

GAHC010093382023



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

Case No. : WP(C)/2403/2023

CHANDA RANI MEDHI
D/O- LATE BAGALA PRASAD MEDHI,
WARD NO-9,
P.O AND P,S- ABHAYAPURI,
DIST- BONGAIGAON, ASSAM, PIN-783384

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM, EDUCATION
(SECONDARY) DEPARTMENT, DISPUR, GUWAHATI 781006

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

3:THE IN CHARGE DIRECTOR
OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19.

4:THE INSPECTOR OF SCHOOLS
BONGAIGAON DISTRICT CIRCLE
BONGAIGAON
ASSAM
PIN- 783380

5:SANJAY KALITA
SUBJECT TEACHER OF MATHEMATICS

ABHAYESWARI H.S AMD M.P SCHOOL
ABHAYAPURI

P.O AMD P.S- ABHAYAPURI
DIST- BONGAIGAON
ASSAM
PIN-78338

Advocate for the Petitioner : MR. M U MAHMUD

Advocate for the Respondent : SC, SEC. EDU.

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

03/05/2023

Heard Mr. M U Mahmud, learned counsel for the petitioner and Mr. B Kaushik, learned Standing counsel, Department of School (Secondary) Education, Assam for the respondent Nos. 1 to 4.

2. Matter pertains to Principal in-charge of Abhayeswari Higher Secondary & Multi Purpose School in the District of Bongaigaon, a provincialised Higher Secondary School of the State.

3. The regular Principal of said Abhayeswari H.S. & M.P. School retired from service on 31.03.2023 on attaining the age of superannuation at 60 years. On retirement of the regular Principal of said H.S. & M.P. School, namely, Mina Kumari Mondal, she handed over the charge to the petitioner on 31.03.2023, intimating the Inspector of Schools, Bongaigaon about the same.

4. However, the Director of Secondary Education, Assam by an order No. GB-Est/Appt./FP/54/2022/202 dated 12.04.2023 allowed the respondent No. 5, to be the Principal in-charge of said Abhayeswari H.S. & M.P. School along with the financial power to draw and disburse the salary etc. of the staff of the said school in addition to his normal duties as Subject Teacher under F.R.49(C) as Mina Kumari Mondal, retired from service on 31.03.2023.

5. It is contended by the petitioner that she is the senior most teacher of said Abhayeswari H.S. & M.P. School and the outgoing regular Principal of the school rightly handed over the charge of Principal in-charge to her. In that regard, the petitioner has placed a copy of the seniority list of

presently serving teaching staff of said Abhayeswari H.S. & M.P. School, duly approved by the Inspector of Schools, Bongaigaon, wherein name of the petitioner figured at Sl. No. 1.

6. Petitioner stated that the respondent No. 5 is much junior to her, who joined the said school only on 30.01.2013 and that he obtained B.Ed. Degree without due permission from the authority concerned in the Secondary Education Department and further, his service has not yet been confirmed.

7. It is submitted by Mr. Mahmud, learned counsel for the petitioner that it is well settled that Adhoc cannot be replaced by an Adhoc and since the petitioner is serving as in-charge Principal of said Abhayeswari H.S. & M.P. School, where she was handed over the charge by the outgoing Principal of the said school, namely, Mina Kumar Mondal, therefore, the impugned order dated 12.04.2023 allowing the respondent No. 5, junior most Post Graduate Teacher of the said school to be the Principal in-charge of the said school which is in violation of the law laid down by the Hon'ble Apex Court needs to be set aside and quashed.

8. Mr. Mahmud, learned counsel for the petitioner further submitted that the seniority list of teaching staff of said Abhayeswari H.S. & M.P. School duly countersigned by the Inspector of Schools, Bongaigaon is not under challenge.

