

GAHC010049902023



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

Case No. : WP(C)/1318/2023

FAROQUE AHMED
S/O- LT. ASHRAF ALI, VILL- NABIN NAGAR, P.S. SADAR NAGAON, P.O.
NAGAON, HAIBORGAON, DIST.- NAGAON, ASSAM, PIN- 782002

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM, DEPT. OF
SCHOOL EDUCATION, GUWAHATI- 781006

2:THE SECRETARY TO THE GOVT. OF ASSAM
DEPT. OF SCHOOL EDUCATION
DISPUR
GUWAHATI- 781006

3:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI- 781019

4:THE INSPECTOR OF SCHOOLS
NAGAON DISTRICT CIRCLE
NAGAON 782120
ASSAM

5:MD. TAIYEBUR RAHMAN
B.SC. I/C HEADMASTER
SOLMARI HIGH SCHOOL
NAGAON
ASSAM
PIN- 78200

Advocate for the Petitioner : MR. A DEKA
Advocate for the Respondent : SC, SEC. EDU.

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

13-03-2023

Heard Mr. A. Deka, learned counsel for the petitioner and Mr. B. Kaushik, learned Standing Counsel, Department of School Education for the respondent Nos. 1 to 4.

Due to superannuation of the erstwhile Headmaster of Solmari High School, Nagaon, the Director of Secondary Education, Assam allowed the respondent No.5 to be the in-charge Headmaster of said High School w.e.f., 01.05.2022, though he does not have the requisite eligibility of B.Ed. Degree to hold the post of Headmaster in a provincialised Secondary School of the State as provided under the Assam Secondary Education (Provincialised Schools) Service Rules, 2018.

Petitioner submitted that said Solmari High School, Lawgaon, Solmari in the District of Nagaon was earlier known as Solmari Senior Madrassa and was a Government aided Senior Madrassa.

The services of the teaching and non-teaching staff of the said Madrassa including the petitioner as well as respondent No.5 were provincialised w.e.f., 15.08.1994 and since then the said Madrassa came to be known as Solmari High School, provincialised under the Assam Madrassa Education (Provincialisation) Act, 1995.

Since the date of provincialisation of their services w.e.f., 15.08.1994, both the petitioner and the respondent No.5 are drawing Graduate Scale of Pay.

As there was no B.Ed. qualified Teacher in said High School at the relevant point of time, the Director of Secondary Education, Assam considering the respondent No.5

to be senior, w.e.f., 01.04.2022, allowed him to be the in-charge Headmaster of said High School on superannuation of the erstwhile Headmaster of the said School on 31.03.2022.

In the meanwhile, the Director of Secondary Education, Assam by an order dated 20.10.2020 deputed the petitioner for his B.Ed. Degree and accordingly placed him at Sikshan Mahavidyalaya, Nagaon for such training for a period of two years for the Session 2020-2022.

Petitioner submitted that he passed his B.Ed. Degree in First Class from said Sikshan Mahavidyalaya, Nagaon in the Examination conducted by the Gauhati University in June, 2022, result of which was declared on 10.12.2022.

After obtaining his B.Ed. Degree the petitioner on 08.02.2023 submitted a representation before the Inspector of School, Nagaon District Circle, Nagaon respondent No.4 to allow him to hold the charge of Headmaster of said Solmari High School, as he has all the requisite eligibility for promotion to the post of Headmaster in a provincialised High School as provided in said 2018 Rules.

In his said representation dated 08.02.2023, the petitioner submitted that the respondent No.5, who is serving as in-charge Headmaster of said High School in addition to his normal duties as an Assistant Teacher is not qualified to be the regular Headmaster of any such provincialised High School in terms of said 2018 Rules and therefore, he is not entitled to be the in-charge Headmaster, on availability of qualified Graduate Assistant Teacher with B.Ed. in the Graduate Scale of Pay in said Solmari High School.

Placing reliance on a judgment of this Hon'ble Court in the case of *Jagannath Pegu Vs. State of Assam and Others.* reported in 2007 (3) GLT 389, Mr. Deka, learned counsel for the petitioner submitted that only an eligible candidate for a particular post should be allowed to hold the charge of the said post, but in the case is hand, though the petitioner is eligible to hold the post of Headmaster having B.Ed. Degree and the

length of service as required in a Graduate Scale of Pay, but the respondent authorities have allowed the respondent No.5 to be the in-charge Headmaster of said Solmari High School, who does not have the requisite eligibility of B.Ed. Degree to be a Headmaster of any provincialised Secondary School of the State.

Mr. Deka, learned counsel for the petitioner in that regard also placed reliance on the order dated 07.06.2016, passed by a Division Bench of this Court in the case of *Anuwar Mehdi Vs. State of Assam and Ors.* reported in 2016 (5) GLT 52.

After hearing the learned counsels for the parties and considering the above, the petitioner is directed to submit a fresh representation before the Director of Secondary Education, Assam through the Inspector of Schools, Nagaon on or before **30.03.2023** stating all his credentials along with the testimonials in that regard for redressal of his grievances.

In the event of filing any such representation by the petitioner within the said stipulated period, the Director of Secondary Education, Assam within a period of 30 (thirty) days from the date of receipt of such representation of the petitioner shall pass necessary order on the said representation after giving an opportunity of hearing to the petitioner as well as the respondent No. 5. During such determination, if the DSE, Assam comes to the conclusion that the petitioner possess the requisite eligibility to be a Headmaster under the said 2018 Rules, and the said respondent No.5 does not have such requisite eligibility, the DSE, Assam shall do the needful in accordance with law allowing such eligible Assistant Teacher of said Solmari High School to be the Headmaster of said High School.

The Inspector of School, Nagaon is further directed to prepare the Gradation List of the teaching and non-teaching staff of provincialised High and Higher Secondary Schools of Nagaon district as provided in Rule 25 following the provisions of Rule 24 of said 2018 Rules including Rule 24 (7) which provides that *if the date of joining in the School is same between two or more member of service in a cadre, the inter-se-*

seniority shall be determined taking into account their date of birth.

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

JUDGE

Comparing Assistant