

GAHC010061162020



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

Case No. : WP(C)/1971/2020

BADRINATH PANDEY
MA, B.ED., S/O- LT. GOPAL PANDEY, R/O- VILL. NATUN GAON, P.O. AND P.S.
JAGIROAD, DIST- MORIGAON, ASSAM, PIN- 782410.

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, EDUCATION
(SECONDARY) DEPTT., DISPUR, GHY.-06.

2:THE DIRECTOR OF SECONDARY EDUCATION ASSAM
KAHILIPARA GHY.-1.

3:THE INSPECTOR OF SCHOOLS MDC MORIGAON
ASSAM PIN- 782105.

4:AWADHESH KUMAR SINGH
HEAD MASTER
BAPUJI HIGH SCHOOL
JAGIROAD (HINDI MEDIUM)
DISTRICT- MORIGAON
ASSAM
PIN- 782410

Advocate for the Petitioner : MR. S K DAS

Advocate for the Respondent : SC, SEC. EDU.

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

Date : 14.12.2023

ORDER

Heard Mr. S. K. Das, learned counsel for the petitioner. Also heard Mr. U. K. Goswami, learned counsel, appearing on behalf of respondent No. 4.

2. The petitioner who has retired from service on 31.01.2020 on attaining the age of superannuation, in continuation of the earlier proceedings, has challenged the order, dated 20.01.2020, by which, his case for holding the post of Headmaster of Bapuji High School, Jagiroad was rejected and the respondent No. 2 had allowed the respondent No. 4 to continue as the Headmaster of the school in question.

The brief facts of the present proceeding is that the petitioner had joined his service as the Head Teacher of Jagiroad Hindi M.E. School w.e.f. 02.01.1986 and his case for provincialization was considered and his services was so provincialized in Jagiroad Hindi M.E. School. On the other hand, the respondent No. 4 was working as the Headmaster of Bapuji High School, Jagiroad, w.e.f. 01.12.2007. The services of the employees of Bapuji High School, Jagiroad, was taken-up for provincialization and his services was also provincialized vide order, dated 10.01.2022. The services of the petitioner was accordingly provincialized as Headmaster of Jagiroad Hindi M.E. School.

3. The authorities under the Elementary Education Department in terms of the Siksha Khetra Scheme, brought into effect vide the OM dated 22.09.2016, issued a communication dated 22.08.2017 amalgamating Jagiroad Hindi M.E. School with Bapuji High School,

Jagiroad. The said amalgamation was effected and both the petitioner and respondent No. 4 came to figure in the amalgamated school. The names of the petitioner and respondent No. 4 was reflected in the amalgamated list of teachers as available in the said communication, to be holding the post of Headmaster. Subsequently, a dispute arose as to who would be the Headmaster of the school in question in-as-much both were holding the post of Headmaster therein. This led to a number of proceedings before this Court either by the petitioner or by the respondent No. 4. The same not having a relevant factor for the decision in the present proceeding, the same is not referred to.

Be that as it may, in pursuance of the order, dated 23.10.2019 passed in WP(c)4801/2018, the Director, Secondary Education Department, considered the case of the petitioner and respondent No. 4 and vide order dated 20.01.2020 concluded as follows:

“Order: In view of the above, regarding deputation of Shri Awadesh Kr. Singh for the B.Ed. Courses, the matter may be referred to the Education & Training Branch of this Directorate for taking needful action.

Considering the case of Awadesh Kr. Singh being a founder Headmaster and receiving the Headmaster’s scale for more than 7(seven) years, it appears that the claim of Sri Badri Nath Pandey does not sustain.

This order has been issued in compliance of the Hon’ble Court order dtd. 23-10-2019 passed in WP(c) No. 4801/2018 and order dtd. 02-09-2019 passed in WP(c) No.6371/2019 and the petition submitted by the Awadesh Kr. Singh and Badri Nath Pandey is hereby disposed off.”

In terms of the said findings and conclusion thereof, the respondent No. 4 was held to be eligible to function as the Headmaster of the said school.

4. Mr. Das, learned counsel for the petitioner, submits that the order, dated 20.01.2020, does not reflect the correct position and does not consider the materials relevant for arriving at a just conclusion. Mr. Das further contends that the conclusions arrived as to the validity

of the B.Ed. Course certificate of the petitioner was so arrived at, without any jurisdiction.

Mr. Das, learned counsel, also contends that he being the senior to the respondent No. 4, it is he who should have been allowed to function as the Headmaster of the school in question, in terms of the provisions of Clause 4 of the OM dated 22.09.2016 which envisages that it is the senior amongst the two Headmasters coming into existence in the same school after amalgamation, who would be allowed to continue as the Headmaster of the said School.

In that view of the matter; Mr. Das, learned counsel, further submits that the order, dated 20.01.2020, requires to be interfered with by the Court along with the observations made therein with regard to the B.Ed. Course certificate of the petitioner. The learned counsel further submits that the petitioner having already superannuated from his service, the respondent authorities have withheld his leave encashment benefits along with GIS benefits only on account of pendency of proceedings before this Court.

