

GAHC010115692022



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

Case No. : WP(C)/3938/2022

MINAKANTA BORGOHAIN
SON OF LATE GHANA KANTA BORGOHAIN, RESIDENT OF LACHIT
NAGAR, CHAPAKHOWA, P.O. CHAPAKHOWA, DIST. TINSUKIA, ASSAM,
PIN- 786157.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,
EDUCATION (SECONDARY) DEPARTMENT, DISPUR,GHY-06.

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

3:THE INSPECTOR OF SCHOOLS
TDC
TINSUKIA
P.O. AND DIST.- TINSUKIA
ASSAM
PIN- 788001.

4:LAL BAHADUR DEORI
ASSISTANT TEACHER OF CHAPAKHOWA TOWN HIGH SCHOOL
P.O. CHAPAKHOWA
DIST. TINSUKIA
ASSAM
PIN- 786157.

5:THE DISTRICT ELEMENTARY EDUCATION OFFICER
TINSUKIA

Advocate for the Petitioner : MR. M KHAN

Advocate for the Respondent : SC, SEC. EDU.

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

02-05-2023

Heard Mr. M. Khan, learned counsel for the petitioner and Mr. B. Kaushik, learned Standing counsel, Department of School Education, Assam for the respondent Nos. 1 to 3 & 5. Also heard Mr. R. Deori, learned counsel for the private respondent No. 4.

2. The petitioner is aggrieved with the order under No. GB-EST/Apptt/FP/16/2011/292 dated 09.05.2022 by which the Director of Secondary Education (DSE, in short), Assam allowed the respondent No. 4 to be the Headmaster in-charge of Chapakhowa Town High School, Sadiya in the district of Tinsukia, a provincialised Secondary School of the State.

3. The petitioner was the Headmaster of Chapakhowa Town M.E. School. Prior to that, on 01.01.1986 the District Elementary Education Officer, Dibrugarh appointed the petitioner as an Assistant Teacher in Pub-Janata M.E. School, Sadiya that was under Dibrugarh District, now under District-Tinsukia. It is to be noted herein that w.e.f. 01.10.1989, Tinsukia District was carved out of Dibrugarh District. By an order dated 01.04.1990, the petitioner was transferred from said Pub-Janata M.E. School, Sadiya to Chapakhowa Town M.E. School, Chapakhowa. Later, being selected for promotion and on the approval of the Director of Elementary Education, Assam dated 18.02.2004, the District Elementary Education Officer, Tinsukia by order 24.02.2004 promoted the petitioner to the post of Headmaster of said Chapakhowa Town M.E. School w.e.f. the date of issuance of the said order.

4. The District Elementary Education Officer, Dibrugarh by order dated 09.01.1992 appointed the respondent No. 4 as a Science Graduate Teacher and posted him in said Chapakhowa M.E. School, Chapakhowa, pursuant to which, he joined the said M.E. School in the said post and since 09.01.1992,

he received the Graduate Scale of Pay.

5. In pursuance of the order under No. ASE.59/2017/294 dated 02.08.2017 of the State Government in the Secondary Education Department, said Chapakhowa Town M.E. School was amalgamated with Chapakhowa Town High School, Chapakhowa in the district of Tinsukia under the Scheme of "Siksha Khetra" issued under the Office Memorandum No. ASE.481/2016/17 dated 22.09.2016 of the State Government (Annexure-3 to this petition).

6. As the petitioner was the Headmaster of said Chapakhowa Town M.E. School, therefore, on amalgamation of said M.E. School with Chapakhowa Town High School, in terms of the order dated 02.08.2017, noted above, he became the Assistant Headmaster of said amalgamated Chapakhowa Town High School.

7. From the said amalgamation order dated 02.08.2017 amalgamating said Chapakhowa Town M.E. School with Chapakhowa Town High School (Annexure-3 to the petition), it can be seen from the list of the teaching and non-teaching staff of said amalgamated Chapakhowa Town High School that the name of the petitioner figured at Sl. No. 11 as the Assistant Headmaster of the said amalgamated High School.

