

GAHC010080212022



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

Case No. : WP(C)/3549/2022

ROHIT DAHAL
S/O- LATE BHAGIRATH DAHAL
VILL- SOCIETY , P.O AND P.S- SILAPATHAR
PIN-787001,
DIST- DHEMAJI
ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
EDUCATION (SECONDARY) DEPARTMENT, DISPUR, GUWAHATI-6

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

3:THE ADDL. DIRECTOR OF SECONDARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI-19.

4:THE DIRECTOR OF SECONDARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI-19.

5:THE INSPECTOR OF SCHOOLS

DDC
DHEMAJI
ASSAM

6:RUNU PEGU
D/O- LATE BHADRESWAR PEGU
R/O- VILLAGE JUNAKI NAGAR
P.O AND P.S- SILAPATHAR
DIST- DHEMAJI
ASSA

Advocate for the Petitioner : MR. S SAHU

Advocate for the Respondent : SC, SEC. EDU.

Linked Case : WP(C)/1202/2021

RUNU PEGU
D/O. LT. BHADRESWAR PEGU
VILL. JUNAKI NAGAR
SILAPATAHAR
P.O. SILAPATHAR
DIST. DHEMAJI
ASSAM.

VERSUS

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

2:THE COMMISSIONER AND SECRETARY

EDUCATION DEPTT. (SECONDARY)
GOVT. OF ASSAM
DISPUR
GUWAHATI-781006.

3:ADDL. DIRECTOR OF SECONDARY EDUCATION

ASSAM

KAHILIPARA

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4:DIRECTOR OF SECONDARY EDUCATION

ASSAM

KAHILIPARA

GUWAHATI.

5:INSPECTOR OF SCHOOLS

DDC

DHEMAJI

ASSAM.

Advocate for : MR S BORTHAKUR

Advocate for : SC

SEC. EDU. appearing for THE STATE OF ASSAM AND 4 ORS

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

27-03-2023

In WP(C) No. 3549/2022, heard Mr. S. Sahu, learned counsel for the petitioner and Mr. S.M.T.Chistie, learned Standing counsel, Department of School Education, Assam for the respondent Nos. 1 to 5. Also heard Mr. S. Borthakur, learned counsel for the private respondent No. 6.

2. In WP(C) No. 1202/2021, heard Mr. S. Borthakur, learned counsel for the petitioner and Mr. S.M.T.Chistie, learned Standing counsel, Department of School Education, Assam for the respondent Nos. 1 to 5.

3. Matters pertain to Headmaster in-charge of Akajan High School in the district of Dhemaji.

4. Pursuant to the order dated 21.07.1999 of the Additional Director of Secondary Education, Assam, Akajan M.E.School, a provincialised upper primary school of the State was amalgamated with Akajan High School, another provincialised school of the State w.e.f. 02.07.1999 with certain terms and conditions that all the qualified Akajan M.E. School staff shall be absorbed in the amalgamated

Akajan High School w.e.f. the date of amalgamation with their respective pay and prospect but with amalgamated seniority list and that the assets and liabilities, fund and properties and grants, sanctioned to the said M.E.School shall be transferred and vested in the name of the amalgamated High School with effect from the date of its amalgamation.

5. Petitioner of WP(C) No. 1202/2021 and respondent No. 6 of WP(C) No. 3549/2022, namely, Runu Pegu was a graduate who was serving as an Assistant Teacher in said Akajan M.E. School and after such amalgamation of Akajan M.E. School with Akajan High School w.e.f. 02.07.1999, she became an Assistant Teacher of Akajan High School under the Directorate of Secondary Education, Assam within the jurisdiction of the Inspector of Schools, Dhemaji District Circle, Dhemaji. Said Runu Pegu obtained her graduation in the year 1988 and also obtained her B.Ed. degree on 05.03.2002 both from the Dibrugarh University.

6. The then Inspector of Schools, Dhemaji District Circle, Dhemaji by its order under Memo No. DC/Prov/Conf./2007-08/628 dated 19.09.2009 confirmed the service of said Runu Pegu as staff of Akajan High School since 11.01.1994 wherein her name figured at Sl. No. 2 as its Assistant Teacher and that of the petitioner of WP(C) No. 3549/2022 figured at Sl. No. 4 as its Assistant Teacher with copies to all the persons concerned and file.

7. The Headmaster of said Akajan High School on 15.09.2020 prepared a list of teaching staff of said High School on the basis of seniority having B.Ed. degree wherein the names of said Runu Pegu was figured at Sl. No. 1 and that of the petitioner of said WP(C) No. 3549/2022 was figured at Sl. No. 2.

