

GAHC010027602017



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

Case No. : WP(C)/3664/2017

GOLAP HUSSAIN
S/O LT. AMZAD ALI VILL- BILASIPARA GAON, P.O. BILASIPARA BAZAR,
P.S. BARPETA ROAD, PIN - 781315, DIST. BARPETA, ASSAM

VERSUS

THE STATE OF ASSAM and 8 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
SECONDARY EDUCATION DEPARTMENT, DISPUR, GUWAHATI-6.

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM
ELEMENTARY EDUCATION DEPARTMENT
DISPUR
GUWAHATI -6.

3:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19

4:THE SECRETARY
EDUCATION
BTC
KOKRAJHAR

5:THE DIRECTOR OF EDUCATION
BTC
KOKRAJHAR

6:THE DISTRICT ELEMENTARY EDUCATION OFFICER
BAKSA
ASSAM

7:BLOCK ELEMENTARY EDUCATION OFFICER
JALAH/GOBARDHANA

8:HEADMASTER BUBONG BORO M.E. SCHOOL

9:AKBAR ALI
HEADMASTER OF SIDDHESWAR M.E. SCHOOL

Advocate for the Petitioner : MR.P KHATANIAR

Advocate for the Respondent : SC, ELEMENTARY EDUCATION

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

Date : 23.02.2023

Heard Mr. M. K. Goswami, learned counsel for the petitioner and Mr. S. M. T. Chistie, learned Standing Counsel, Elementary Education Department for the respondent Nos. 1 to. 3. Also heard Mrs. R.B. Bora, learned Standing Counsel, BTC for the respondent Nos. 4 to 7 and Mr. S. Ahmed, learned counsel for the respondent No. 9.

2. The Petitioner is a Science Teacher of Bubong Boro M.E. School under Jalah Education Block in the district of Baksa. For the purpose of rationalization of posts of middle schools in the district of Baksa, the DEEO, Baksa, by order under Memo No. DEEO/Baksa/Transfer/2016/9074-80 dated 16.09.2016, transferred the petitioner with post to Kaurpara M.E. School, under Gobardhana Education Block of Baksa district with immediate effect. Pursuant to his such transfer, the petitioner joined said Kaurpara M.E. School immediately. While serving as a Science Teacher in said Kaurpara M.E. School, its regular Headmaster, Mukfar Ali Ahmed, expired suddenly and, as such, the DEEO,

Baksa, by order dated 12.04.2017, transferred the respondent No. 9, Headmaster of Sidheswar M.E. School to Kaurpara M.E. School against the expired vacancy of said Mukfar Ali Ahmed.

3. By another order under memo No. DEEO/Baksa/transfer/2017-2227-33 dated 24.05.2017 the DEEO, Baksa, Musalpur observed that the transfer of the petitioner, vide order dated 16.09.2016 from Bubong Boro M.E. School under BEEEO, Jalah to Kaurpara M.E. School under BEEEO, Gobardhana be treated to be cancelled. By the said order dated 24.05.2017, the petitioner was directed to return from said Kaurpara M.E. School under DEEO, Govardhana to resume his duty at Bubong Boro M.E. School immediately.

4. Being aggrieved with the said transfer order dated 24.05.2017 from Kaurpara M.E. School to Bubong Boro M.E. School within a period of eight months, the petitioner has preferred this writ petition, challenging the order of transfer and appointment of the respondent No. 9 as the Headmaster of Kaurpara M.E. School as well as his transfer from Kaurpara M.E. School to Bubong Boro M.E. School, issued by the DEEO, Baksa, vide order dated 24.05.2017.

5. While issuing notice to the respondents, the Court on 16.06.2017, in the interim, suspended the order dated 24.05.2017, whereby the petitioner was transferred from Kaurpara M.E. School to Bubong Boro M.E. School.

6. The respondent Nos. 4 to 7 have already filed their affidavit in the matter, stating that the petitioner was initially transferred from Bubong Boro M.E. School to Kaurpara M.E. School with post due to rationalisation of teachers.

7. As the regular Headmaster of the said Kaurpara M.E. School was on

medical leave for a period of three months, the DEEO, Baksa, Musalpur by order dated 16.02.2017, allowed the petitioner to work as In-charge Headmaster of said Kaurpara M.E. School along with the power of Drawing and Disbursing Officer in addition to his existing duty during the leave period of the regular Headmaster of the said school from 01.01.2017 to 31.03.2017.

8. Prior to issuance of the order dated 24.05.2017, transferring the petitioner from Kaurpara M.E. School to Bubong Boro M.E. School, the respondent No. 9 joined as Headmaster of said Kaurpara M.E. School in terms of the order dated 12.04.2017, issued by the DEEO, Baksa, Musalpur.

9. It is seen that after joining of the respondent No. 9 as Headmaster in the said Kaurpara M.E. School, the petitioner continued his service as a Science Teacher in said Kaurpara M.E. School on the basis of his transfer dated 16.09.2016. As such, the Court, by order dated 12.02.2020, observed that the petitioner if still serving as a Science Graduate Teacher in Kaurpara M.E. School, Gobardhana, he shall remain there until further order of the Court, and, as such, the prayer of the petitioner for setting aside the transfer of the respondent No. 9 as Headmaster of Kaurpur M.E. School, issued by the DEEO, Baksa dated 12.04.2017, is without any merit.

10. It is also seen that by order dated 16.09.2016, the DEEO, Baksa, transferred the petitioner from Bubong Boro M.E. School under Jalah Education Block and posted him at Kaurpara M.E. School under Gobardhana Education Block under BTC area on the basis of the approval of the District Level Committee (Transfer and Rationalization) Resolution No. 4, considering the requirement of teachers in said Kaurpara M.E. School. The said transfer of the petitioner from Bubong Boro M.E. School to Kaurpara M.E. School was of

16.09.2016, which is more than 6 ½ years back.

11. Considering the entire aspects of the matter, this writ petition is disposed of with an observation that without complying the provision of law and if the service of the petitioner as a Science Teacher is not required under Gobardhana Education Block, the respondent authority shall allow the petitioner to continue as a Science Graduate Teacher in the said Kaurpara M.E. School. However, if in an administrative exigency, the petitioner's service is required to be transferred to any other school under BTC area in exigencies of services, the respondent authorities concerned shall do the needful in accordance with law only.

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

JUDGE

Comparing Assistant