

GAHC010040742023



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

Case No. : WP(C)/1244/2023

TAMIZUDDIN AHMED
S/O- LT. ABDUL ALI, R/O- VILL- GARBHITOR, P.O. DHAMDHAMA, P.S.
BARAMA, DIST.- BAKSA, BTC (BTR), ASSAM, PIN- 781349

VERSUS

THE STATE OF ASSAM AND 7 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, EDUCATION
DEPT. (ELEMENTARY) DISPUR, GHY-6

2:THE DIRECTOR
ELEMENTARY EDUCATION DEPT.
KAHILIPARA
GUWAHATI-19

3:THE DIRECTOR OF SECONDARY EDUCATION
KAHILIPARA
GHY-19

4:THE SECRETARY
BODOLAND TERRITORIAL COUNCIL (BTR)
BODOFA NWGWR
KOKRAJHAR
PIN- 783370
ASSAM

5:THE DIRECTOR OF EDUCATION
BODOLAND TERRITORIAL COUNCIL (BTR)
KOKRAJHAR
PIN- 783370
ASSAM

6:THE PRINCIPAL SECRETARY

B.T.C. (BTR) KOKRAJHAR
ASSAM
PIN- 783370

7:THE INSPECTOR OF SCHOOLS
BAKSA DISTRICT CIRCLE
BAKSA (BTR)
MUSHALPUR
PIN- 781372

8:THE HEADMASTER
GARBHITOR HIGH SCHOOL
P.O. NIZDHAMDHAMA
PIN- 781349
DIST.- BAKSA
BTAD (BTR)
ASSA

Advocate for the Petitioner : MR. R M CHOUDHURY

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

30.03.2023

Heard Mr. R M Choudhury, learned counsel for the petitioner and Mr. G Pegu, learned Standing counsel, Department of School Education, Assam for the respondent Nos. 1 to 3. Also heard Ms. R B Bora, learned Standing counsel, BTC for the respondent Nos. 4 to 7.

2. It is contended by the petitioner that since the number of enrollment of students at 575 No. Garbhitor Moktab Lower Primary School increased to a large extent, therefore, the President of the Managing Committee of said L.P. school on 25.01.1986 appointed the petitioner as 3rd Assistant Teacher of said L.P. school on honorary basis w.e.f. 07.02.1986.

3. The said appointment of the petitioner by the President of the Managing Committee of the said L.P. school was considered and approved by the Managing Committee of the said L.P. School in its meeting held on 02.06.1988.

- 4.** Petitioner also contended that the Sub-Inspector of Schools, Barama Education Block during his visit and inspection on 16.04.1988 found the petitioner serving in the said L.P. school and that the Deputy Inspector of Schools, Nalbari on 29.02.1996 wrote to the Director of Education, BTC for creation of an additional post of teacher in the said Garbhitor Moktab L.P. school under BTC area of District-Baksa to accommodate the petitioner in the said L.P. School as he was found working on honorary basis since 1986.
- 5.** Pursuant to the Office Memorandum dated 22.09.2016 said Garbhitor Moktab L.P. school and Garbhitor M.E. school were amalgamated with Garbhitor High School, on approval of the State Government in the Secondary Education Department dated 24.08.2017, under the Siksha Khetra Scheme, a scheme for amalgamation/merger of schools.
- 6.** The Headmaster of said Garbhitor High School, Dhamdhama on 05.10.2020 issued a certificate that the petitioner was serving as an Assistant Teacher in said 575 No. Garbhitor Moktab L.P. School on honorary basis, where the said L.P. school has now been amalgamated with Garbhitor High School.
- 7.** Though the petitioner through the Headmaster of Garbhitor High School submitted representation before the Inspector of Schools, Baksa District Circle, Mushalpur and the Deputy Inspector of Schools, Baksa District Circle, Mushalpur on 15.10.2020 and 27.10.2020 respectively, stating that he has been serving in said Garbhitor Moktab L.P. School since 1986 on honorary basis and since on retirement of the Headmaster, Hitesh Sarma, one post of Assistant Teacher is lying vacant, the authorities should consider regularization of his service in the said vacant post.
- 8.** In that regard, the Inspector of Schools, Baksa District Circle, Mushalpur wrote to the Director of Education, BTC for provincialisation of service of the petitioner.
- 9.** Petitioner placed before the Court that the School Management and Development Committee of Garbhitor amalgamated High School on 18.01.2021 resolved for regularization of the service of the petitioner.
- 10.** Pursuant to such recommendation of the Inspector of Schools, Baksa District Circle, Mushalpur dated 15.10.2020, the Director of Education, BTC on 03.12.2021 with a detailed report wrote to the Secretary, Education Department, BTC, Kokrajhar regarding

appointment and regularization of service of the petitioner with an observation that the service of the petitioner serving in Garbhitor Moktab L.P. School on honorary basis cannot be regularized against the vacant sanctioned post under any Rules.

