

GAHC010069702023



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

Case No. : WA/125/2023

ROMESH CHOWHAN
S/O. LT. SRI RAMAKANTA CHOWHAN ASSTT. TEACHER PHAKUAGRAM
HIGHER SECONDARY SCHOOL, DIST. KARIMGANJ, R/O. VILL.
GHUNGOOR, P.O. NIT, P.S. SILCHAR SADAR, DIST. CACHAR, ASSAM, PIN-
788010.

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE COMM. AND SECY., TO THE GOVT. OF ASSAM, DEPTT. OF
SECONDARY EDUCATION, DISPUR, GUWAHATI, ASSAM, PIN-781006.

2:THE DIRECTOR OF SECONDARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI
ASSAM
PIN-781019.

3:THE INSPECTOR OF SCHOOLS

KDC
KARIMGANJ
P.O. AND DIST. KARIMGANJ
ASSAM.

4:THE PRINCIPAL

PHAKUAGRAM HIGHER SECONDARY SCHOOL
DIST. KARIMGANJ
ASSAM
PIN-788723.

5:THE NATIONAL COUNCIL FOR TEACHER EDUCATION

EASTERN REGIONAL COMMITTEE
REP. BY ITS REGIONAL DIRECTOR
15 NILAKANTHA NAGAR
NAYAPALLI
BHUBANESWAR
ORISSA
PIN-751012

Advocate for the Petitioner : Mr. B. Purkayastha

Advocate for the Respondent : Mr. R. Mazumdar,
SC, Education Department

BEFORE
HON'BLE THE CHIEF JUSTICE
HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of hearing & Judgment : 19.05.2023

JUDGMENT & ORDER (Oral)

(M Thakuria, J)

Heard Mr. B. Purkayastha, learned counsel for the appellant. Also heard Mr. R. Mazumdar, learned Standing Counsel, Education Department.

2. This appeal has been preferred against the impugned order dated 10.03.2023 passed by the learned Single Judge in WP(C)No.6297/2019 dismissing the writ petition preferred by the appellant with a direction to set aside and quash the impugned order of cancellation of appointment of the appellant dated 08.12.2017, whereby, the regular appointment order dated 05.12.2017 of the appellant as Assistant Teacher (in short 'AT') (Hindi) of Phakuagram Higher Secondary School, in the district of Karimganj has been cancelled without following due process of law as provided under the provisions of Assam Services (Discipline and Appeal), Rule 1964 and in total violation of the Principle of Natural Justice.

3. The brief fact of the case is that, the appellant had passed HSLC examinations in the year 2002 from SEBA and HS examination from AHSEC in the year 2004. The appellant passed B.A. in the year 2009 with Hindi as one of the subjects and in the said Hindi paper, out of 200 marks, he obtained 103, i.e. 51.5% of marks from Assam University, Silchar. Thereafter, the appellant

obtained the M.A. Degree in Hindi in the year 2012 with 56.5% of marks. The appellant, thereafter, obtained his B.Ed. Degree with First Class from the NCTE recognized college viz, Dr. Shyama Prasad Mukherjee College of Education, Silchar under the Assam University, Silchar in the year 2015.

4. The Government of Assam, Secondary Education Department has issued an advertisement which was published on 16.12.2015 in newspapers, whereby, online applications had been invited for conducting a special TET examination for recruitment of AT Hindi and AT Sanskrit for the secondary schools. The said advertisement clearly stated that for the recruitment of Hindi teachers one must have Pravin/Ratna in Hindi with 50% marks having degree qualification from any recognized university or B.A. with Hindi as one of the subject with 50% marks and B.T./B.Ed. degree from any recognized university/institution. Being suitable with the above criteria the appellant applied through online and appeared before the Scrutiny Committee for physical verification of the testimonials on 05.07.2016 at the RMSA Office at Silchar. After verification of the original testimonials, the authorities had issued the Admit Card to the appellant and accordingly, he appeared in the TET examination, which was conducted on 10.07.2016. The appellant successfully passed the TET examination with 63% of marks out of total 100 marks.

