

GAHC010083692023



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

Case No. : WP(C)/2199/2023

RAMONI BORUAH
S/O- LATE PRABHAT CH. BORUAH,
ASSISTANT TEACHER,
GEDARBORI M.E. SCHOOL,
VILL. GEDABORI, P.O.- CHAKALAGHAT,
P.S.- JAJURI, DIST.- NAGAON, ASSAM,
PIN- 782142.

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM,
EDUCATION DEPARTMENT,
ASSAM SACHIVALAYA, DISPUR,
GUWAHATI- 781006.

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI- 781019.

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER
NAGAON
ASSAM
ASSAM TRUNK ROAD

NAGAON
ASSAM
PIN- 782001.

4:THE BLOCK ELEMENTARY EDUCATION OFFICER

KHAGARIJAN
ASSAM
PIN- 782002.

5:PRABHAT CH. NATH
I/C HEADMASTER

GEDARBORI M.E. SCHOOL

VILL.- GEDABORI
P.O.- CHAKALAGHAT

P.S.- JAJURI
DIST- NAGAON

ASSAM
PIN- 782142

Advocate for the Petitioner : DR G J SHARMA

Advocate for the Respondent : SC, ELEM. EDU

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

26/04/2023

Heard Ms. S Bora, learned counsel for the petitioner and Mr. P K Bora, learned Standing counsel, Department of School Education for the respondent Nos. 1 to 4.

2. Petitioner served as an Assistant Teacher in Science at Gedarbori M.E. School under Khagarijan Education Block of District-Nagaon w.e.f. 26.01.1988 since its venture stage.

3. Pursuant to the approval of the State Government on 26.03.2013 and the consequential order of the Director of Elementary Education (DEE), Assam dated 16.05.2013, the service of the petitioner was provincialised w.e.f. 01.01.2013 under the provisions of the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 as amended in 2012 during its force.

4. The respondent No. 5 was initially appointed as an Assistant Teacher at Chakalaghat Junior

Basic School under Khagarijan Education Block of District-Nagaon at a fixed pay of Rs.1800/- per month in pursuance of the order of the Deputy Inspector of Schools, Nagaon dated 31.03.2001. Later, pursuant to the order of the DEE, Assam dated 30.07.2010, his service was regularized against the vacant post at Gedarbori L.P. School at a fixed pay of Rs.1800/- per month under the Block Elementary Education Officer (BEEO), Khagarijan, District-Nagaon.

5. In terms of the Notification dated 19.12.2017 of the State Government in the Elementary Education Department, said Gedarbori L.P. School in the Khagarijan Education Block, District-Nagaon was amalgamated with Gedarbori M.E. School, Khagarijan, District-Nagaon.

6. The Headmaster of said Gedarbori M.E. School retired from service on 28.02.2023. In that regard, the BEEO, Khagarijan, District-Nagaon by its communication dated 27.01.2023 informed the erstwhile Headmaster of the said Gedarbori M.E. School, Prabhat Chandra Saikia that on his retirement on 28.02.2023 on attaining the age of 60 years, he shall hand over the charge of the school to the 1st Assistant Teacher of the said school.

7. It is stated by the petitioner that he being the senior most Assistant Teacher of said Gedarbori M.E. School, its erstwhile Headmaster on his retirement on 28.02.2023 handed over the charge to him and since 01.03.2023, he is serving as the in-charge Headmaster of said Gedarbori M.E. School.

8. As per the proposal of the BEEO, Khagarijan dated 06.03.2023, the District Elementary Education Officer (DEEO), Nagaon on 09.03.2023 allowed the respondent No. 5 to be the in-charge Headmaster of said Gedarbori M.E. School in addition to his own duties as an Assistant Teacher with the authority to draw and disburse the salary of the staff and other financial matters related to school affairs for a period of 3 (three) months w.e.f. 01.03.2023 to 31.05.2023 or till the joining of a regular Headmaster, whichever is earlier as the erstwhile Headmaster of the said M.E. School, Prabhat Chandra Saikia retired on 28.02.2023.

9. Since the petitioner did not hand over the charge to the respondent No. 5 as the in-charge Headmaster of said M.E. School pursuant to the order of the DEEO, Nagaon dated 09.03.2023, the respondent No. 5 submitted a complaint before the BEEO, Khagarijan, Nagaon. In view of that the BEEO, Khagarijan, Nagaon on 14.03.2023 issued a show-cause notice to the petitioner as to why disciplinary action should not be initiated against him for non-compliance of the order dated 09.03.2023 and to submit his reply on or before 16.03.2023.

10. The petitioner on receipt of the said show-cause notice dated 14.03.2023 on 16.03.2023 submitted his reply on 31.03.2023 stating that he being the senior most Assistant Teacher of said Gedarbori M.E. School, pursuant to the communication dated 27.01.2023 of the BEEO, Khagarijan, the erstwhile Headmaster of the said school, Prabhat Chandra Saikia, on his retirement on 28.02.2023 handed over the charge to him and since 01.03.2023 he is discharging his duties as in-charge Headmaster of said Gedarbori M.E. School. He further stated that the order of the DEEO, Nagaon dated 09.03.2023 allowing the respondent No. 5 to be the in-charge Headmaster of the said Gedarbori M.E. School was not issued to him and as such, he was not aware of the said order.

11. It is also stated by the petitioner that hardly one year of his service left and as such, the authorities concerned considering his show-cause reply dated 31.03.2023 should not take any steps to initiate any departmental proceeding upon him.

