

GAHC010038362022



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

Case No. : WP(C)/3431/2021

MRS MOUSUMI BARUAH
W/O- SRI UDAY KAMAL CHETIA
R/O- VILL- KHANIAGAON
P.S. MILAN NAGAR
DIBRUGARH
DIST.- DIBRUGARH
ASSAM
PIN- 786003

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
EDUCATION (SECONDARY) DEPTT.
DISPUR
GHY-06
ASSAM

2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GHY-19
ASSAM

3:THE INSPECTOR OF SCHOOLS
DIBRUGARH DISTRICT CIRCLE
DIBRUGARH
PIN- 786001
ASSAM

4:THE STATE SELECTION BOARD
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
EDUCATION (SECONDARY) DEPTT. AS CHAIRMAN
DISPUR
GHY-06

Advocate for : MR. A DEKA
Advocate for : SC
SEC. EDU. appearing for THE STATE OF ASSAM AND 3 ORS

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

04.01.2023

Heard Mr. D. P. Borah, learned counsel for the petitioner and Mr. N. J. Khataniar, learned Standing counsel, Secondary Education Department, Assam for all the official respondent Nos. 1 to 4.

2) The petitioner is a Master Degree holder as well as obtained B.Ed. Degree in the year 2004. On 25.11.1999, she was appointed as an Assistant Teacher in Mankata M.E. School in the district of Dibrugarh and thereafter, she was transferred to Barbaruah Girls M.E. School, Dibrugarh. Said Barbaruah Girls M.E. School, Barbaruah along with Barbaruah L. P. School, Barbaruah were amalgamated with Barbaruah Girls High School being in the same campus under the provisions of 'Siksha Khetra Scheme' by order No. ASE.14/2017/Pt-1/134 dated 09.11.2017 issued by the State Government in the Secondary Education Department.

3) By the said amalgamation order dated 09.11.2017, the State Government in the Secondary Education Department clarified that after such amalgamation of said Barbaruah Girls M.E. School with Barbaruah Girls High School, the name of the school shall be Barbaruah Girls High School and the School Management and Development Committee of the amalgamated School shall be reconstituted by the Inspector of Schools, Dibrugarh as per the Government existing instructions with inclusion of two representatives one from Guardians and another from teachers of each amalgamated schools.

4) By the said order of amalgamation dated 09.11.2017, it was specified that the existing posts including the vacant posts shall be the posts and employees of Barbaruah Girls High School and that the posts held by each of the incumbents from those schools after amalgamation of schools shall be the posts of Barbaruah Girls High School.

5) It is stated by the petitioner that number of vacancy for the post of regular Headmaster/Headmistress/Superintendent in the district of Dibrugarh was assessed following the

provisions of Rules 14, 15, 16, 24 and 25 of the Assam Secondary Education (Provincialised) Service Rules, 2003 as amended in 2012 and thereafter, the necessary particulars of the interested candidates have been called for School-wise promotion to the post of Headmaster/Headmistress of High/Higher Secondary Schools, Dibrugarh.

6) The regular Headmistress of Barbaruah Girls High School was lying vacant since 2012 to May, 2020. For filling up of the post of Headmistress of said Barbaruah Girls High School, Barbaruah, Dibrugarh on promotion, the petitioner appeared for interview before the State Selection Board on 15.09.2018 and after such interview, on being selected for promotion to the post of Headmistress in said Barbaruah Girls High School, the Director of Secondary Education, Assam by order under Memo No. GB.EST/Apptt(HM & Supdt)/1/2020/12 dated 27.05.2020 promoted her as a Regular Headmistress of Barbaruah Girls High School, Barbaruah.

