

GAHC010079882023



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

Case No. : WP(C)/2042/2023

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

VERSUS

1. 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, GHY-19

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

4:THE BECHAMARI MOHAMMAD ISMAIL HIGHER SECONDARY SCHOOL
REP. BY ITS IN-CHARGE PRINCIPL/SECRETARY
P.O. BECHAMARI, DISTRICT- NAGAON
ASSAM, PIN- 782123

5:THE IN-CHARGE PRINCIPAL
BECHAMARI MOHAMMAD ISMAIL HIGHER SECONDARY SCHOOL
P.O. BECHAMARI, DISTRICT- 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.

- B E F O R E -

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

05.12.2023

Heard Mr. M.A. Sheikh, learned counsel for the petitioner. Also heard Mr. R. Majumdar, learned Standing Counsel, Secondary Education Department, Assam.

2. The petitioner is serving as an Assistant Teacher in Bechamari Mohammad Ismail Higher Secondary School (in short, Bechamari MIHS School) in the district of Nagaon, Assam, wherein, the respondent No.6 is the senior most Subject Teacher of the said School.

3. By instituting this writ petition, the petitioner, has assailed the order dated 05.04.2023 (Annexure -14) passed by the in-charge Director, Secondary Education, Assam by which the respondent No.6 was allowed to hold the charge of the Principal in-charge of the said Bechamari MIHS School along with financial power to draw and disburse the salary etc. of the teaching and non-teaching staff of the said H.S. School in addition to her normal duties as Subject Teacher vice Billal Uddin Ahmed, Principal, who had retired on 31.03.2023.

4. Learned counsel for the petitioner has contended that although the respondent No.6 is the senior-most Subject Teacher in the said School but she is not eligible to be allowed to even hold the charge of the post of Principal in-charge inasmuch as she does not fulfill the requirements under Rule 12(3)(v) of the Assam Secondary Education (Provincialised Schools) Service Rules, 2018 [in short, Rules of 2018],

wherein the eligibility criteria for holding the post of Principal has been laid down.

5. One of the eligibility criteria that has been prescribed under the Rules of 2018 is that the candidate should not be more than 57 years of age on the 1st January of the year of recruitment. The said Rules of 2018 had come into force w.e.f. 10.10.2019.

6. It is settled law that even to hold the post on in-charge basis, a candidate must be eligible in terms of the relevant Rules of promotion for the said post on regular basis. The eligibility criteria required to be possessed by a employee for promotion to a particular post cannot be ignored even when the said post is filled up on an *ad hoc*/in-charge basis [refer *Jagganath Pegu Vs. State of Assam & Ors.*, 2007 (3) GLT 389].

7. Having noticed the eligibility criteria as well as the observations made in the decision of this Court in the case of *Jagganath Pegu* (supra), the facts involved in the present case is considered.

8. From the seniority list available on record, it is found that the date of birth of the respondent No.6 is 01.11.1965. The respondent No.6 would cross the age of 57 years on 31.10.2022. Accordingly, applying the provisions of Rule 12(3)(v) of the Rules of 2018, the respondent No.6 having crossed the maximum age limit of 57 years as of 1st day of January, 2023, she would not be eligible to hold the charge of the post of Principal of the school in question on the date the impugned order dated 05.04.2023 was issued. In other words, the impugned order dated 05.04.2023 was admittedly issued in violation of the provisions of Rule 12(3)(v) of the Rules of 2018 rendering it unsustainable.

9. In view of the aforesaid position, the impugned order dated 05.04.2023 is hereby interfered with.

10. It is submitted at the bar that in pursuance of the interim order dated 11.04.2023 passed by this Court, the petitioner was allowed to look after the academic affairs of the school in addition to his normal duties.

11. In view of the interference made by this Court with the order dated 05.04.2023 and also the conclusion drawn that the respondent No.6 is not eligible even to hold the post of Principal of the School on in-charge basis, the Director, Secondary Education Department, Assam will now take the requisite steps for filling up the post of Principal of Bechamari MIHS School on regular basis and till the post of Principal is filled up on regular basis, in the event the petitioner is senior most and eligible Assistant Teacher working in the school, he should be allowed to discharge the functions of the post of Principal of the school on in-charge basis.

12. Necessary orders in this connection be passed by the Director, Secondary Education Department, Assam within a period of 1(one) month from the date of receipt of a certified copy of this order.

13. Petitioner shall submit a certified copy of this order to the Director, Secondary Education Department, Assam for further necessary actions in terms of the directions given hereinabove.

14. With the above observations and directions, the present writ petition stands disposed of.

JUDGE

Comparing Assistant