12. Being aggrieved with the said order of the DEEO, Nagaon dated 09.03.2023 allowing the respondent No. 5 to be the in-charge Headmaster of said Gedarbori M.E. School as well as the show-cause notice dated 14.03.2023 issued by the BEEO, Khagarijan, District-Nagaon, the petitioner has preferred this writ petition.

13. With regard to the posts of Headmaster/Headmistress in a provincialised M.E./M.E.M./M.V./Government/Provincialised M.V. Schools and Government Senior Basic Schools, the State Government in the Elementary Education Department vide Notification No. AEE.509/2019/45 dated 08.03.2022 have issued certain guidelines.

14. As per the said Notification dated 08.03.2022, a regular Headmaster in such provincialised/Government Upper Primary Schools are appointed on the basis of seniority cum efficiency on the recommendation of the District Level Selection Committee that is to be constituted by the DEE, Assam. Before such recommendation by the constituted committee, a District Gradation List of teachers separately for M.E/M.E.M./M.V./Provincialised M.V. Schools and Government Senior Basic Schools in order of seniority showing the date of appointment, educational qualification, year of passing of training, age on the date of appointment, date of retirement is required to be published. Moreover, the teacher having less than 10 years of continuous service is not to be considered for promotion.

15. Further, the committee amongst others is required to follow the Assam Scheduled Caste and Scheduled Tribes (Reservation or Vacancies in Service & Post) Act, 1978 and Rules as amended

framed thereunder for preparation of the panel of teachers for the posts of Headmaster/Headmistress in M.E./M.E.M./M.V./Government Provincialised M.V. Schools and Government Senior Basic Schools.

16. Law is well settled that even for in-charge Headmaster/Headmistress/ Principal in a Government/Provincialised Educational Institution in the State of Assam, the incumbent must have the requisite eligibility in terms of the necessary Guidelines/Rules as applicable for the post of the Head of such Institution.

17. In the case in hand, it is seen that only on the proposal of the BEEO, Khagarijan, Nagaon dated 06.03.2023, the DEEO, Nagaon on 09.03.2023 allowed the respondent No. 5 to be the in-charge Headmaster of Gedarbori M.E. School, whereas the service of the respondent No. 5, who was a Fixed Pay Assistant Teacher of Gedarbori L.P. School, whose service was regularized in the year 2012 in a Fixed Pay and that the said L.P. School was amalgamated with Gedarbori M.E. School only in the year 2017. Moreover, the petitioner's service was provincialised w.e.f. 01.01.2013 in said Gedarbori M.E. School.

18. It is also seen from the order dated 09.03.2023 issued by the DEEO, Nagaon allowing the respondent No. 5 to be the in-charge Headmaster of said Gedarbori M.E. School that the copy of the said order has not been forwarded to the petitioner, on whom charge was handed over by the erstwhile Headmaster of said Gedarbori M.E. School on 28.02.2023.

19. After hearing the learned counsels for the parties and considering the entire aspects of the matter, this writ petition is disposed of at the motion stage itself directing the petitioner to submit a representation before the District Elementary Education Officer, Nagaon on or before 04.05.2023 pertaining to the claim for the post of in-charge Headmaster of Gedarbori M.E. School under Khagarijan Education Block of District-Nagaon.

20. In the event of submission of such representation by the petitioner along with a certified copy of this order and a copy of this writ petition including the Annexures appended thereto with his full details including his address, phone number/mobile number and e-mail address etc. within the time so specified (the date noted above), the District Elementary Education Officer, Nagaon after giving an opportunity of hearing to the petitioner as well as the respondent No. 5 and the other eligible teachers of said Gedarbori M.E. School shall determine the seniority amongst the teachers of amalgamated Gedarbori M.E. School, intimating the petitioner about his seniority position.

21. Thereafter, the DEEO, Nagaon shall allow the eligible senior most teachers to hold the post of

in-charge Headmaster of said Gedarbori M.E. School.

22. Till such determination of seniority between the petitioner; the respondent No. 5 and the other eligible teachers of Gedarbori M.E. School, the impugned order under Memo No. DEEO(N)/A-II/N/Pt-09/2015/0509-12 dated 09.03.2023 issued by the DEEO, Nagaon allowing the respondent No. 5 to be the in-charge Headmaster of Gedarbori M.E. School shall remain suspended.

23. In the event of any such determination, if the respondent No. 5 is found to be the senior most and eligible Assistant Teacher of amalgamated Gedarbori M.E. School, the said order dated 09.03.2023 of the DEEO, Nagaon allowing the respondent No. 5 to be the in-charge Headmaster of the said Gedarbori M.E. School shall stand revived, otherwise the DEEO, Nagaon shall pass a fresh order regarding in-charge Headmaster of the said M.E. School as per his determination, cancelling/recalling his said order dated 09.03.2023.

24. The entire process of determination of seniority among the petitioner; the respondent No. 5 and the other eligible teachers of said Gedarbori M.E. School to be its Headmaster in-charge shall be completed within a period of 45 (forty five) days from the date of receipt of a certified copy of this order to be submitted by the petitioner, as directed above.

25. Till such decision of the DEEO, Nagaon, the Block Elementary Education Officer, Khagarijan, District-Nagaon shall be the in-charge Headmaster of amalgamated Gedarbori M.E. School for the purpose of drawing and disbursing the salary of the teaching and non-teaching staff of the said Gedarbori M.E. School and with regard to the other financial matters related to the said school.

26. For the reasons above, the show-cause notice dated 14.03.2023 issued by the BEEO, Khagarijan, Nagaon, being not in conformity with law, is set aside and quashed.

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

JUDGE

Comparing Assistant