7) On being enquired by the State Government in the Secondary Education Department, as some anomalies were found regarding selection of Headmistress in said Barbaruah Girls High School, the Inspector of Schools, Dibrugarh, on 01.06.2020 wrote to the Director of Secondary Education, Assam pointing out those anomalies in selection to the post of regular Headmistress in said Barbaruah Girls High School. As such, the Director of Secondary Education, Assam called the petitioner and three other teachers of said Barbaruah Girls High School for hearing. After hearing the petitioner and three others, the Director of Secondary Education Assam by its order under memo No. GB.EST/Apptt/HM/1/2020/Pt/12 dated 06.06.2020 decided to keep the promotion order in respect of the petitioner to the post of regular Headmistress of said Barbaruah Girls High School issued on 27.05.2020, in abeyance.

8) Thereafter, on receipt of a complaint dated 10.07.2020 from another Assistant Teacher, namely, Mina Kumari Borah of said Barbaruah Girls High School alleging that the petitioner received Graduate Scale of Pay only from the year, 2016, the Director of Secondary Education, Assam made an enquiry in that regard.

9) After making an enquiry, the Director of Secondary Education, Assam by order under No. GB.EST/Apptt/HM/1/2020/Pt/35 dated 19.07.2021, kept the promotion order of the petitioner as a regular Headmistress of Barbaruah Girls High School issued on 27.05.2020 in abeyance till such furnishing of report by the Enquiry officer with the decision taken thereof.

10) Being aggrieved with the same, the petitioner has preferred this writ petition praying amongst others for quashing the said order dated 19.07.2021 issued by the Director of Secondary Education,

Assam and for granting all consequential benefits to her as a regular Headmistress of said Barbaruah Girls High School w.e.f. 27.05.2020.

11) The Court on 30.07.2021 while issuing notice to the respondents stayed the impugned order dated 19.07.2021 of the Director of Secondary Education, Assam keeping in abeyance the promotion of the petitioner to the post of regular Headmistress in said Barbaruah Girls High School and the same is still in force.

12) The respondents in the Secondary Education Department have filed their affidavit in the matter clarifying their stand that the petitioner was serving as an Assistant Teacher in the provincialised Barbaruah Girls M.E. School, Barbaruah since November, 1999 and that after amalgamation of said Barbaruah Girls M.E. School with Barbaruah Girls High School vide order dated 09.11.2017, she became an Assistant Teacher in said Barbaruah Girls High School.

13) The respondents in the Secondary Education Department annexed the communication under No. ASE.328/2019/195 dated 08.05.2020 issued by the Commissioner & Secretary to the Government of Assam in the Secondary Education Department, whereby the State Government in the Secondary Education Department conveyed its approval regarding the select list of Headmaster/Superintendent of provincialised High Schools/High Madrassa whose services have been provincialised in the year 2013 sent by the Director of Secondary Education, Assam in respect of the concerned candidates enclosed as Annexure-A consisting of 20 numbers of the districts of the State including the district of Dibrugarh as per the provisions under Rule 15 (4) of the Assam Secondary Education (Provinciased Service) Rules, 2003 as amended wherein the name of the petitioner figured in said Annexure-A at Sl. No. 43.

14) In the said affidavit, the respondent No. 2 also annexed the communication under No. GB-EST/DSE/CC/58/2021/119 dated 25.03.2022 of the Director of Secondary Education, Assam whereby the decision of the Government to relax the minimum 10 years of Teaching experience as a Graduate Teacher for promotion to the post of Headmaster and approval of the said list was communicated by the State Government on 08.05.2020 stating that the name of the petitioner was erroneously enlisted in the said list of teachers recommended for the post of Regular Headmaster of said Barbaruah Girls High School provincialised in the year, 2013.

15) Rule 2 (n) of the said 2003 Rules defines "Graduate Teacher" which reads as follows:-

" Graduate Teacher" means the category of Assistant Teacher in High/Higher Secondary/Higher Secondary and Multipurpose/High Madrassa Schools for whose appointment the minimum qualification

prescribed is a Graduate degree in Arts, Science or Commerce including Demonstrators in Higher Secondary/Higher Secondary & Multipurpose School [which shall also include the Graduate Classical Teacher of Hindi, Sanskrit, Arabic, Persian, Assamese, Bodo etc. for whose appointment a Graduate degree from any recognized University with the concerned language as a subject is necessary]."