8. Since the petitioner became the Assistant Headmaster of said amalgamated Chapakhowa Town High School, being the Headmaster of erstwhile Chapakhowa Town M.E. School, in pursuance of the order of the Director of Secondary Education, Assam under letter No. DSE/GIS/AHM/238/2021/3 dated 31.12.2021, the Inspector of Schools, Tinsukia District Circle, Tinsukia by order under Memo No. IS/TDC/Fix/ AHM/97-102 dated 05.03.2022 allowed the petitioner to receive Scale of Pay of Rs. 22,000/- to Rs. 97,000/- with Grade Pay of Rs. 9,400/- per month on his promotion to the post of Assistant Headmaster of amalgamated Chapakhowa Town High School w.e.f. 02.08.2017 and his pay was fixed at Rs. 56,030/- per month.

9. As the regular Headmaster of said Chapakhowa Town High School, Sjt. Lakhmiswar Gogoi retired from service on 31.12.2020 on attaining the age of superannuation at 60 years, the DSE, Assam by order under No. GB-EST/Apptt/FP/ 17/2019/68 dated 29.12.2020 allowed the petitioner to be the Headmaster in-charge of said Town High School along with financial power to draw and disburse the salary etc. of the staff of said High School in addition to his normal duties as an Assistant Teacher under FR 49(C) specifying that the said order is purely temporary arrangement and shall come into force w.e.f. 01.01.2021.

10. However, by the impugned order dated 09.05.2022, the DSE, Assam found the petitioner to be junior to the respondent No. 4 in terms of receiving of the Graduate Scale of Pay and therefore, by the said order dated 09.05.2022 allowed the respondent No. 4 to be the Headmaster in-charge of said Chapakhowa Town High School along with financial power to draw and disburse the salary etc. of the staff of said High School in addition to his normal duties as an Assistant Teacher of said School under FR 49 (C). Further, by the said order dated 09.05.2022, the DSE, Assam cancelled its earlier order dated 29.12.2020, noted above, whereby the said authority earlier allowed the petitioner as the Headmaster in-charge of said amalgamated Chapakhowa Town High School.

11. The President of the School Management and Development Committee as well as the Headmaster in-charge of said amalgamated Chapakhowa Town High School in June, 2022 submitted a seniority list of teaching staff of said amalgamated High School showing the petitioner at seniority position No. 1 who received the Assistant Headmaster Scale of Pay with Grade Pay of Rs. 9,400/- since 02.08.2017 and that of the respondent No. 4 at seniority position No. 4, an Assistant Teacher in the said amalgamated High School who received Graduate Scale of Pay with Grade Pay of Rs. 8,700/- since 09.01.1992.

12. The respondent No. 4 filed an affidavit in the matter stating that as he received Graduate Scale of Pay since 09.01.1992, whereas the petitioner received Graduate Scale of Pay only w.e.f. 24.02.2004, that is much later than him, therefore, he is senior to the petitioner and as such, by the impugned order dated 09.05.2022, the DSE, Assam determined him to be the senior than the petitioner and accordingly, by the said order dated 09.05.2022, the DSE, Assam allowed him to be the Headmaster in-charge of said amalgamated Chapakhowa Town High School. The respondent No.4 also stated that pursuant to the said order dated 09.05.2022 of the DSE, Assam, he had already joined as the Headmaster in-charge of the said High School on 04.06.2022. As such, he being the senior to the petitioner, who received the Graduate Scale of Pay since 09.01.1992, submitted that the impugned order dated 09.05.2022, whereby the DSE, Assam allowed him to be the Headmaster in-charge of said amalgamated Chapakhowa Town High School, does not call for any interference.

13. The Assam Secondary Education (Provincialised Schools) Service Rules, 2018, a statutory Rule under Article 309 of the Constitution of India that regulates the recruitment and the conditions of service of the teaching and non-teaching employees appointed to the Assam Secondary Education (Provincialised Schools) Service that came into force w.e.f. 10.10.2019 is applicable for consideration to the post of Headmaster in such provincialised Secondary Schools of the State.