5. After declaration of the result of the special TET examination, 2016, the Director of Secondary Education (in short 'DSC'), Assam vide his letter No. GB-EST/ Special (TET)/ 1/2015/180, dated 05.12.2016 had issued a letter/circular directing all the Inspector of Schools of the entire State including the respondent No. 3 to take initiative for filling up the vacant posts of Hindi,

Sanskrit and Arabic teacher in provincialised Secondary Schools within their respective jurisdiction.

6. Along with the above letter the DSE, Assam had circulated the guideline's for appointment of AT issued vide O.M. No. ASE.313/2013/126 dated 14.07.2016, wherein, under clause 2(ii) of the said letter, it was clearly stated that for the post of Hindi teacher, the candidate must have B.A. with Hindi as one of the subjects with 50% marks and BT/B.Ed. degree from any recognized university.

7. After receipt of the above directions from the DSE, Assam, all the Head of institutions of High School/Higher Secondary schools including the respondent No. 4 under the jurisdiction of respondent No. 3 had published a common advertisement in the local newspaper on 28.01.2017, whereby, the applications for the post of Graduate AT Hindi etc. have been invited from the TET qualified intending candidates. Accordingly, the petitioner applied for the post of AT Hindi at Phakuagram Higher Secondary School, Karimganj. Thereafter, the appellant appeared before the Selection Committee, who duly verified all the testimonials of the appellant comparing with the originals. After the interview, the appellant was selected for the post of AT teacher at the same school and accordingly, he was appointed as a teacher in Phakuagram Higher Secondary School, Karimganj, vide common order issued under Memo No. K-IS/Apptt/CT/Hindi/15/2006/1821-30 dated 09.06.2017.

8. After receipt of the Appointment Order, the appellant went to Phakuagram Higher Secondary School, Karimganj on 14.06.2017, in order to

join his duty in the school. On the said day the respondent No.4 was absent in the School and as such the appellant submitted his Joining Letter to the Senior Most Assistant Teacher of the school, and thereafter, the said teacher allowed the appellant to take classes of his subject. The appellant signed in the attendance register for two days, i.e. on 14.06.2017 and 15.06.2017, and also took classes in the school. After expiry of two days, the respondent No. 4 unlawfully restrained the appellant from putting his signature in the attendance register and to take classes and asked him not to come in school and told that he would receive the due communication from him. Thus, finding no alternative, the appellant submitted his representation before the respondent No. 3 on 16.06.2017 requesting him to remove the hindrance.

9. As the State respondents did not allow him to join in service and accordingly, the appellant earlier approached before this Court by filling WP(C)No.5700/2017. This Court vide order dated 16.09.2017, had disposed the above representation directing the State respondent to facilitate his joining in the above referred School. But, the respondent authorities remained silent over the matter and did not allow the appellant to join his service. The appellant came to know from reliable official sources that the Inspector of Schools, KDC, Karimganj is going to terminate him from service for not fulfilling the eligibility criteria as mandated by the impugned Service Rule 2003. Being aggrieved by the impugned action of the State respondents the appellant challenged the provisions of the impugned Service Rule of 2003 in WP(C) No.1801/2018 in order to make the same inconformity with the Central legislation/Notification dated 12.11.2014 issued by the NCTE.

10. It is further submitted by the learned counsel for the appellant that the respondent No.3, all of a sudden without issuing any show cause notice and keeping the appellant in dark had passed the impugned cancellation of appointment order dated 08.12.2017. The appellant had received a copy of the impugned order only on 02.01.2018 from the affidavit filed by the respondent No.3 in the Contempt case (C)No.549/2017. Thus, the respondents have grossly violated the fundamental rights of the appellant as well as the same is against the principle of natural justice.

