

GAHC010044302023



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

**Case No. : WP(C)/1122/2023**

MD. MOBRUR BARBHUIYA  
SON OF LATE MUJAMMIL ALI BARBHUIYA,  
HEADMASTER OF JAMIRA HIGH SCHOOL (A),  
P.O.- JAMIRA BAZAR, DIST.- HAILAKANDI, ASSAM.

VERSUS

THE STATE OF ASSAM AND 5 ORS  
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM,  
DEPARTMENT OF SCHOOL EDUCATION,  
DISPUR, GUWAHATI-6.

2:THE DIRECTOR OF SECONDARY EDUCATION  
ASSAM  
KAHILIPARA  
GUWAHATI- 19.

3:THE INSPECTOR OF SCHOOLS  
HDC  
HAILAKANDI  
P.O. AND DIST.- HAILAKANDI  
ASSAM  
PIN- 788151.

4:THE DISTRICT LEVEL COMMITTEE FOR AMALGAMATION/ MERGER OF  
SCHOOL  
REPRESENTED BY ITS CHAIRMAN

THE ADDITIONAL DEPUTY COMMISSIONER (EDUCATION)  
HAILAKANDI  
ASSAM

PIN- 788151.

5:THE TREASURY OFFICER  
HAILAKANDI TREASURY  
P.O. AND DIST. HAILAKANDI

ASSAM  
PIN- 788151.

6:MD. HIFJUR RAHMAN LASKAR  
IN-CHARGE HEADMASTER OF JAMIRA HIGH SCHOOL (B)

P.O. JAMIRA BAZAR

DIST.- KARIMGANJ  
PIN- 78816

**Advocate for the Petitioner** : MR. U K NAIR

**Advocate for the Respondent** : SC, SEC. EDU.

**BEFORE**

**HON'BLE MR. JUSTICE MANASH RANJAN PATHAK**

**14/03/2023**

Heard Mr. U K Nair, learned Senior counsel assisted by Mr. M Khan, learned counsel for the petitioner. Also heard Mr. S M T Chistie, learned Standing counsel, Department of School (Secondary) Education for the respondent Nos. 1 to 3; Mr. G Bokalia, learned Government Advocate, Assam for the respondent No. 4; Mr. A Chaliha, learned Standing counsel, Finance Department for the respondent No. 5 and Mr. N Hoque, learned counsel for the respondent/caveator respondent No. 6.

Dispute involved in this writ petition relates to the Drawing and Disbursing Officer of Jamira High School (B), District-Hailakandi, with which the Jamira High School (A), District-Hailakandi was amalgamated.

Said Jamira High School (A) was initially a Title Madrassa under the name and style of "Jamira Title Madrassa", District-Hailakandi affiliated to the State Madrassa Board teaching various theological

subjects like, Holy Quoran, Islamic Studies, Fiqh, Hadith, Usul Al Fiqh, Aquaid, Tafsir, Hadith, Faraid etc. Said Title Madrassa on being approved by the State Government in the Education Department was provincialised under the provisions of the *Assam Venture Madrassa Educational Institutions (Provincialisation of Services) Act, 2011* as amended during the force of the said Act by an order No. DME.725/Prov./Hailakandi/2013/42 dated 27.12.2013 issued by the Director of Madrassa Education, Assam.

While provincialising the said Title Madrassa by order dated 27.12.2013, 1 (one) post of Principal, 5 (five) posts of Lecturer, 1 (one) post of Librarian (F.M.), 1 (one) post of Junior Assistant and 1 (one) post of Grade-IV in total 9 posts were sanctioned, wherein the petitioner, having M.M. and B.A. degree was made the Principal of said Title Madrassa on its provincialisation.

