graduate Teacher. While the order dated 04.11.2020 was issued by the DSE, Assam allowing the petitioner to hold the charge of Headmistress of said High School, she did not complete 10 years of teaching experience as a Graduate Teacher in terms of the said 2018 Rules.

Further, on 18.01.2022 when the DSE, Assam allowed the respondent No. 4 to hold the charge of Headmaster of said High School, he too did not complete the requisite eligibility of 10 years teaching experience as a Graduate Teacher as required by the 2018 Rules, a statutory Rule that

regulates the conditions of the service of the teaching and non teaching employees appointed to the Assam Secondary Education (provincialised schools).

As such, following the decision of this Court passed in the case of Jagannath Pegu (Supra), which has already attained finality by efflux of time, both the petitioner and the respondent No. 4 are not eligible to hold the post of Headmaster for not having the requisite eligibility of ten years from the date of receiving Graduate Scale of Pay to hold the post of Headmaster in a provincialised Secondary School as per said 2018 Rules.

It is to be noted herein that as provided by the provisions of said 2018 Rules obtaining BT/B.Ed degree along with any such degree of BA/BSc./B.Com from any recognized university having 10 years of teaching experience as a Graduate Teacher is the only criteria or eligibility for the post of Headmaster but obtaining of BT/B.Ed. degree as per the said 2018 Rules is not the criteria of seniority.

Though the respondent No. 4 was offered to go on deputation for his B.Ed. degree in the year 2014 itself, he did not avail the same and then it was the petitioner who availed it. Thereafter, the respondent No. 4 availed such deputation for B.Ed. degree.

Considering the entire aspect of the matter, both the order dated 04.11.2020 issued by the DSE, Assam allowing the petitioner to hold the charge of Headmaster of said Chakir Bhitha High School, District-Barpeta as well as that of the order dated 18.01.2022 issued by the DSE, Assam allowing the respondent No. 4 to hold the charge of Headmaster of said school are not tenable in law in terms of the decision of the case of Jagannath Pegu (Supra) and the provisions of said 2018 Rules. Accordingly, both the above noted orders of the Director of Secondary Education, Assam are set aside and quashed.

It is to be noted herein that both the orders dated 04.11.2020 and that of 18.01.2022 of the DSE, Assam were only temporary arrangement and were issued until further order and the conditions incorporated in those two orders have neither been challenged by the petitioner nor the respondent No. 4.

In support of her claim to be the Headmaster in-charge of said High School, the petitioner relying on the judgment in the case of *Vaijanath Vs. Secretary, Marathwada Shikshan Prasarak Mandal, Devgiri College, Campus, Aurangabad and others* decided by a full Bench of the Bombay High Court.

Considering the entire aspect of the matter, the petitioner as well as the respondent No 4 may approach the appropriate authority for determination their seniority, if so advised.

Until such determination of the seniority of the petitioner and the respondent No. 4, the Court is of the view that the Inspector of Schools, Barpeta District Circle, Barpeta should hold the charge of Headmaster of said Chakir Bhitha High School, District-Barpeta along with its financial power to draw and disburse the salary etc. of the staff of said school in addition to his normal duties as the Inspector of School, Barpeta District Circle, Barpeta.

The interim order passed earlier in this proceeding on 04.02.2022 is hereby recalled/stands vacated.

JUDGE

Comparing Assistant