16) Schedule I (3) provides the requisite eligibility criteria for Selection of Graduate Teacher in provincialised Secondary Schools of the State under the said 2003 Rules as provided in Rule 8 of said 2003 Rules.

- (i) *100 marks on percentage of marks in B.A./B.Com/B.Sc. Examination (in case of Major/Hons, the marks obtained in Major/Hons shall be taken into consideration);*
- (ii) *100 marks on percentage of marks in HS Final Examination;*
- (iii) *100 marks on percentage of B.T./B.Ed. Examination;*
- (iv) *100 marks on percentage of marks in TET Examination;*
- (v) *50 marks @ 25 marks for one year of teaching experience as contractual teacher, and another 25 marks for two years, subject to consideration for a maximum period of two years;*
- (vi) *50 marks for Viva-voce, Assessment in Viva-voce shall be on the basis of personality, presentation, communication skills, higher academic qualification (if any), excellence in NCC, Sports fine-arts and cultural activities.]**

17) Rule 14 (2) (3) (4) of the said 2003 Rules provide for recruitment to the post of Headmaster/Headmistress/Superintendent/Assistant Head Master/ Assistant Head Mistress of High/HS/HS & MP School read as follows:-

(2) *The post of Head Master/Head Mistress and Superintendent shall be filled up by promotion from the School-wise seniority list on the recommendation of the State Selection Board. The selection of Head Master/Head Mistress/Superintendent shall be based upon seniority and satisfactory Annual Confidential Report for 3 (three) consecutive years.*

The seniority shall be determined from the date of receiving graduate scale as per Rule 24 (2).

(3) *The post of Assistant Head Master/Asstt. Head Mistress/Assistant Superintendent shall be filled up by promotion from the school-wise seniority list of Assistant Teachers on recommendation of the State Selection Board. The selection shall be based be upon satisfactory Annual Confidential Report for last 3 years and seniority of service in graduate scale of pay with a minimum 7 years of teaching experience.*

In case of amalgamated High School, the Head Master/Head Mistress of the M.E.

School Is eligible for selection as Assistant Head Master/Asstt. Head Mistress subject to condition that-

(i) the incumbent should have at least 5 years of teaching experience in M.E. School if he/she is the founder Head Master/Head Mistress of the M.E. School;

(ii) the incumbent should have at least 10 years of teaching experience in M.E. School if he/she is not the founder Head Master/Head Mistress of the M.E. School.

The seniority shall be determined as per provision of Rule 24(2).

(4) Eligibility for the post of Head Master/Head Mistress/Superintendent/Assistant Head Master/Asstt. Head Mistress/ Asstt. Superintendent of High/High Madrassa School as the case may be-

(i) The minimum qualification for the post of Head Master/Head Mistress / Superintendent/Assistant Head Master/Asstt. Head Mistress/Assistant Superintendent shall be graduate in Arts, Science or Commerce with B.T. or B.Ed. degree;

(ii) He/She must possess at least 10 years of teaching experience as Graduate Teacher;

(iii) He/She must possess at least seven years of teaching experience as Graduate teacher to be an Assistant Head Master/Head Mistress/Asstt. Superintendent.

18) Rule 15 of said 2003 Rules relates to "Procedure of selection for the post of Headmaster/Headmistress" in such provincialised Secondary Schools of the State.

19) Till such amalgamation of Barbaruah Girls M.E. School, Barbaruah with Barbaruah Girls High School on 09.11.2017, the petitioner was an Assistant Teacher of Barbaruah Girls M.E. School and her service condition was regulated by the Assam Elementary Education (Provincialisation) Rules 1977 as amended.

20) Apparently, the petitioner was appointed as an Assistant Teacher in ME/Upper Primary School on 25.11.1999 and the requirement for an Assistant Teacher of ME/Upper Primary School at the relevant time of appointment of the petitioner was only matriculate with credit for experiences as teachers in provincialised Pre-Primary Schools or Pre-Primary schools under Grants-in-Aid and/or passing junior basic training and senior basic training and diploma in Elementary Education of 2 years.