In pursuance of the decisions of the Councils of Ministers, in its meeting held on 13.12.2020 and in exercise of the power under Article 309 of the Constitution of India, the State Government in the Secondary Education Department vide Notification No.ASE.473/2020/48 dated 12.02.2021 repealed the *Assam Madrassa Education (Provincialised) Service Rules, 2016* and brought all such High Madrassas and Madrassa Higher Secondary Schools including the pre-Senior Madrassa, Senior Madrassa, Title Madrassa and Arabic College affiliated to the State Madrassa Board under the Board of Secondary Education, Assam and the Assam Higher Secondary Education Council under the Rules of *the Assam Secondary Education (Provincialised Schools) Service Rules, 2018* renaming all such Madrassas as Secondary Schools treating all such Arabic Colleges as composite Higher Secondary Schools, all Senior and Title Madrassas as High Schools and where appropriate conditions have been fulfilled, the Title Madrassas have been upgraded to Higher Secondary Schools, if so needed.

The State Government in the Secondary Education Department took such decision by adopting the National Education Policy from the middle stage and such Madrassas under the Government being provincialised, where the curriculum prescribed by the State Council of Education Research and Training (SCERT), it is the High School Leaving Certificate course curriculum of Secondary Education Board of Assam as well as the course of the curriculum of Assam Higher Secondary Education Council have been made applicable and all the subjects of all theological aspects were withdrawn from these provincialised Madrassas accepting the Arabic language in the syllabus of such Madrassas.

Pursuant to the said Notification dated 12.02.2021 of the State Government in the Secondary Education Department, noted above, said Jamira Title Madrassa have been renamed as Jamira High

School in the District of Hailakandi. Following the scheme of "Siksha Khetra" that relates to amalgamation and merger of different schools as per the policy laid down by the State Government in the Secondary Education Department vide Office Memorandum No. ASE.481/2016/164 dated 03.08.2021 and on the recommendation of the concerned committee consisting of Headmaster of Jamira High School (A) [previously known as Jamira Title Madrassa], the in-charge Headmaster of Jamira High School (B), the Inspector of Schools of Hailakandi District Circle, Hailakandi and the Deputy Director of Secondary Education, Assam, the Jamira High School (B) was amalgamated with Jamira High School (A) [previously known as Jamira Title Madrassa] on being approved by the State Government in the Secondary Education Department vide communication No. 10/2022/63 dated 10.03.2022 and pursuant to the order No. DSE/GIS/Amal/3/2021/42 dated 29.03.2022 issued by the Director of Secondary Education, Assam and after such amalgamation and merger, it became Jamira High School (A).

As per the said order dated 29.03.2022 of the Director of Secondary Education (DSE), Assam, the Headmaster of Jamira High School (A) was allowed to be the Drawing and Disbursing Officer for the purpose of disbursing salaries etc. to the employees of both the schools, i.e., Jamira High School (A) and the amalgamated Jamira High School (B).

Being aggrieved with such amalgamation vide order dated 29.03.2022 issued by the DSE, Assam, noted above, the respondent No. 6 preferred a writ petition being WP(C) No. 3972/2022.

Clause 19 of the said O.M. dated 03.08.2021 regarding "Siksha Khetra" scheme provides that *for any dispute arising out of the order of such amalgamation, the aggrieved Institution/public may appeal before the Government in the Secondary or Elementary Education Department, as the case may be.*

Considering the said provision of the O.M. dated 03.08.2021 regarding the scheme of "Siksha Khetra", i.e., amalgamation of Educational Institutions, the Court by order dated 15.06.2022 disposed of said WP(C) No. 3972/2022 preferred by the respondent No. 6 directing him to prefer an appeal before the Secretary to the Govt. of Assam in the Secondary Education Department within the stipulated time.

Pursuant to the same, the petitioner preferred an appeal and the Secretary to the Govt. of Assam in the Secondary Education Department sought for a report from the Inspector of Schools, Hailakandi regarding amalgamation of Jamira High School (A) and Jamira High School (B).

