

GAHC010053622023



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

Case No. : WA/101/2023

BIDYUT KANTI DUTTA AND 2 ORS.
S/O. LATE VIVEKANANDA DUTTA, R/O. SOUTH HAILAKANDI, TOOL
ROAD, P.O. AND DIST. HAILAKANDI, ASSAM.

2: HEMJYOTI KALITA
S/O. NAGARJULI
R/O. VILL. AND P.O. BAKSA DIST. BAKSA
ASSAM. 781313

3: CHINMOY PATHAK
S/O. MR. T.R PATHAK
R/O. TAMULPUR
P.O.
DIST. BAKSA
ASSAM

VERSUS

THE STATE OF ASSAM AND 7 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
EDUCATION DEPTT. (ELEMENTARY), DISPUR, GUWAHATI-06.

2: THE MISSION DIRECTOR
SAMAGRA SHIKSHA

ASSAM (SAMAGRA SIKSHA ASSAM)
KAHILIPARA
GUWAHATI-19.

3: THE DISTRICT MISSION CO-ORDINATOR
SAMAGRASHIKSHA
HAILAKANDI
P.O.
P.S. AND DIST. HAILAKANDI

ASSAM. PIN

4:THE DISTRICT MISSION CO ORDINATOR SAMAGRA SHIKSHA BAKSA
BAKSA
ASSAM

5:THE DEPUTY COMMISSIONER
HAILAKANDI
P.O.
P.S. AND DIST. HAILAKANDI
ASSAM. PIN

6:THE DEPUTY COMMISSIONER
BAKSA
P.O.
P.S. AND DIST. BAKSA
ASSAM. PIN

7:BLOCK MISSION CO-ORDINATOR
P.O.
P.S. AND DIST. HAILAKANDI
ASSAM. PIN

8:BLOCK MISSION CO-ORDINATOR
P.O.
P.S. AND DIST. BAKSA
ASSAM. PI

For the Appellants : Mr. S. Chamaria, Advocate.

For the Respondents : Ms. K. Das, Standing Counsel, Education (Elementary) Department
for respondent No.1.

: Mr. P. Nayak, Standing Counsel, Samagra Shiksha, Assam for
respondent Nos.2, 3, 4, 7 & 8.

: Mrs. M. Bhattacharjee, Additional Senior Government Advocate,
Assam for respondent Nos.5 & 6.

- B E F O R E -

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SOUMITRA SAIKIA

22.03.2023

Heard Mr. S. Chamaria, learned counsel for the appellants. Also heard Ms. K. Das, learned standing counsel, Education (Elementary) Department appearing for the respondent No.1; Mr. P. Nayak, learned standing counsel, Samagra Shiksha Assam, appearing for the respondent Nos.2, 3, 4, 7 & 8 and Mrs. M. Bhattacharjee, learned Additional Senior Government Advocate, Assam representing the respondent Nos.5 & 6.

This appeal is directed against the order dated 06.02.2023 passed by the learned Single Judge in WP(C) No.7667/2022 and WP(C) No.7671/2022. The present appellants are the writ petitioners in WP(C) No.7671/2022, who were serving as Accounts Assistant-cum-Caretaker on contractual basis under Samagra Shiksha Assam in Kasturba Gandhi Balika Vidyalaya (for short, "KGV B"). The writ petitioners were appointed on the basis of a Service Agreement for a period of 11(eleven) months, which were to be renewed from time to time.

The grievance of the writ petitioners is that they have been transferred vide order dated 03.11.2022 issued by the Mission Director, Samagra Shiksha, Assam from KGV B to Netaji Subhash Chandra Bose Avasiya Vidyalaya (for short, "NSCBAV") for the same category of posts. Being aggrieved, the writ petitioners assailed the said order dated 03.11.2022 before this Court.

The claims of the appellants/writ petitioners were contested by the respondents, who submitted that under the guidelines, there is a specific Clause, which provides that the persons engaged either on contract basis or in deputation shall be liable to be posted anywhere. The learned Single Judge,

upon considering the entire matter, dismissed the writ petition. Being aggrieved, the present appeal has been filed.