11. During the pendency of WP(C)No.1801/2018, the Govt. of Assam repealed the earlier service Rules of 2003 and had introduced the Assam Secondary Education (Provincialised Schools) Service Rules 2018 by incorporating the mandates of the NCTE. Therefore, this Court vide order dated 04.08.2022 disposed the WP(C)No.1801/2018 without interfering the merit of the termination issue to the appellant. Further, during the pendency of the WP(C)No.1801/2018, after introduction of the Service Rules of 2018, the State respondents intended to proceed with the filing up of the post in question and the appellant immediately preferred the WP(C)No.6297/2019 and this Court vide order dated 29.08.2019 had granted interim protection to the appellant by restraining the State respondents to proceed with any fresh process of selection. Thereafter, both the WP(C)No.1801/2018 and WP(C)No.6297/2019 have been taken up by the Division Bench of this Court, however, vide order dated 28.04.2022, the WP(C)/No.6297/2019 was remanded back before the Court of learned Single Bench with a direction to decide the issue of termination order.

12. The contention of the respondents placed before the learned Single Judge in writ petition is that:-

“The appellant does not have the desired qualification as per the advertisement dated 21.01.2017 and as such the appellant was not eligible to be appointed as a Hindi teacher.”

Points before the learned Single Judge for consideration are:-

- I.** Whether the qualification prescribed by the NCTE would be binding upon the State of Assam being the mandates of the Central legislation?
- II.** Whether the conditions stipulated in the Advertisement in contrary Central legislation would be binding upon the appellant?
- III.** Whether the issuance of the impugned termination order dated 08.12.2017 without issuing any show cause notice to the appellant was legally justified action on the part of the State respondents?

The decision and conclusion of the learned Single Judge:-

- 12.1.** The learned Single Judge accepted the submissions of the respondents while passing the impugned order dated 10.03.2023 in WP(C)No.6297/2019 and dismissed the Writ petition filed by the appellant on the ground that the appellant is bound by the conditions of the Advertisement. As the appellant did not possess the qualifications as per the Advertisement before the cutoff date and as such the State respondents have rightly passed the impugned termination order dated 08.12.2017.

13. Accordingly, challenging the Judgment and Order passed by the learned Single Judge the present writ appeal has been preferred:-

13.1. The Court of learned Single Judge has failed to appreciate the contention of the petitioner/appellant and could not appreciate the fact that the impugned termination order dated 08.12.2017 passed by the respondent No.3 without following the due process of law and had violated the provisions of Article 311 of the Constitution of India *read with* the provisions of the Assam Services (Discipline and Appeal) Rules, 1964.

13.2. The learned Single Judge ought to have taken into consideration the fact that the appellant was appointed by the State respondents by following due process of law as per the mandates of the Central laws provided by the NCTE and therefore, the appointment of the appellant was legally valid in all respect and as such the impugned order dated 10.03.2023 passed in WP(C)No.6297/2019 is bad in law and the same is liable to be set aside.

13.3. During the pendency of the WP(C)No.1801/2018, the State respondents have rectified the errors of the Service Rule by repealing the earlier Service Rules of 2003 and thereby introducing the new Service Rules of 2018 in the light of the mandates of the NCTE notifications, but the learned Single Judge failed to consider the said aspect of the case while adjudicating the writ petition and thus arrived at an erroneous decision.

14. Accordingly, it is prayed for setting aside and quashing the order dated 10.03.2023 passed in WP(C)No.6297/2019 and also prayed for a direction to the State respondents to allow the appellant to continue to serve as a Graduate

Teacher Hindi at Phakuagram HS School in the District of Karimganj, by setting aside and quashing the impugned termination order dated 08.12.2017, which was issued by the respondent No.3.

15. It is further submitted by the learned counsel for the appellant that as per the Assam Secondary Education (provincialisation) Service Rules, 2018, the petitioner holds the requisite qualification of 56.5% marks in Post Graduate in Hindi, and thus, he is eligible for continuing in service. It is also submitted that the appellant is entitled to all reliefs, as prayed for, and his service should be counted without any break with all service benefits.