8. The petitioner of said WP(C) No. 3549/2022 namely, Rohit Dahal though on 03.01.1988 joined his service as an Assistant Teacher of Science in Chimenmukh High School and received his Graduate Scale of Pay w.e.f. 19.11.1991 but he was transferred to Akajan High School from said Chimenmukh High School on his own request on 01.09.2004. As such, the seniority of said Rohit Dahal in said Akajan High School is to be counted from the date of joining in it i.e., 01.09.2004.

9. On the retirement of the regular Headmaster of said Akajan High School, it is seen that the Director of State Madrassa Board, Assam on 26.11.2020, raised an issue regarding receipt of Graduate Scale of Pay by said Runu Pegu, who was earlier an Assistant Teacher of Akajan M.E. School and became an Assistant Teacher of Akajan High School on amalgamation of Akajan M.E. School with Akajan High School. As such, the Director of State Madrassa Board, Assam vide order No.GB-

EST/Apptt/FP/44/2017/142 dated 26.11.2020, in the interest of public service, allowed the Inspector of Schools, Dhemaji District Circle, Dhemaji to act as an in-charge Headmaster of Akajan High School along with financial power as per the provisions of FR 49(C) of State FRs & SRs to draw and disburse salary etc. of the staff of said school.

10. Being aggrieved with said order dated 26.11.2020 of the Director of State Madrassa Board, Assam, said Runu Pegu preferred the connected writ petition being WP(C) No. 1202/2021 praying amongst others for setting aside and quashing the said order dated 26.11.2020, noted above and further, prayed for direction to the respondent authorities in the Secondary Education Department to accord ex-post facto approval to the payment of Graduate Scale of Pay to her and to appoint her as the in-charge Headmistress of said Akajan High School, Dhemaji.

11. The Court while issuing notice to the respondents in said WP(C) No. 1202/2021 on 26.02.2021, stayed the said order dated 26.11.2020 issued by the Director of State Madrassa Board, Assam until further order with the further observation that the petitioner, i.e., Runu Pegu is found to be the senior most teacher receiving the Graduate Scale of Pay in said Akajan High School and there shall not be any impediment in allowing her to be the in-charge Headmistress of the school concerned.

12. It is to be noted herein that though the notice in said WP(C) No. 1202/2021 was issued on 26.02.2021 but the respondent authorities in the Secondary Education Department have not filed their affidavit in the matter till date and the said interim order dated 26.02.2021 passed in WP(C) No. 1202/2021 is still in force.

13. On verification of the available records in terms of the order dated 26.02.2021 passed in said WP(C) No. 1202/2021, the Director of Secondary Education, Assam, found that the petitioner therein i.e., Runu Pegu was allowed to draw intermediate Scale of Pay as an Assistant Teacher of Akajan M.E. School w.e.f. 11.01.1994 and after amalgamation of said Akajan M.E. School with Akajan High School, she received her Graduate Scale of Pay w.e.f. 02.07.1999.

14. With regard to the petitioner of WP(C) No. 3549/2022, Rohit Dahal, the Director of Secondary Education, Assam found that though he received Graduate Scale of Pay w.e.f. 19.11.1991, as he was transferred on 01.09.2004 from Chimenmukh High School at his own interest, who joined the said Akajan High School on 01.09.2004, he could not have any claim for seniority over the existing staff of said High School to which he was transferred at his own interest. As such, seniority of said Rohit Dahal is considered only w.e.f. 01.09.2004 i.e., from the date of joining in the said school on his

transfer at his own request.

15. Therefore, on the facts and findings, the Director of Secondary Education, Assam vide order under Memo No. GB-EST/DSE/CC/28/2021/4-A dated 23.03.2021 observed that Smt. Runu Pegu, MA, B.Ed., Assistant Teacher of Akajan High School considering the date of her receiving Graduate Scale of Pay w.e.f. 02.07.1999 is found to be senior than said Sri Rohit Dahal, M.Sc, B.Ed, Assistant Teacher of Akajan High School and accordingly, allowed said Smt. Runu Pegu, MA, B.Ed. Assistant Teacher of Akajan High School to act as an in-charge Headmistress of said Akajan High School along with financial power as per the provisions of FR 49(C) to draw and disburse salary etc. of the staff of the said High School relieving the Inspector of Schools, Dhemaji District Circle, Dhemaji with further observation that the same is purely temporary arrangement and subject to finalization of said WP(C) No. 1202/2021.

16. Being aggrieved with the said order dated 23.03.2021 of the Director of Secondary Education, Assam, said Rohit Dahal, an Assistant Teacher who was transferred vide order dated 01.09.2004 from Chimenmukh High School to Akajan High School at his own interest preferred the connected writ petition being WP(C) No. 3549/2022 praying amongst others to set aside and quash the order dated 23.03.2021, noted above and to allow him to be the in-charge Headmaster of said Akajan High School and to consider his representation dated 24.08.2021 submitted before the Director of Secondary Education, Assam by making necessary enquiry to the effect in allowing said Runu Pegu as the in-charge Headmistress of said Akajan High School.

