

GAHC010054742022



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

Case No. : WP(C)/2012/2022

AJIT DAS
S/O- LATE GOPAL DAS, R/O- VILL.- NABAPUR, P.O. AND P.S. BISWANATH
CHARIALI, DIST. BISWANATH, ASSAM, PIN-784176.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,
SECONDARY EDUCATION DEPARTMENT, DISPUR, GUWAHATI-6.

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
SECONDARY EDUCATION DEPARTMENT
DISPUR
GUWAHATI-6.

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

4:THE INSPECTOR OF SCHOOLS
SDC
TEZPUR
ASSA

Advocate for the Petitioner : MR. I ALAM

Advocate for the Respondent : SC, SEC. EDU.

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

09/03/2023

Heard Mr. I Alam, learned counsel for the petitioner and Ms. D Musahary, learned Standing counsel, Department of School Education for the respondent Nos. 1 to 4.

Petitioner a B.Sc. with Zoology and Botany (General course) from Gauhati University in the year 1997 was appointed as an Assistant Teacher at a fixed pay of Rs.2000/- per month by the then District Elementary Education Officer, Sonitpur, Tezpur vide order dated 08.03.2001 under the Centrally Sponsored Scheme -01-Ele-Edn-102-Assistance to Non-Govt.-Primary Schools-549-Operation Black Board (OBB) (i) & (ii) salaries under Plan 2001-2002 and posted at F.A. Ahmed M.E. Madrassa, Biswanath Chariali, District-Sonitpur. Pursuant to the same, the petitioner joined his service on 14.03.2001.

The State Government in the Elementary Education Department by order dated 21.10.2010, regularized the service of the petitioner as an Assistant Teacher (OBB) of Upper Primary School specifying that he will receive the monthly salary @ Rs.2000/- per month subject to revision to be decided by the Government and that on undergoing the Senior Basic/Normal Training from the current academic session, he will be entitled to enjoy prescribed pay scale as per the ROP, 2010 from the date of passing training as per the Assam Elementary Education (Provincialization) Rules, 1977, as amended 2005.

By the said order dated 21.10.2010, the service of the petitioner from OBB Teacher was regularized in a regular vacant sanctioned post of Assistant Teacher of Upper Primary School at F.A. Ahmed M.E. Madrassa itself against the original creation No. EPS.16/75/32 dated 29.11.1975 and permanent retention No.EAA.91/90/82 dated 30.07.1992.

After completion of his Diploma in Elementary Education in the year 2012 from the District Institute of Education & Training (DIET), Sonitpur, Tezpur, the petitioner received regular Scale of Pay as an Assistant Teacher of Upper Primary School.

Later, by an order dated 16.02.2017, one Sowaguri Lower Primary School with said F.A. Ahmed M.E. Madrassa were amalgamated with F.A. Ahmed High Madrassa under the, "Siksha Khetra"

Scheme.

As the name of the petitioner was not recommended for selection to the post of Headmaster in said F.A. Ahmed High Madrassa, the petitioner preferred a writ petition being WP(C) No. 6019/2021.

The Court after hearing the learned counsels for the parties, by order dated 17.11.2021 disposed of the said WP(C) No. 6019/2021 directing the Director of Secondary Education (DSE), Assam to pass a reasoned order after verification of the records determining whether the petitioner has a legal right to be included for consideration for selection to the post of Headmaster in such provincialised Secondary School of the State.

Pursuant to the said order of the Court dated 17.11.2021 passed in said WP(C) No. 6019/2021, the DSE, Assam after verification of the records passed a speaking order on 28.02.2022 holding that since the petitioner received Graduate Scale of Pay w.e.f. 01.04.2016 only, he did not complete the required 10 (ten) years of regular service in the Graduate Scale of Pay and therefore, he is not entitled for selection to the post of Headmaster in a provincialised Secondary School as per Rule 14(2) of the Assam Secondary Education (Provincialised Schools) Service Rules, 2018. It is to be noted herein that said 2018 Rules came into force w.e.f. 10.10.2019.

Being aggrieved with the said finding of the DSE, Assam dated 28.02.2022, the petitioner has preferred this writ petition.