Pursuant to the same, the Inspector of Schools, Hailakandi on 19.09.2022 submitted a detail report clarifying that while visiting the Jamira High School (A) and Jamira High School (B) on 10.09.2022, it found that the Jamira High School (A) as non-existent one, except one office room and as such, he directed the Headmaster of the school to convey a public meeting on 11.09.2022 at 11 A.M. so to settle the dispute regarding the amalgamation of Jamira High School (B) with Jamira High School (A). Accordingly, in presence of the said Inspector of Schools, Hailakandi, the concerned Block Elementary Education Officer, Lala and Katlichera, opinion from the guardians, the members of the School Management and Development Committee and local public were obtained and it was found that the Jamira High School (A) was not eligible to become a Base School and the meeting unanimously resolved that the teaching staff of Jamira High School (A) will co-operate with the Jamira High School (B) in both scholastic and non-scholastic activities.

The petitioner has also submitted his written statement on behalf of the Jamira High School (A), erstwhile Jamira Title Madrassa, Hailakandi on 11.11.2022 before the Director of Secondary Education, Assam with regard to the dispute relating to amalgamation between Jamira High School (A) and Jamira High School (B).

After such report of the Inspector of School, Hailakandi dated 19.09.2022 and on being approved by the Government in the Secondary Education Department and in compliance of the order of the Court dated 15.06.2022 passed in WP(C) No. 3972/2022, the Director of Secondary Education, Assam by order No. DSE/GIS/CC/20/2023/54 dated 24.02.2023 merged Jamira High School (A), District-Hailakandi, i.e., the erstwhile Jamira Title Madrassa with the Jamira High School (B), clarifying that after such amalgamation the school will be known as the Jamira High School (B) and accordingly, informed the Treasury Officer, Hailakandi Treasury that the Headmaster of Jamira High School (B) will be the Drawing and Disbursing Officer for disbursing the salaries etc. of the employees of the said amalgamated Jamira High School.

Being aggrieved with such action on the part of the Director of Secondary Education, Assam allowing the respondent No. 6, in-charge Headmaster of Jamira High School (B) to be the Drawing and Disbursing Officer of the amalgamated Jamira High School disregarding his post as the regular Principal of erstwhile Jamira Title Madrassa since its provincialisation, the petitioner has preferred this writ petition.

The petitioner contended that Clause 15(a) of the said scheme of "Siksha Khetra" issued vide O.M. dated 03.08.2021, noted above, clearly provides that the school having good infrastructure

facilities together with an amiable academic atmosphere and proper road connectivity in comparison to the other schools shall be the Base School and other schools shall be merged with that Base School. *The senior-most Principal/Headmaster shall be the Principal/Headmaster of the School after the merger.* If the date of joining happens to be the same, then the Seniority in age shall be taken into consideration for determination of the seniority. The other Principal/Headmaster shall be the ex-officio Principal/Headmaster with the post personal to him and he/she shall continue to get his pay in the existing status till retirement or till posting elsewhere.

It is contended by the petitioner that since he is a regular Principal of said Jamira High School (A), whereas the respondent No. 6 is only the Assistant Teacher and Headmaster in-charge of Jamira High School (B), therefore, in compliance of the said provisions of Clause 15 (a) of the said O.M. dated 03.08.2021 regarding "Siksha Khetra" scheme, the respondent authorities in the Directorate of Secondary Education, Assam should have allowed him to be the Drawing and Disbursing Officer of the said Jamira High School after the said amalgamation.

Mr. N Hoque, learned counsel for the respondent No. 6 submitted that in terms of the said Notification of the State Government dated 12.02.2021 since all High Madrassas and Madrasa Higher Secondary Schools affiliated to the SEBA as well as the Pre-Senior Madrasa, Senior Madrasa, Title Madrasa and Arabic College affiliated to the State Madrasa Board have been brought under the provisions of the *Assam Secondary Education (Provincialised Schools) Service Rules, 2018*, where the Headmaster as provided in Rule 14 of said 2018 Rules, stipulates that the incumbent must not only a Graduate but also have to be a B.T./B.Ed. degree holder from any recognized University.

Mr. Hoque, learned counsel for the respondent No. 6 submitted that the petitioner does not have the B.Ed. degree and is a mere Graduate and as such, he is not entitled to be the Headmaster in-charge of any such provincialised High Schools as per the provisions of Rule 14 of said 2018 Rules.

