

GAHC010129462021



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

Case No. : WP(C)/4241/2021

MD. BADAR ALI
S/O- MAHAMAD ALI, R/O- VILL- NARAVITA, P.O. BONGAIGAON, DIST.-
BONGAIGAON, ASSAM, PIN- 781346

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, ELEMENTARY
EDUCATION DEPTT., DISPUR, GHY-6

2:THE SECRETARY TO THE GOVT. OF ASSAM
EDUCATION DEPTT.
DISPUR
GHY-6

3:THE DIRECTOR TO THE ELEMENTARY EDUCATION DEPTT.
GOVT. OF ASSAM
KAHILIPARA
GHY-19

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER
BONGAIGAON
PIN-

5:THE BLOCK ELEMENTARY EDUCATION OFFICER
SRIJANGRAM BLOCK
BANGAIGAON
ASSAM
PIN-

6:SURANJAN KR. CHANDA
I/C HEADMASTER

TOPGAON MEM SCHOOL
SRIJANGRAM BLOCK
BANGAIGAON
ASSAM
PIN

Advocate for the Petitioner : MRS A BUJARBARUAH

Advocate for the Respondent : GA, ASSAM

B E F O R E

HON'BLE MR. JUSTICE NELSON SAILO

ORDER

13.10.2023

Heard Mr. A R Bhuyan, learned counsel for the petitioner and Mr. A R Sikdar, learned counsel for the respondent No. 6. Also heard Mr. P N Sharma, learned Standing Counsel, Elementary Education Department for the official respondents.

By filing this writ petition, the petitioner has challenged the Speaking Order dated 31.07.2021 (Annexure-9) by which the private respondent No. 6 has been given the charge of Headmaster of Topgaon MEM, which was provincialised on 19.11.1991. As per the Speaking Order, since the petitioner is not a trained Arabic teacher, preference has been given to the respondent No. 6. Mr. A R Bhuyan, learned counsel for the petitioner referring to the procedures for promotion to the post of Headmaster of ME/MEM/MV and Senior Basic Schools notified on 02.03.2010 by the Education (Elementary) Department, more particularly Clause-(5), submits that even though one is not a trained teacher but if he or she has 15 (fifteen) years of continuous service and has not been given the facility for the prescribed training, he or she can be considered for

promotion to the post of Headmaster. The learned counsel, therefore, submits that the petitioner admittedly is senior to the respondent No. 6 and having served more than 15 (fifteen) years under the said Institution, the petitioner ought to have been given the charge of the Headmaster and also considered for promotion to the said post.

Per contra, Mr. A R Sikdar, learned counsel submits that an enquiry has been conducted as directed by this Court and during the enquiry, it was found that the petitioner was not qualified at the initial stage of his appointment as teacher of the said School and apart from being under age. Therefore, there is nothing wrong in the Speaking Order dated 31.07.2021.

Mr. P N Sharma, learned Standing Counsel, Elementary Education Department also adopts the argument of the Mr. A R Sikdar and submits that the report has been filed along with the counter affidavit by the respondent Department.

Upon considering the rival contentions, Court is of the considered view that the matter should be looked into by the Director, Elementary Education Department and who shall take a decision in the matter after giving due opportunities to the parties concerned to project their case and hear them personally.

Accordingly, the writ petition is disposed of with a direction to the petitioner and the private respondent No. 6 to submit their respective claim before the Director, Elementary Education Department (respondent No. 3) within 15 days from today and the Director, thereafter, upon receiving the same within a period of one month, shall consider and dispose of the same by passing a Speaking Order afresh. It is made clear that before taking such decision, the Director shall give personal hearing to the rival parties, including the

Department officials. The order to be passed shall be duly communicated to the parties concerned.

With the above observation and direction, the writ petition stands disposed of. The Speaking Order dated 30.07.2021 is hereby set aside. Until the passing of the Speaking Order by the Director, the status quo as on today, regarding the running of the school shall be maintained.

JUDGE

Comparing Assistant