On 21.09.2022, the respondent DSE, Assam has filed an affidavit in the matter stating that the petitioner received the Graduate Scale of Pay only w.e.f. 01.04.2016 and prior to that as he was appointed at a fixed pay, he was receiving fixed pay of Rs. 2000/- per month against a post created on 08.03.2001, though his service was regularized on 21.10.2010. In the said affidavit, the DSE also stated that after completion of his Diploma in Elementary Education from the DIET, the petitioner was allowed to draw intermediate scale of pay per month from 01.01.2012 to 30.03.2016 and that those facts have been ascertained from the Gradation List annexed to the writ petition by the petitioner himself.

As such, the said respondent contended that since he received the regular Graduate Scale of Pay w.e.f. 01.04.2016 only and since he did not complete the period of 10 (ten) years of regular service in the Graduate Scale of Pay as required under the provisions of Rule 14(2) of the said 2018 Rules, noted above, the petitioner is not entitled for selection to the post of Headmaster in said F.A.

Ahmed High Madrassa.

However, the petitioner submitted that after completion of Diploma in Elementary Education he received the Pay Band 2 with Scale of Pay of Rs. 5,200/- – Rs. 20,200/- + Grade Pay of Rs. 2,700/- per month since 2012 and that said pay scale is equivalent to the Graduate Scale of Pay payable to the Graduate Teachers serving in the Assam Lower School Service as applicable for M.E./M.V./Senior Basic Schools teachers and therefore, as he had completed 10 (ten) years of service in the Graduate Scale of Pay, he was entitled for selection to the post of Headmaster in said F.A. Ahmed High Madrassa.

Petitioner also stated that he obtained B.Ed. degree in the year 2020 from the DIET, Sonitpur that was conducted by the Gauhati University. Regarding receipt of Graduate Scale of Pay since 2012, the petitioner has annexed copy of his service book. But he contended that he received the Scale of Pay of Rs. 5830/- with Graduate Scale of Pay of Rs.2700/- which is meant for a Graduate Teacher.

Mr. Alam, learned counsel for the petitioner by placing the Service Book of the petitioner submitted that since 01.04.2012, he received the Graduate Scale of Pay and as such, he is eligible for selection to the post of Headmaster in provincialised Secondary Schools of the State as per the said 2018 Rules.

Though, the petitioner claimed that he is holding a post of Assistant Teacher (Graduate), but he could not place any such order by which he was appointed as a Graduate Assistant Teacher.

After hearing the learned counsels for the parties and considering the entire aspects of the matter, the matter is remanded back to the Director of Secondary Education, Assam directing him to re-do the exercise afresh in terms of the order dated 17.11.2021 passed in said WP(C) No. 6019/2021 within a period of 60 (sixty) days from the date of receipt of a certified copy of this order to be furnished by the petitioner, verifying all the relevant records – relating to the appointment, regularization, adjustment in service of the petitioner and the scale of pay granted to him by the respondent authorities, after regularization of his service as an Assistant Teacher, wherein he was initially appointed as an OBB Teacher under the Centrally Sponsored Scheme in a fixed pay.

During such process, if the petitioner is found to be duly appointed as a regular Assistant Teacher in a provincialised Upper Primary Schools after regularization of his service vide order dated 21.10.2010 allowing him to draw Graduate Scale of Pay, the DSE, Assam shall pass fresh order in accordance with law.

However, it is made clear that while considering the case of the petitioner afresh in terms of the said order dated 17.11.2021 passed in WP(C) No. 6019/2021, the DSE, Assam shall not be influenced by any such observation made herein above by this Court.

Accordingly, the impugned speaking order No. DSE/SSB/CC/7/2021/97 dated 28.02.2022 passed by the Director of Secondary Education, Assam is set aside and quashed, remanding back the matter to the said authority again, for issuance of a fresh order after necessary consideration in terms of the order dated 17.11.2021 passed in WP(C) No. 6019/2021, noted above.

On its receipt, the petitioner shall submit a certified copy of this order before the Director of Secondary Education, Assam forthwith, obtaining necessary acknowledgment from the said authority in that regard.

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

JUDGE

Comparing Assistant