

GAHC010063292023



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

Case No. : WP(C)/1666/2023

MD. SADIQUE ANUWAR
S/O- MD. ABUL HASHIM, VILLAGE- RAMPUR SATRA, P.O. CHALA PATHER,
P.S. BATADRAVA, DIST.- NAGAON, ASSAM, PIN- 782124

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, SECONDARY
EDUCATION DEPTT., DISPUR, GHY-6

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

3:THE INSPECTOR OF SCHOOLS
NAGAON DISTRICT CIRCLE
NAGAON P.O. AND DIST.- NAGAON
ASSAM PIN- 782001

4:THE BECHAMARI M.I. H.S. SCHOOL
REP. BY ITS PRINCIPAL/SECRETARY
P.O. BECHAMARI DIST.- NAGAON
ASSAM PIN- 782123

5:THE PRINCIPAL
BECHAMARI M.I. H.S. SCHOOL
P.O. BECHAMARI
DIST.- NAGAON
ASSAM PIN- 782123

6:ANJANA SAIKIA BORAH
W/O- DEEPOK BORAH
VILLAGE- KUWORITUL
P.S. KALIABOR

DIST.- NAGAON
ASSAM PIN- 78213

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

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

28-03-2023

Heard Mr. M. A. Sheikh, learned counsel for the petitioner and Mr. SMT Chistie, learned Standing Counsel, Department of School Education for the respondent Nos. 1 to 3.

Matter pertains to Principal in-charge of Bechamari Mohammad Ismail Higher Secondary School (in short Bechamari MIHS School) in the District of Nagaon, Assam a provincialised Secondary School of the State, where, its Principal Mr. Bilal Uddin Ahmed shall retire from service on 31.03.2023 on attaining the age of superannuation at 60 years.

The contention of the petitioner is that since 11.04.2001 he is serving as an Assistant Teacher in said H.S. School and has also obtained his B.Ed. Degree from Sikshan Mahavidyalaya, Nagaon in the year 2010, on deputation as well as Master Degree in English Literature from Chhatrapati Shahu Ji Maharaj University, Kanpur in the year 2013.

Though petitioner was paid fixed salary, considering him to be one of the excess Teachers out of 239 Graduate Teacher under Nagaon District, appointed during 2011 in excess against 71 numbers of allotted vacancies; but on the basis of a Cabinet decision dated 20.02.2021, the State Government in the Secondary Education Department by Notification dated 26.02.2021 allowed the petitioner to draw regular Scale of Pay since the date of his joining pursuant to which his Scale of Pay has been

re-fixed as per Revision of Pay Rules, 2017 in the Pay Band-2 at Rs. 14,000/- to Rs.60,500/- with Grade Pay of Rs.8,700/- and as such, the petitioner is drawing his regular Scale of Pay as an Assistant Teacher in the Graduate Scale of Pay since the date of his joining in the said H.S. School.

Petitioner submitted that other teachers having B.Ed. Degree as well as Master Degree serving in the said H. S. School, one has already crossed the age of 57 years and the other is yet to complete 15 years of service as a Graduate Teacher in the said Higher Secondary School. Thereafter, petitioner submitted that if he is not allowed to be the Principal in-charge of said Higher Secondary School, he will suffer irreparable loss.

An incumbent is allowed to be Headmaster in-charge of a High School or a Principal in-charge of Higher Secondary School only when such an incumbent is the senior most teacher having requisite eligibility, including Educational qualification in addition to his/her normal duties, only for the purpose of smooth functioning of the concerned educational institution, so that the teaching and non-teaching staff of the said School gets their regular salary and the said educational institution is administered properly.

There is no such sanctioned post in the Assam Secondary School Education Service as Headmaster in-charge or Principal in-charge. However, with regard to Headmaster in-charge or Principal in-charge in any Government/Provincialised educational institution, law is well settled, that-only an incumbent who is qualified for the post of Headmaster /Principal should be allowed to be the Headmaster/Principal in-charge.

In the case of *Jagannath Pegu vs. State of Assam and others* reported in 2007 (3) GLT 389 the Court have held that – *a candidate eligible in terms of the relevant Rules for promotion to a post on a regular basis cannot be overlooked for the purpose of any temporary arrangement concerning the post.*

It is seen that as on date, the post of Principal of said Bechamari MIHS School, Nagaon is not vacant and apprehending that someone else from the said School will be allowed to hold the charge of Principal in said Higher Secondary School on retirement of the present Principal of the said School, the petitioner has preferred this writ petition.

The right of the petitioner, if any, with regard to such temporary arrangement for the post of in-charge Principal of said Bechamari MIHS School shall accrue only when the said post falls vacant.

As such, at this stage, the case of the petitioner for issuance of any such Writ to the respondent authorities to allow him to be the in-charge Principal of said Bechamari MIHS School is premature.

However, if so advised, the petitioner may approach the appropriate authority for consideration of his case for such temporary arrangement as in-charge Principal in said Bechamari MIHS School.

Needless to say that if the authority concerned wants to allow any such teaching staff of said Bechamari MIHS School as in-charge Principal after the retirement of its regular Principal on 31.03.2023, then it shall comply with the provisions as laid down in the case of Jagannath Pegu(supra), noted above and other settled laws in that regard.

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

JUDGE

Comparing Assistant