

GAHC010113282023



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

Case No. : WP(C)/3152/2023

MD ABDUL REZZAK
S/O- MD. JINNAT ALI,
MA, B.ED, GRADUATE ASSISTANT TEACHER,
DR. ZAKIR HUSSAIN HIGHER SECONDARY SCHOOL,
R/O- VILL. AND P.O. TAPAR PATHAR,
PS CHHAYGAON, DIST- KAMRUP,
ASSAM, PIN- 781137.

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE SECRETARY,
TO THE GOVT. OF ASSAM,
SECONDARY EDUCATION DEPARTMENT,
ASSAM CIVIL SECRETARIAT, DISPUR,
GUWAHATI, ASSAM, PIN- 781006.

2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI
ASSAM

PIN- 781019.

3:THE INSPECTOR OF SCHOOLS
KAMRUP DISTRICT CIRCLE
AMINGAON
DIST. KAMRUP
ASSAM

Advocate for the Petitioner : MR. A K DUTTA

Advocate for the Respondent : SC, SEC. EDU.

**BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA**

ORDER

Date : 06-10-2023

Heard Ms. B. Purkayastha, learned counsel for the petitioner. Also heard Mr. S.M.T. Chistie, learned counsel for the respondents in the Secondary Education Department of Government of Assam.

2. The petitioner Md. Abdul Rezzak who is a teacher in the Dr. Zakir Hussain Higher Secondary School in the Kamrup district is aggrieved by the order dated 10.04.2023 of the In-Charge Director of Secondary Education Assam by which the Inspector of Schools, Kamrup was allowed to be the In-Charge Principal of Dr. Zakir Hussain Higher Secondary School along with the financial power.

3. The respondents in the Education Department takes a stand although no affidavit has been filed, upon obtaining instruction from the Department, that Dr. Zakir Hussain Higher Secondary School does not have a sanction post of Principal and in the circumstance, the respondents have issued the order impugned dated 10.04.2023 by allowing the Inspector of Schools, Kamrup to be the In-Charge Principal.

4. On facts as well as under the law there is a requirement of a post to be sanctioned and created for the Principal of a Higher Secondary School, which prima facie appears to the Court to be a legal duty been not performed by the respondents in not sanctioning a post.

5. From such point of view, the reasoning of the respondents would be

unacceptable that the Inspector of Schools is made the In-Charge Principal as there is no sanctioned post of Principal for the school. On the other hand, it is the claim of the petitioner that being the senior most and eligible teacher of the school, he has a legal right to be considered to be made the In-Charge Principal of the School.

6. If the two statements of the petitioner is correct that he is the senior most and he also has all the eligible qualifications to be a regular principal, in such event, we have to accept that the petitioner also has a legal right to be made the regular principal which again cannot be defeated merely because a legal duty had not been performed by the respondents in creating and sanctioning the post of Principal.

7. In the circumstance, we direct the Director of Secondary Education Department Assam, to verify the service particulars of the petitioner and if it is found that he is the senior most as well as eligible in all the respect to be a regular principal, appropriate order may be passed to make him the In-Charge Principal but having taken note that there is no post of Principal, we also provide that such In-Charge Principal may be meted to the petitioner without providing the required financial implication of being the In-Charge Principal.

8. In the meantime the respondent authorities collectively are directed to immediately initiate the process of sanctioning and creating the post of Principal of Dr. Zakir Hussain Higher Secondary School and in doing so, it is also provided that all other departments of the Government of Assam including the Finance Department to also take note that a Higher Secondary School under the Government of Assam cannot function without the post of Principal.

9. The requirement of sanctioning the post be completed within a period of

three months from the date of receipt of certified copy of this order and the reasoned order to be passed considering the claim of the petitioner, for being the In-Charge Principal without financial implications be passed by the Director within a period of fifteen days.

Writ petition stands disposed of in the above terms.

JUDGE

Comparing Assistant