

GAHC010082012023



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

Case No. : WP(C)/2122/2023

BIKASH UPADHYAYA
M.SC., B.ED.,
SON OF LATE NARENDRA UPADHYAYA,
PRESENTLY WORKING AS ASSISTANT TEACHER OF BEHALI H.S. SCHOOL,

GANG MOUTHAN, BISWANATH,
SONITPUR, ASSAM- 784167.

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,
DEPARTMENT OF SCHOOL EDUCATION,
DISPUR, GUWAHATI-6.

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

3:THE INSPECTOR OF SCHOOL
SONITPUR DISTRICT CIRCLE
BUS STAND
NEAR ASTC
MAHABHAIRAB
TEZPUR
ASSAM 784001.

4:SIDDHARTHA PAUL
MA
B.ED.
POST GRADUATE TEACHER OF BEHALI HIGHER SECONDARY SCHOOL
GANG MOUTHAN
BISWANATH

SONITPUR
ASSAM- 784167

Advocate for the Petitioner : MR. S K DAS

Advocate for the Respondent : SC, SEC. EDU.

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

25-04-2023

Heard Mr. S. K. Das, learned counsel for the petitioner and Mr. B. Kaushik, learned Standing Counsel, Department of School (Secondary) Education, for the respondent Nos. 1 to 3.

2. The Director of Secondary Education, Assam by order under No.GB-EST/Apptt/FP/38/2022/141 dated 01.03.2023 allowed the respondent No.4, Sri Siddhartha Paul, M.A., B.Ed., Post Graduate Teacher of Behali Higher Secondary School, District - Sonitpur to be the Principal in-charge of the said H.S. School along with financial power to draw and disburse the salary etc., of the staff of the said School in addition to his normal duties as Post Graduate Teacher under FR 49(C) as Smti. Nalini Devi, regular Principal of said H.S. School, retired from service on 28.02.2023, on attaining the age of superannuation at the age of sixty years, observing that the same is purely temporary arrangement and that the order comes into force with immediate effect.

3. The petitioner, an Assistant Teacher, having Post Graduate Degree, who passed his 3 years B.Sc. with Major in Physics from Gauhati University in the year 1996, obtained Master Degree in Physics from Gauhati University in the year 1999 and also obtained his B.Ed. Degree from Biswanath College of Education, Sonitpur in the year 2009 under Gauhati University. Being aggrieved with the said order dated 01.03.2023

issued by the Director of Higher Education, Assam allowing the respondent No.4 to be the Principal in-charge of said Behali HS School, has filed this writ petition on 12.04.2023 stating that the respondent No.4 joined said Behali Higher Secondary School as a Post Graduate Teacher on 07.09.2009 and have not yet completed 15 years of service as a Post Graduate Teacher and as such has not become eligible to be a Principal of a provincialised Higher Secondary School of the State as provided under Rule 12 (3) (ii) of *the Assam Secondary Education (Provincialised Schools) Rules, 2018*.

4. Rule 12 of said 2018 Rules provides for "Recruitment of Principal in provincialised Higher Secondary Schools of the State as well as the procedure thereof".

5. Sub-Rule (3) of Rule 12 of said 2018 Rules stipulates the minimum qualification for appointment to the post of Principal in provincialised Higher Secondary Schools and Senior Secondary Schools, which reads as follows:--

- i. *"The candidate must be MA/M.Sc./M.Com with B.T./B.Ed degree from any recognized University having inform good academic career. In respect of Hindi Teacher having degree qualification, eh Hindi 'Parangat' and 'Nishanat' shall be considered instead of B.T./B.Ed.*
- ii. *The candidate must have rendered at least 15 years of service as Post Graduate Teachers in any of the provincialised Higher Secondary/Senior Secondary School; or*
- iii. *The candidate must have rendered at least 15 years of service as Vice-President in any of the provincialised Higher Secondary School; or*
- iv. *The candidate must have 17 years of teaching experience as Graduate Teacher in any Higher Secondary School;*
- v. *The age of the candidate must not be more than 57 years as on the first January of the year of recruitment:*

Provided that the service and teaching experience acquired in a School during provincialised period shall be counted. The period rendered prior to provincialisation of the School shall not be counted;
- vi. *The candidate must possess commanding personality, administrative*

ability, leadership skills and integrity.”