9. Rule 12 of the Assam Secondary Education (Provincialised Schools) Service Rules, 2018 relates to *Recruitment to Principal and Procedure thereof*, where Rule 12(3) of the said 2018 Rules stipulates that :

(3) The minimum qualifications for appointment to the post of Principal in Higher Secondary School and Senior Secondary School shall be as follows:-

- (i) The candidate must be M.A./M.Sc./M.Com with B.T./B.Ed. degree from any recognized University having uniform good academic career. In respect of Hindi Teacher having degree qualification, the 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 5 years of service as Vice-Principal 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 candidates 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.*

10. From the said Rule 12(3) of 2018 Rules, noted above, it can be seen that for the post of regular Principal in a provincialised Secondary School, a candidate must rendered at least 15 years of service as Post Graduate Teacher in any of the provincialised Higher Secondary/Senior Secondary School and that a candidate must have 17 years of teaching experience as Graduate Teacher in any Higher Secondary School.

11. From the Annexure appended by the petitioner in her petition as Annexure-7 i.e., Order under Memo No. BDC/BED/2022/1614-18 dated 01.02.2023 issued by the Inspector of Schools, Bongaigaon District Circle, Bongaigaon, it can be seen that the petitioner received the Graduate Scale of Pay w.e.f. 01.12.2019 and she is yet to complete 17 years of service as a Graduate Teacher, i.e., since 01.12.2019 till 31.03.2023, she has completed only 3 years 4 months as a Graduate Teacher in said Abhayeswari H.S. & M.P. School.

12. Further, from the said seniority list of teaching staff of said Abhayeswari H.S. & M.P. School annexed by the petitioner as Annexure-8, duly countersigned by the Inspector of Schools, Bongaigaon, it is also seen that said Sanjay Kalita, respondent No. 5 joined as Post Graduate Teacher in said Abhayeswari H.S. & M.P. School only on 30.01.2013 and have not yet completed 15 years of service as a Post Graduate Teacher, and since 30.01.2013 till 31.03.2023, he has completed only 10 years 2 months as a Post Graduate Teacher in said Abhayeswari H.S. & M.P. School.

13. Co-ordinate benches of this Court in the cases of *Jagannath Pegu Vs. State of Assam and Others* reported in 2007 (3) GLT 389 as well as in WP(C) No. 1535/2011 (*Md. Hassain Ali Vs. State of Assam and Others*) decided on 04.12.2014, have held that even for holding the post of Principal in-charge/ Vice-Principal/Headmaster/Headmistress/Superintendent in a provincialised or a Government

Educational Institution, a candidate must have the requisite eligibility for the concerned regular post and that the seniority in service alone is not the criteria.

14. Considering the above, neither the petitioner nor the respondent No. 5 fulfills the requisite eligibility to hold the post of Principal in-charge of said Abhayeswari H.S. & M.P. School in the District of Bongaigaon in terms of 12(3) of the said 2018 Rules till date.

15. For the reasons above, the order dated 12.04.2023 issued by the Director of Secondary Education, Assam allowing the respondent No. 5 to hold the charge of Principal in-charge of said school, being not in conformity with law, is hereby set aside and quashed.

16. After hearing the learned counsel for the parties and considering the entire aspects of the matter, the Court is of the opinion that the Director of Secondary Education, Assam shall forthwith determine the seniority position of the petitioner, the respondent No. 5 and the other eligible teachers of said Abhayeswari H.S. & M.P. School considering their requisite eligibility to hold the post of Principal in-charge of said H.S. & M.P. School as provided in Rule 12 of the said 2018 Rules and thereafter, shall give the charge of Principal in-charge of said Abhayeswari H.S. & M.P. School to the eligible incumbent having the requisite eligibility in terms of Rule 12 of the said 2018 Rules, after giving an opportunity of hearing to the petitioner as well as the respondent No. 5 and the other eligible teachers, enabling them to place the relevant documents before the said authority for consideration of their cases to the post of Principal in-charge of said Abhayeswari H.S. & M.P. School.

17. Till such decision of the Director of Secondary Education, Assam as directed above, the Inspector of Schools, Bongaigaon District Circle, Bongaigaon shall be the Principal in-charge of said Abhayeswari H.S. & M.P. School for the purpose of drawing and disbursing the salary etc. of the teaching and non-teaching staff of the said School, in addition to his normal duties under FR 49(C).

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

JUDGE

Comparing Assistant