This fact has not been denied by the petitioner and it can also be seen from the order of provincialisation of said Jamira High School, erstwhile Jamira Title Madrasa dated 27.12.2013 annexed by the petitioner, wherein it is clearly shown that the petitioner was the Principal of Jamira Title Madrasa having M.M. and B.A. degree.

Further, on repealing of the *Assam Madrasa Education (Provincialised) Service Rules, 2016* and in terms of the Notification dated 12.02.2021 of the State Government in the Secondary Education Department, all the existing staff, including teaching and non-teaching staff of Madrasa

Educational Institutions have been brought under the provisions of said 2018 Rules that have already been upheld by a Division Bench of this Court.

From the report of the Inspector of Schools, Hailakandi dated 19.09.2022 annexed to this writ petition, it can also be seen that the Head of the Institution namely, Jamira High School (A) erstwhile Jamira Title Madrassa does not possess the B.Ed. degree and that none of the teaching staff of the said Jamira High School (A) has any B.Ed. qualification.

Rule 14 of the said 2018 Rules relates to Recruitment to the post of Headmaster/Superintendent of provincialised High School/High Madrassa and provides as follows:-

*“14.(1) The post of Headmaster of a High School and Superintendent of a High Madrassa shall be filled up by promotion from the candidates amongst the Graduate Teachers as per District wise Seniority list on the recommendation of the District Selection Committee constituted under Rule 16 (2). The selection of Headmaster and Superintendent shall be based upon seniority and satisfactory Annual Confidential Report for last consecutive years as per procedure provided under Sub Rule 3.*

*Provided that the seniority of the Graduate Teacher shall be determined from the date of receiving graduate scale of pay by the respective Assistant Teacher.”*

Clause 16 of the said O.M. dated 03.08.2021 pertaining to “Siksha Khetra” provides for gradation list and stipulates that *status of each of the teachers of the Higher Schools after amalgamation/merger will be revised. After amalgamation/merger, the gradation list of school or district as the case may be has to be revised by incorporating the names of teachers against the Higher School in accordance with his/her qualification and status and that he/she will get the seniority as before and his/her name has to be placed in appropriate place, in such a way that he/she does not lose his/her seniority.*

Since there is a dispute regarding holding of Drawing and Disbursing Officer after amalgamation of said Jamira High School (A) with Jamira High School (B); after hearing the learned counsels for the parties and considering the entire aspects of the matter, the Court hereby directs the Director of Secondary Education, Assam, to pass a necessary order in that regard after determining the seniority of the petitioner vis-à-vis the respondent No. 6 considering their requisite eligibility to become a Headmaster of a provincialised school as provided in said 2018 Rules considering the fact that Jamira High School (B) was provincialised in the year 1994 and that the Jamira High School (A)

was provincialised in the year 2013 and giving an opportunity of hearing to both the petitioner as well as the respondent No. 6. Thereafter, the said Director from amongst the two, whoever is found to be senior and eligible to hold the post of Headmaster as per said 2018 Rules shall be conferred with the power of Drawing and Disbursing Officer of the amalgamated Jamira High School (A) with Jamira High School (B).

The entire process shall be completed within a period of 30 (thirty) days from the date of receipt of the certified copy of this order, to be furnished by both the petitioner as well as the respondent No. 6 on or before 06.04.2023 along with their respective testimonials and other relevant documents, as required, before the Director of Secondary Education, Assam, obtaining necessary acknowledgment from the said authority in that regard.

Till such decision of the Director of Secondary Education, Assam, the Inspector of Schools, Hailakandi District Circle, Hailakandi shall be the Drawing and Disbursing Officer of amalgamated Jamira High School for the purpose of drawing and disbursing the salaries etc. of the employees of teaching as well as non-teaching staff of the said amalgamated High School.

With above observation and direction, this writ petition stands disposed of.

**JUDGE**

**Comparing Assistant**