

GAHC010112192016



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

Case No. : WP(C)/3120/2016

SMTI. PADUMI BARMAN
W/O ATUL CH. BARMAN, R/O NILACHALPUR, MALIGAON, DIST- KAMRUP
METRO, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM,
EDUCATION SECO, DISPUR, GHY-6

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

3:THE COMMISSIONER and SECY. TO THE GOVT. OF ASSAM
FINANCE DEPTT.
DISPUR
GHY-6

4:THE ACCONTANT GENERAL OF ASSAM
AandE
MAIDAMGAON
BELTOLA
GHY-2

Advocate for the Petitioner : MRS.A DEVI

Advocate for the Respondent : SC, SECONDARY EDUCATION

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

01-03-2023

Heard Ms. A. Devi, learned counsel for the petitioner and Mr. R. Mazumdar, learned Standing counsel, Department of School Education, Assam for the respondent Nos. 1 & 2.

2. The petitioner served as an Assistant Teacher in Maligaon High School from 13.08.1982 since the time of its venture stage. Since provincialisation of her service w.e.f. 25.04.1985, the petitioner received her Graduate Scale of Pay. Said High School was later converted to a co-educational institution.

3. In the seniority list prepared by the Headmistress and Secretary of said High School on 29.07.2010, the name of the petitioner was placed at Sl. No. 1 and that of Smt. Garima Sarma was placed at Sl. No. 3. Said Garima Sarma, Classical Teacher of Sanskrit was transferred from Desh Bhakta Tarun Ram Phukan School, Silchar and she joined said Maligaon High School on 29.08.1986.

4. After retirement of the erstwhile Headmistress of said Maligaon High School, the Inspector of Schools, Kamrup District Circle, Panbazar, Guwahati by order dated 31.07.2010 allowed said Garima Sarma to be the Headmistress in-charge of said High School, disregarding the seniority of the petitioner.

5. Being aggrieved with the same, the petitioner preferred a writ petition being WP(C) No. 5711/2011, challenging the order dated 31.07.2010 of the Inspector of Schools, Kamrup District Circle, Panbazar, Guwahati whereby said Garima Sarma was allowed to be the Headmistress in-charge of said Maligaon High School.

6. During pendency of said WP(C) No. 5711/2011 preferred by the petitioner, said Garima Sarma retired from her service on 30.11.2013 on attaining the age of superannuation at 60 years. Thereafter, the petitioner was allowed to be the Headmistress in-charge of said Maligaon High School, who too retired from service on 28.02.2015 on attaining the age of superannuation at 60 years.

7. On 11.02.2011 & 12.02.2011, a selection for the post of regular

Headmaster/Headmistress/Superintendent of provincialised High Schools/High Madrassas of the State was held and during the selection for the post of Headmaster pertaining to Maligaon High School, the name of Garima Sarma figured at Sl. No. 1 and that of the petitioner at Sl. No. 2.

8. During pendency of said WP(C) No. 5711/2011, on being selected and recommended by the School Level Selection Committee that was approved by the State Level Selection Board, said Garima Sarma was allowed to hold the post of regular Headmistress of said Maligaon High School.

9. It is stated that after the retirement of said Garima Sarma on attaining the age of superannuation at 60 years, the petitioner was allowed to serve as the Headmistress in-charge of said High School on that basis and that since she was senior to Garima Sarma, it is stated that the respondent authorities in the Secondary Education illegally allowed said Garima Sarma to hold the post of regular Headmistress of said High School. Therefore, the petitioner has prayed for direction to the respondent authorities in the Secondary Education Department to provide her regular Scale of Pay as Headmistress of said Maligaon High School since the date of appointment of said Garima Sarma as a regular Headmistress of said High school.

10. The second prayer of the petitioner is that since she was allowed to hold the charge of Headmistress of said Maligaon High School after the retirement of said Garima Sarma, the respondent authorities in the Secondary Education Department should provide the petitioner the Scale of Pay of Headmaster/Headmistress since October, 2013 till her retirement in February, 2015.

11. Pursuant to the orders passed in said WP(C) No. 5711/2011, the Directorate of Secondary Education (DSE), Assam while determining the seniority between the petitioner and said Garima Sarma, respondent No. 5 therein in service, said Garima Sarma was found to be senior than the petitioner. However, said decision of the DSE, Assam was neither objected nor challenged by the petitioner and in the meanwhile, said Garima Sarma retired from her service.

12. The Court by order dated 06.05.2014 dismissed said WP(C) No. 5711/2011 that was preferred by the petitioner as infructuous since the prayer of the petitioner challenging the appointment of said Garima Sarma as Headmistress in-charge of said Maligaon High School had no force, after her appointment/promotion to the post of Headmistress in-charge in the said High School.

13. It is an admitted fact that in the merit list prepared by the concerned authorities in the year 2011 for the post of regular Headmaster/Headmistress in said Maligaon High School, the name of said Garima Sarma figured at Sl. No. 1 and that of the petitioner at Sl. No. 2. Accordingly, said Garima

Sarma was allowed to hold the post of Headmistress of said Maligaon High School.

14. It is well settled that once a selected candidate on merit was appointed to the post, after such appointment, the select list becomes exhausted and in that view of the matter, the petitioner cannot claim that as she was selected in the year, 2011 for the post of Headmistress in said Maligaon High School, who was at the second position in the merit list at that point of time, therefore, the petitioner should be appointed as the Headmistress of the said High School after the retirement of said Garima Sarma is not sustainable in law. In fact, after the retirement of the selected candidate namely, Garima Sarma in October, 2013, the post of Headmistress in said Maligaon High School needs to be filled up again by a regular process of selection and not from the select list that was prepared in the year 2011.

15. Though in this petition, the petitioner annexed a copy of the select list showing the position of selected candidates in respect of Natun Fatasil Town High School, pursuant to which, one Purabi Das Kalita was appointed as a Headmistress in that School on 11.11.2014, but from the affidavit filed by the respondent authorities in the Secondary Education Department, it is seen that at the time of appointment of Headmaster/Headmistress of said Natun Fatasil Town High School, the 1st and 2nd selected candidates have already retired from their services and the 3rd selected candidate from the panel of the select list was appointed as a Headmistress of said High School and the case of appointment of Headmistress of said Natun Fatasil Town High School is not similar to the case of appointment of regular Headmaster from the said select list of 2011 pertaining to Maligaon High School.

16. With regard to the claim of the petitioner for her Scale of Pay of Headmistress during the time she performed duties as the Headmistress in-charge in said Maligaon High School, it is not the case of the petitioner that she was allowed to hold the charge of Headmistress of said School but not under the Fundamental Rule 49 (C).

17. Fundamental Rule 49 (C) provides that *no additional pay shall be admissible to the Government employee who is directed to hold current charge of the routine duties of a higher post irrespective of the duration of the additional charge.*

18. It is well settled in law that the authority concerned may allow a Government employee to hold a higher or equivalent post under F.R. 49 (C) in addition to the normal duties of the said Government employee for which no such additional amount/financial benefit equivalent to the additional charge is

required to be paid to the concerned incumbent.

19. As noted above, since the petitioner was allowed to be the Headmistress in-charge of said Maligaon High School, as such, she is not entitled to any such additional amount for performing her duties of Headmistress on in-charge basis in said Maligaon High School.

20. Moreover, the claim of the petitioner for her regular promotion to the post of regular Headmistress in said Maligaon High School has been dismissed on 02.06.2017 for non-prosecution.

21. For the reasons above, this writ petition being devoid of merit, stands dismissed.

JUDGE

Comparing Assistant