17. The petitioner Rohit Dahal in said WP(C) No. 3549/2022 stated that earlier he had no knowledge about the fact that said Runu Pegu received her Graduate Scale of Pay by virtue of an unauthorized order passed by the then Inspector of Schools, Dhemaji District Circle, Dhemaji.

18. It is an admitted fact that the petitioner of WP(C) No. 3549/2022, Rohit Dahal joined Akajan High School on 01.09.2004 on his transfer from Chimenmukh High School at his own request. As such, his seniority in Akajan High School is to be counted from 01.09.2004.

19. It is already noted above that the Inspector of Schools, Dhemaji District Circle, Dhemaji vide its order dated 19.09.2009 while confirming the services of the teaching staff of said Akajan High School, placed said Runu Pegu at Sl. No. 2 and placed Rohit Dahal at Sl. No. 4 in the list of seniority of teaching staff of the said High School.

20. Further, the petitioner of WP(C) No. 3549/2022 along with said Runu Pegu served in that

Akajan High School since 01.09.2004 and as such, it cannot be presumed that said petitioner was unaware of the fact of receiving Graduate Scale of Pay by said Runu Pegu from the date of amalgamation of said Akajan M.E. School with Akajan High School, i.e., 02.07.1999.

21. It is seen that though the issue regarding receipt of Graduate Scale of Pay by said Runu Pegu was raised by the Director of State Madrassa Board, Assam, but the concerned authority has no jurisdiction to interfere with any such High School under the Directorate of Secondary Education, Assam.

22. It is also seen that only after the order dated 23.03.2021 passed by the Director of Secondary Education, Assam allowing said Runu Pegu, M.A., B.Ed., Assistant Teacher of said Akajan High School to be the in-charge Headmaster of said High School, said Rohit Dahal as petitioner on 25.04.2022 filed said WP(C) No. 3549/2022 challenging the order dated 23.03.2021, whereby said Runu Pegu was allowed to act as an in-charge Headmistress of said Akajan High School after more than a year without explaining any valid reason in that regard and as on date, he has not challenged with regard to receipt of Graduate Scale of Pay by Smt. Runu Pegu w.e.f. 02.07.1999 who was a Graduate of 1988 and was an Assistant Teacher of Akajan M.E. School that was amalgamated with Akajan High School w.e.f. 02.07.1999.

23. However, neither the authorities in the Secondary Education Department, the concerned Treasury Officer nor the Drawing and Disbursing Officer of Akajan High School since January, 2000 raised any issue regarding drawal of Graduate Scale of Pay by the petitioner of WP(C) No. 1202/2021 in terms of the order dated 28.01.2000 issued by the then Inspector of Schools, Dhemaji District Circle, Dhemaji for last more than 23 years.

24. Further, the Graduate Scale of Pay drawn by said Runu Pegu was not at her instance as she was only an Assistant Teacher of Akajan High School after amalgamation of said Akajan M.E. School with Akajan High School and as such, she being not the Drawing and Disbursing Officer of said Akajan High School, such Graduate Scale of Pay was paid to her only in terms of the order dated 28.01.2000 issued by the then Inspector of Schools, Dhemaji District Circle, Dhemaji.

25. During the deliberation of the matter, the petitioner of said WP(C) No. 3549/2022 submitted that Runu Pegu obtained her B.Ed. degree while in service without any prior sanction nor sent on deputation and that by filing a representation dated 24.08.2021, he had brought to the notice of the said fact to the Director of Secondary Education, Assam.

26. On perusal of WP(C) No. 1202/2021, it is seen that Runu Pegu passed her B.Ed. examination on 05.03.2002 and also received her increment on passing such B.Ed. degree. As such, the authorities in the Secondary Education Department have accepted the B.Ed. degree obtained by said Runu Pegu from Dibrugarh University on 05.03.2002 to be a valid one.

27. After hearing the learned counsels for the parties and considering the entire aspect of the matter, the Court is of the view that the issue raised by the petitioner of WP(C) No. 3549/2022, being devoid of any merit and accordingly stands dismissed.

28. With regard to WP(C) No. 1202/2021, since the order No. GB-EST/Apptt/FP/44/2017/142 dated 26.11.2020 issued by the Director of State Madrassa Board, Assam who has no jurisdiction over any such provincialised High Schools of the State, like Akajan High School, being without jurisdiction is a nullity and accordingly set aside and quashed.

29. Accordingly, said WP(C) No. 1202/2021 stands allowed to the extent above.

JUDGE

Comparing Assistant