11. Pursuant to the said communication of the Director of Education, BTC, Kokrajhar; the Secretary, Education Department, BTC, Kokrajhar on 25.02.2022 directed the Director of Education, BTC to dispose of the representation of the petitioner by a Speaking Order.

12. Accordingly, the Director of Education, BTC by the impugned Speaking Order under No. DE/BTC/Apptt-257/Pt-I/2017/795 dated 15.03.2022 rejected the claim of the petitioner for regularization of his service as an Assistant Teacher in No. 575 Gorbhitor Moktab L.P. School which has already been amalgamated with Gorbhitor High School, as the Director found that the Managing Committee of said Gorbhitor L.P. School illegally appointed him and accordingly cancelled his appointment with effect from the date of his initial appointment.

13. Being aggrieved with the same, the petitioner has preferred this writ petition.

14. The Court by order dated 10.03.2023 directed the respondents in the BTC to apprise the Court as to when said 575 No. Gorbhitor Moktab L.P. School, Nij Dhamdhama in the erstwhile district of Nalbari presently under Baksa District, was provincialised.

15. By placing a copy of the order of amalgamation of 575 No. Gorbhitor Moktab L.P. School with said Garbhitor High School, Ms. R B Bora, learned Standing counsel, BTC apprised the Court that said 575 No. Gorbhitor Moktab L.P. School was provincialised in the year 1977 under the provisions of the Assam Elementary Education (Provincialisation) Act, 1974 and the Assam Elementary Education (Provincialisation) Rules, 1977 as the post creation numbers reflects that those posts were sanctioned in the year 1977 itself.

16. Further, the impugned communications of the Director of Education, BTC dated 03.12.2021 as well as 15.03.2022 also reflects that during the time of appointment of the petitioner by the President of the School Managing committee of said L.P. School, the said school was a provincialised lower primary school.

17. The Court in the case of *Jahangir Alam and Others -Vs- State of Assam and Others* reported in *2003 (3) GLT 544* decided on 29.09.2003 have held that – the relevant Rules, namely, the Assam Elementary Education (Provincialisation) Rules, 1977 as well as the

Assam Secondary Education (Provincialisation) Service Rules, 1982 specifically provides for appointment of Assistant Teachers in provincialised L.P. school of the State by following the procedure of Direct Recruitment after advertisement and selection, following the provisions of Articles 14 and 16 of the Constitution of India and that after provincialisation of any such school, honorary Teachers appointed by the Managing Committee of such provincialised schools cannot be regularized, since statutory provincialisation Rules, namely, the Assam Elementary Education (Provincialisation) Rules, 1977 as well as the Assam Secondary Education (Provincialisation) Service Rules, 1982 does not empower the Managing Committee to appoint any such Teacher in a provincialised school.

18. As such, even if it is assumed that a person has rendered a long period of service by way of such appointment issued by the Managing Committee of the School in violation of the statutory recruitment Rules in force, his/her service cannot be regularized, since the incumbent appointed in such manner does not have any legal right for regularization.

19. Considering the above and the law laid down by this Court in the case of *Jahangir Alam* (supra) and as it is found that the petitioner was appointed by the President of the Managing Committee of the 575 No. Garbhitor Moktab Lower Primary School, after the school was provincialised in the year 1977 under the provisions of the Assam Elementary Education (Provincialisation) Act, 1974 and the Assam Elementary Education (Provincialisation) Rules, 1977, though the petitioner has rendered his service since 1986 as an honorary Assistant Teacher in 575 No. Garbhitor Moktab Lower Primary School, which has now been amalgamated with Garbhitor High School, his service cannot be considered for regularization, as the appointment of the petitioner is found to be illegal being made in violation of the provisions of the Articles 14 and 16 of the Constitution of India, without any advertisement and selection in a provincialised school of the State.

20. Considering the above, the communication of the Director of Education, BTC under No. DE/BTC/Apptt-257/Pt-I/2017/751 dated 03.12.2021 as well as the impugned Speaking Order under No. DE/BTC/Apptt-257/Pt-I/2017/795 dated 15.03.2022 does not call for any interference by this Court.

21. Accordingly this writ petition being devoid of merit stands dismissed.

22. Copy of the communication of the Director of Education, BTC dated 29.03.2023

placed before the Court by Ms. R B Bora, Standing counsel, BTC be kept as part of the record.

JUDGE

Comparing Assistant