21) Though the petitioner is a graduate and holder of B.Ed. degree having the requisite educational

qualification for the post of Headmaster/Headmistress of provincialised school but she lacked minimum of 10 years of teaching experience as Graduate Teacher in any Secondary School.

22) At the time of approval of the petitioner by the State Government to the post of Headmistress of Barbaruah Girls High School, District-Dibrugarh on 08.05.2020, the petitioner had only 3 years of teaching experience as a teacher in a Secondary School.

23) During the time of appointment of the petitioner as an Assistant Teacher of Mankata M.E. School on 25.11.1999, the Pay Scale of an Assistant Teacher in such provincialised ME/Upper-Primary School was intermediate scale, Graduate Scale of Pay was given only to the Headmaster/Headmistress and Science Graduate Teacher of such provincialised ME/Upper-Primary School.

24) From the amalgamation order dated 09.11.2017 annexed by the respondents in the Secondary Education Department, it is seen that the petitioner received Scale of Pay of Rs. 14,000/- to 49,000/- + Grade Pay of Rs. 6200/- whereas, the Assistant Teacher of Barbaruah Girls Secondary School received Scale of Pay of Rs. 14,000/- to 49,000/- + Grade Pay of Rs. 8700/-.

25) Since the petitioner's service as a Graduate Teacher in the provincialised Secondary School was only w.e.f. amalgamation of Barbaruah Girls M.E. School with Barbaruah Girls High School i.e., 09.11.2017, she did not fulfill one of the requisite eligibility criteria for the post of Headmistress in such provincialised Secondary School under the provision of said 2003 Rules as amended whereby a candidate is required to have at least 10 years of experience as Graduate Teacher in any such provincialised Secondary School.

26) Though the petitioner claimed that her name was enclosed in the list of relaxation of the candidates for the minimum 10 years of Teaching experience as Graduate Teacher for promotion to the post of Headmaster relaxed by State Government in the Secondary Education Department on being recommended by the Directorate of Secondary Education, Assam but from the reading of said recommendation dated 08.05.2020 of the State Government in the Secondary Education Department noted above, it is clear that such relaxation was given by the State Government in the Secondary Education Department for those teachers whose services have been provincialised in the year, 2013 whereas the petitioner was already appointed in a provincialised M.E. School in November, 1999, as noted above. As such, she does not come under the purview of such provisions of relaxation as given to those whose services were provincialised in the year 2013.

27) It is to be noted herein that Rule 15 (4) of the said 2003 Rules clearly stipulates that the recommended select list for the post of Headmaster/ Headmistress is required to be submitted for

approval of the State Government and after such approval of the State Government, the Director of Secondary Education, Assam is required to issue promotion order in order to merit from the approved select list fulfilling the reservation quota as per the existing Government rules and provisions.

28) Apparently, in the case in hand, the petitioner was promoted to the post of Headmistress on her selection on the basis of the approval given by the State Government in the Secondary Education Department and accordingly, the Director of Secondary Education, Assam by order dated 27.05.2020 promoted to her to the post of Headmistress of said Barbaruah Girls High School on such approval of the State Government. Therefore, the Director of Secondary Education, Assam on its own, without taking any prior approval of the State Government in the Secondary Education Department, cannot keep the order of promotion of the petitioner to the post of Headmistress of Barbaruah Girls High School in abeyance. To keep any such order of promotion to the post of Headmistress after being approved by the State Government in abeyance, it is the duty of the Director of Secondary Education, Assam to seek approval from the State Government first in that regard and only on obtaining such approval, the Director of Secondary Education, Assam Could have passed such order keeping the promotion in abeyance.

29) In view of the above, the impugned order under No. GB.EST/Apptt/HM/1/2020/Pt/35 dated 19.07.2021 issued by the Director of Secondary Education, Assam being not in conformity with law is hereby set aside and quashed.

30) With the above observation, this writ petition stands disposed of.

JUDGE

Comparing Assistant