14. Rule 14 of said 2018 Rules provides for the "Recruitment to the post of Head Master/Superintendent and Procedure thereof" and the Rule 14(1) stipulates as follows –

"The post of Headmaster of a High School and Superintendent of a High Madrassa shall be filled up by promotion from the candidates amongst the Graduate Teachers as per District-wise seniority list on the recommendation of the District Selection Committee constituted under Rule 16 (2). The selection of Headmaster and Superintendent shall be based upon seniority and satisfactory Annual Confidential Report for last 3 consecutive years as per procedure provider under sub-rule (3):

Provided that the seniority of the Graduate Teacher shall be determined from the date of receiving Graduate scale of pay by the respective Assistant Teacher."

15. Rule 14 (2) of said 2018 Rules specifies amongst others the eligibility for the post of Headmaster/Superintendent in High School/High Madrassa as the case may be shall be as follows –

(a) *He must be BA/B.Sc./B.Com with B.T./B.Ed. degree from any recognize University. In respect of Hindi Teacher having degree qualification, the Hindi 'Parangat' and 'Nishanar' shall be considered instead of B.T./B.Ed;*

(b) *He must have at least 10 years of teaching experience as Graduate Teacher:*

Provided that the Graduate teacher shall include the cadre of Assistant Headmaster for the purpose of selection to the post of Headmaster and the seniority of the Assistant Headmaster shall be counted from the date of joining as Graduate Teacher with graduate scale of pay:

Provided further that in case of amalgamated High School where ME/MV school has been amalgamated, the Assistant Headmaster is eligible for selection as Headmaster subject to the condition that the incumbent should have at least 15 years of teaching experience as graduate teacher including the period of service in the erstwhile ME/MV School.

16. Rule 3 of said 2018 Rules relates to "Classes and Cadres" where the Assistant Headmaster is under the cadre of Class-III(i) as provided under Rule 3(1)(b)(i), whereas the Graduate Teacher is under Class-III(ii)(a) as provided under Rule 3 (1)(b)(ii)(a) of said 2018 Rules.

17. The petitioner was the regular Headmaster of Chapakhowa Town M.E. School and on the

amalgamation of said M.E. School with Chapakhowa Town High School on 02.08.2017, the petitioner became the Assistant Headmaster of said amalgamated Chapakhowa Town High School and since 02.08.2017, he is receiving the higher Scale of Pay of Assistant Headmaster in a provincialised Secondary School of the State than the respondent No. 4 who continued to receive Graduate Scale of Pay and the same is not objected or challenged by the respondent No. 4.

18. However, it is seen that both the petitioner and the respondent No. 4 are graduates but neither of them possesses one of the essential eligibility i.e., B.Ed./B.T. degree to be eligible for the post of Headmaster in a provincialised Secondary School of the State including said amalgamated Chapakhowa Town High School.

19. 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.

20. Considering the above, the impugned order No. GB-EST/Apptt/FP/16/2011/ 292 dated 09.05.2022 issued by the Director of Secondary Education, Assam being not tenable in law, is hereby set aside and quashed. Consequently, the interim order of status quo as on 13.06.2022 passed earlier in the present proceeding on 13.06.2022, which is still in force, stands vacated/is hereby recalled.

21. It is seen from the seniority list of teachers serving in said amalgamated Chapakhowa Town High School (Annexure-7 to this petition) that none of its teaching staff possess the requisite B.T./B.Ed. degree or Hindi "Parangat" and "Nishanar" degrees with graduation to be eligible for the post of Headmaster in provincialised Secondary Schools of the State.

22. In view of the above, the Inspector of Schools, Tinsukia District Circle, Tinsukia shall hold the charge of Headmaster in-charge of said amalgamated Chapakhowa Town High School, Chapakhowa of Sadiya Sub-Division, Tinsukia along with the financial power to draw and disburse the salary etc. of the teaching and non-teaching staff of said High School in addition to his normal duties under FR 49 (C) until a regular and eligible teacher is promoted to the post of Headmaster in said High School as provided under Rule 14 (2) of the 2018 Rules, noted above. For that purpose, the Director of Secondary Education, Assam shall pass a necessary order forthwith.

23. With the above observation and direction, this writ petition stands allowed to the extent above.

JUDGE

Comparing Assistant