5. Per contra, Mr. Goswami, learned counsel, appearing on behalf of respondent No. 4, submits that the petitioner having already superannuated from service, he cannot have any grievance with regard to functioning by the respondent No. 4 as Headmaster of Bapuji High School, Jagiroad. The learned counsel further submits that the petitioner being an incumbent in the Jagiroad Hindi M.E. School, upon amalgamation, cannot claim to be the Headmaster of an amalgamated school i.e. Bapuji High School, Jagiroad.

Mr. Goswami, learned counsel for respondent No. 4, also submits that it is the respondent No. 4 who is senior in Bapuji High School, Jagiroad and as such, he having been

functioning as the Headmaster of the school in question, the petitioner cannot dislodge the respondent No. 4.

6. I have heard the learned counsels appearing for the parties and also perused the materials placed on record.

7. The facts as noted above, are not disputed and both the petitioner and respondent No. 4 were provincialized in their respective services as Headmasters. The services of the petitioner was provincialized as Headmaster in Jagiroad Hindi M.E. School and the respondent No. 4 was so provincialized in the Bapuji High School, Jagiroad. Subsequent to the amalgamation of the school wherein the petitioner was functioning as the Headmaster with the school where the respondent No. 4 was functioning as the Headmaster, a situation arose wherein, in the same school i.e. Bapuji High School, Jagiroad; two Headmasters with authorized scale of pay came into being. This naturally led to a dispute as to who would be the Headmaster of the school in question and accordingly, a number of proceedings were instituted before this Court by either of the parties.

The resolution of the dispute lies in the application of the said OM dated 22.09.2016 although Mr. Das, learned counsel for the petitioner, would want this Court to apply the provisions of Clause 4 thereof, which provides that in the event, a merger happens and two Headmasters are available in the amalgamated school, it would be the senior-most among them who would be the Headmaster of the school by way of the date of joining or by the date of birth who would be entitled to function as the Headmaster of the school in question. The said submission of Mr. Das, learned counsel, when viewed in the context of the provisions of the OM dated 22.09.2016 reflects that the said provision would come into operation when both the schools amalgamated were the school of same grade. The

provision which is relevant to the present school is available in Clause 3(7) of the OM dated 22.09.2016 which being relevant is quoted hereinbelow:

“(7). In the event the highest school is High School, the Headmaster of the High School shall continue after amalgamation. The post of Headmaster of ME School shall be re-designated as Assistant Headmaster with same pay scale whatever they are drawing and the post shall be held by the existing Headmaster of the ME School without requiring the qualification for the post of Assistant Headmaster. However, after cessation of the services of such Assistant Headmaster, the vacancy shall be filled up from the candidates having requisite qualification as per procedure stipulated in the Service Rules in force.”

8. In terms of the said provision of Clause 3(7) of the OM dated 22.09.2016, in the event of amalgamation of ME school with a High School, the Headmaster of the ME school shall be re-designated as the Assistant Headmaster but he would be permitted to draw the pay scale authorized to the post of Headmaster of the ME school.

Accordingly, on application of the provisions of Clause 3(7) to the facts of the present case, it is clear that the petitioner could not make a claim to the post of Headmaster of Bapuji High School, Jagiroad, upon amalgamation of his earlier school i.e. Jagiroad Hindi M.E. School with Bapuji High School, Jagiroad. The petitioner would only be permitted to be the Assistant Headmaster of Bapuji High School, Jagiroad.

9. This Court need not proceed further in the matter in-as-much the petitioner has retired from his service upon attaining the age of superannuation on 31.01.2020 and the petitioner having drawn the salary of the Headmaster during the period while he was working with Bapuji High School, Jagiroad; after amalgamation, no further direction is called for in this context.

10. This writ petition, as filed by the petitioner, does not have any merit and accordingly, stands dismissed. There shall be no order as to cost.

However, dismissal of this writ petition would not bar this Court from considering the submission made by the petitioner that his leave encashment and GIS benefits was not released to him which was projected by him to be on account of the proceeding pending before this Court. In view of the said submission, the petitioner is permitted to submit an application before the Director, Elementary Education Department, Government of Assam, making a demand therein for the amount that would accrue to him against leave encashment benefits and Group Insurance Scheme (GIS). Upon receipt of such an application, the Director, Elementary Education Department, Government of Assam, shall verify the said fact and if found that the amounts due under leave encashment benefits and Group Insurance Scheme(GIS) have remained unpaid, the said benefits shall be released to the petitioner within a period of 2(two) months therefrom.

Before parting with the records, we have also considered the submission of Mr. Das, learned counsel for the petitioner, with regard to the observations made in the order, dated 20.01.2020 pertaining to the B.Ed. Course of the petitioner and in the considered view of this Court, the said observation was unnecessary and was not a valid consideration for the purpose of arriving at the conclusion with regard to the issue considered in the order dated 20.01.2020. Accordingly, the observation as made in the order, dated 20.01.2020, pertaining to the petitioner's B.Ed. Degree, stands expunged.

JUDGE

Comparing Assistant