6. The petitioner was initially appointed as an Assistant Teacher in Kharsimalu High School in the District of Sonitpur by an order issued by the Inspector of Schools, Sonitpur District Circle, Tezpur on 11.09.1998 in the Graduate Scale of Pay. By an order dated 13.02.2004 issued by the Inspector of Schools, Sonitpur District Circle, Tezpur, the petitioner was transferred to Behali Higher Secondary School at his own request, against a vacant post that fell vacant as one Smti. Rina Deb, Assistant Teacher of the said Higher Secondary School was transferred.

7. Pursuant to his said transfer order, the petitioner joined Behali Higher Secondary School on 14.02.2004 and since then, he is serving in the said Higher Secondary School for more than 19 years having Master Degree with B.Ed., being eligible to be appointed as a Principal in a provincialised Higher Secondary School of the State. The seniority list that was prepared by the erstwhile Principal of said Behali Higher Secondary School as on 28.01.2023, annexed to this writ petition by the petitioner, reflects that the petitioner is the senior most teacher of the said H.S. School and that the respondent No.4 is in Srl. No.2 in the said seniority list, who joined said H.S. School on 07.09.2009 who is yet to complete 15 years of service as a Post Graduate Teacher in a provincialised Higher Secondary School or Senior Secondary School of the State. It is clearly reflects that the respondent No.4 does not have the requisite eligibility to be appointed as a Principal of provincialised Higher Secondary School as per the provisions of said 2018 Rules.

8. Coordinate Benches of this Court in the case of *Jagannath Pegu Vs. State of Assam and Ors.* reported in 2007 (3) GLT 389 as well as in WP(C) No. 1535/2011 (Md. Hassain Ali Vs. State of Assam and Ors.) decided on 04.12.2014, have held that even for holding the post of Principal in-charge, a candidate must have to fulfill the eligibility criteria for the regular post and not the seniority alone.

9. After hearing the learned counsels for the parties, considering the provisions of

Rule 12 of said 2018 Rules, since the respondent No.4 does not have the requisite eligibility criteria to hold the post of regular Principal in terms of said Rule 12 of said 2018 Rules, since he has not completed 15 years of continuous service as a Post Graduate Teacher, the Court found that the order under No.GB-EST/Apptt/FP/38/2022/141 dated 01.03.2023, issued by the Director of Secondary Education, Assam being inconsistent with law is illegal and accordingly, the same is hereby set aside and quashed.

10. For the ends of justice, the Director of Secondary Education, Assam is directed to pass a fresh order with regard to the Principal in-charge of said Behali Higher Secondary School that fell vacant on retirement of the regular Principal of said Behali Higher Secondary School, District - Sonitpur on 28.02.2023 determining the eligibility and seniority after giving an opportunity of hearing to the petitioner as well as other eligible teachers of said Higher Secondary School including the respondent No. 4 enabling them to place their relevant documents to consider their cases for the post of Principal in-charge of said Behali Higher Secondary School, following the principles of law laid down by the Hon'ble Court in the case of Jagannath Pegu (supra) as well as in the case of Md. Hassain Ali Vs. State of Assam and Ors. WP(C) No. 1535/2011 decided on 04.12.2014, noted above, and the provisions of Rule 12 of said 2018 Rules, till appointment of a regular Principal.

11. The petitioner shall submit a certified copy of this order before the Director of Secondary Education, Assam on or before 02.05.2023 obtaining necessary acknowledgement from the said authority in that regard.

12. The Director of Secondary Education, Assam on or before 31.05.2023 shall pass a fresh order allowing the eligible senior most teacher, who have the requisite eligibility to be the in-charge Principal of said Behali Higher Secondary School.

13. Till then, the Inspector of Schools, Sonitpur District Circle, Tezpur shall act as the Principal in-charge of said Behali Higher Secondary School along with financial power

to draw and disburse the salary etc., to the teaching and non-teaching staff of the said Higher Secondary School.

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

JUDGE

Comparing Assistant