16. In this context, Mr. R. Mazumdar, learned Standing Counsel, Education Department has submitted that as per the Advertisement published in Newspaper on 28.01.2017, the desired qualification to be selected and appointed as Hindi Teacher in Graduate Scale was required to be "*Pravin/Ratna in Hindi with 50% marks having degree qualification from any recognized university or B.A. with Hindi as one of the subject with 50% marks and B.T./B.Ed. Degree from any recognized university (Parangat to be treated as equivalent to B.ED. degree only for the purpose of Hindi Teaching)*". The appellant had no requisite qualification as per the advertisement at time of his application for the post. The subsequently prescribed qualifications vide entry No.3 of Schedule –II of the Assam Secondary Education (Provincialised Schools) Rules, 2018 would not enable the appellant to grant the relief as prayed for. The appointment order dated 09.06.2017 was cancelled by Inspector of School, KDC, Karimganj, vide order dated 08.12.2017, in compliance with the order dated 05.12.2017, issued by the respondent No.2/Director of Secondary, Assam.

On the date of appointment the appellant was a Graduate with Hindi as one subject and he also obtained 50% marks in Hindi but, his aggregate marks was not 50% or above as per requisite qualification of the advertisement. The appointment Letter was erroneously issued and therefore rectifying the mistake, his appointment was terminated.

17. The decision passed by the *Hon'ble Supreme Court in Alka Ojha Vs. Rajasthan Public Service Commission & Anr., reported in AIR 2011 SCC 3547*, can be relied in this case, wherein, the appointment for the post of Motor vehicle Sub-Inspector, tentative selection was cancelled at stage of final scrutiny on ground that petitioner has not been possessed with one or prescribed eligibility condition, i.e. driving licence, under adverting Rules, the relevant entries of the Schedule and content of advertisement and direction issued amounting to amendment of the Rules framed under Article 309 of the Constitution, which was clearly impermissible.

18. The *Hon'ble Supreme Court in State of Bihar vs. Madhu Kant Ranjan*, reported in *2021, STPL 12176/AIR 2022 SC 1310*, also it has been held that;

“As per the settled proposition of law, a candidate/applicant has to comply with all the conditions/eligibility criteria as per the advertisement before the cut-off date mentioned therein unless extended by the recruiting authority. Moreover only those documents, which are submitted along with the application form, which are required to be submitted as per the advertisement have to be considered.”

19. In the instant case, it is seen that, though the appellant possess 50% marks in Hindi as one of his subject, but he did not have 50% marks in

aggregate in Graduate degree. As per the advertisement the candidate was required to be Pravin/Ratna in Hindi with 50% of marks having degree qualification from any recognized University or BA with Hindi as one of the subject with 50% or with "BT/B.ED" degree from any recognized University. Though the appellant has the Post Graduate Degree in Hindi with 56.5 marks, however, it was not the requisite qualification prescribed in the advertisement for appointment in Graduate teacher in Hindi. Subsequently, the prescribed qualification for Entry No.3 of Schedule-II of the Assistant Secondary Education (Provincialised) Rules 2018 not enable the appellant to grant the relief as prayed for appointing him as Graduate teacher, which was terminated by the Inspector of School vide order under Memo No.K-IS/Apptt/CT/Hindi/ 15/2017/15230-37 dated 08.12.2017, in compliance with the order dated 05.12.2017, after rectifying the mistake in appointed order, which was erroneously issued by the Directorate Secondary Education, Assam.

20. Thus, we do not find any infirmity to make any interference in the order passed by the learned Single Judge vide order dated 10.03.2023 in Writ Petition(C)6297/2019, and the impugned Termination order dated 08.12.2017, issued by the Directorate Secondary Education, Assam and accordingly, the same stands dismissed.

21. In the circumstances of the case, however, the parties are left to bear their own cost.

JUDGE

CHIEF JUSTICE

Comparing Assistant