Before us, the learned counsels for the parties reiterated their submissions made before the learned Single Judge. We have heard the learned counsel for the parties and have also perused the pleadings on record. The impugned order of the learned Single Judge has also been perused.

We find that from the Service Agreement executed by and between the employer/Axom Sarba Siksha Abhiyan Mission and the appellants/writ petitioners that there is indeed a specific clause, i.e. Clause 5, which provides that that during the period of the Agreement, the employees shall be governed by all the Rules, Regulations and By-laws of the Axom Sarba Siksha Abhiyan Mission.

Mr. Nayak, learned standing counsel, Samagra Shiksha Assam submits that the conditions of Service Regulations prescribe that a member of the service engaged either on contract basis or in deputation shall be liable to be posted anywhere within the State of Assam or in any other Department of the Government, Corporate Body, Society, etc. This position is not disputed by the learned counsel for the appellants.

The learned counsel for the appellants submits that pursuant to the 11th Executive Committee meeting held on 24.08.2022, it was decided to explore the possibility of the existing male staff of KGBVs being accommodated or transferred to other institutions like Adarsha Vidyalaya or other schemes etc and the posts in KGBV be filled up with only female candidates. The Government of India in its Project Approval Board Meeting while considering the annual work plan and budget, of Samagra Siksha, Assam had sanctioned 10 numbers of new

NSCBAVs in 10 Blocks. The authorities have now taken initiative for operationalization of these NSCBAVs. It is submitted that NSCBAVs are residential schools for boys whereas KGBVs are residential schools for girls. In NSCBAVs most of positions like Superintendent, Administrative Assistant, Peon, Chawkidar, Cook are to be filled up with male candidates. In order to implement the decision of the Executive Committee of Samagra Siksha as well as to operationalise the newly established NSCBAVs, the order of transfer dated 03.11.2022 was issued by the Mission Director, Samagra Siksha, Assam whereby the appellants were transferred from KGBVs to NSCBAVs and which order was assailed in the writ petition.

The learned counsel for the appellants by referring to the revised Guidelines and action Schedule for opening and running the Kasturba Gandhi Balika Vidyalaya (KGBV) residential Schools for girls submits that some of the posts are reserved for female candidates, like the posts of Warden-cum-Teacher, full time Assistant Teacher/part time Teacher, etc. but the posts in which the appellants are presently engaged, namely, Accounts Assistant-cum-Caretaker, no such specification is found that these posts are reserved for female candidates. As such even if the appellants are transferred out, these posts will have to be filled up by some other male candidates. As such the impugned order issued by Mission Director, Samagra Siksha, Assam is arbitrary and the same should be interfered with.

This argument on the face of it cannot be accepted inasmuch as in the absence of any such specification, it has to be held that these posts are gender neutral and that candidates from either of the genders can apply. The Executive Committee had already taken a decision that the posts in KGBVs will be filled up by female candidates while the posts in NSCBAVs should be filled up by male

candidates. Such decision taken cannot be arbitrary inasmuch as the KGBVs are residential schools for girls whereas NSCBAVs are residential schools for Boys. In view of the decision taken in the 11th Executive Meeting held on 24.08.2022 and the subsequent decision of the Central Government to sanction 10 numbers of new NSCBAVs in 10 Blocks, the order dated 03.11.2022 transferring the appellants cannot be said to be contrary to any norms or guidelines as sought to be projected by the learned counsel for the appellants. No other grounds have been urged before us.

Upon careful perusal of the impugned order passed by the learned Single Judge, we find that the learned Single Judge has correctly arrived at the conclusion and rejected the contentions of the appellants/writ petitioners. We find no reasons to disagree with the conclusions arrived at by the learned Single Judge and take a contra view in an intra-Court appeal.

The appeal being devoid of any merit is, accordingly, dismissed. No order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant