

GAHC010130392013



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

Case No. : WP(C)/3355/2013

PRABIR KUMAR PAUL
S/O- LT. CHITTA RANJAN PAUL, R/O VILL.- JAGANNATH BARI ROAD, P.O.
and P.S.- HAFLONG, DIST.- DIMA HASAO AUTONOMOUS COUNCIL, ASSAM,
PIN- 788810.

VERSUS

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

2:THE ADDL. DIRECTOR OF EDUCATION HILLS
ASSAM
HAFLONG
PIN- 788819.

3:THE CHIEF EXECUTIVE MEMBER
DIMA HASAO AUTONOMOUS COUNCIL
HAFLONG
ASSAM
PIN- 788819.

4:THE EXECUTIVE MEMBER I/C EDUCATION
DIMA HASAO AUTONOMOUS COUNCIL
HAFLONG
ASSAM.

5:THE PRINCIPAL SECY. T
DIMA HASAO AUTONOMOUS COUNCIL
HAFLONG
ASSAM
PIN- 788819.

6:THE INSPECTOR OF SCHOOLS
DIMA HASAO AUTONOMOUS COUNCIL
HAFLONG
ASSAM.

7:SWAPAN KUMAR BARMAN
S/O- NOT KNOWN
THE VICE PRINCIPAL OF GOVT. BOYS' HIGHER SECONDARY SCHOOL
HAFLONG
R/O VILL.- HOUSING BOARD QUARTER
HAFLONG TOWN
P.O. and P.S.- HAFLONG
DIST.- DIMA HASAO
ASSAM
PIN- 788819

Advocate for the Petitioner : MR.S K DAS

Advocate for the Respondent : MR. U K NAIR, SC, WPT AND BC

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 09.03.2023.

Heard Mr. A.K. Purakayastha, learned counsel for the petitioner. Also heard Mr. A. Khanikar, learned standing counsel for respondent no.1, Mr. S. Phukan, learned standing counsel for Dima Hasao Autonomous Council, representing respondent nos. 2 to 6; Mr. R. Dhar, learned standing council for WPT & BC Department and also heard Mr. U.K. Nair learned senior counsel, appointed as an amicus curiae in this case, assisted by Ms. D. Mahanta, learned counsel.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the order dated 11.04.2013, by which promotion was

made in favour of respondent no. 7 for the Post of Vice Principal of the Government Boys' Higher Secondary School, Halflong, Dima Hasao.

3. The pleading, in its entirety, has not been referred to the case in view of the order proposed to be passed. It would suffice to mention that the case projected by the petitioner is that he had become entitled to promotion and as per the reservation roster, the post was for open category candidates. Accordingly, it is projected that the candidature of the petitioner, who was the senior-most teacher of the Government Boys' H.S. School Halflong, should have considered for promotion in place of private respondent no. 7. The stand of the respondent nos. 2 to 6, in their affidavit-in-opposition is that the petitioner was initially appointed as Assistant Teacher in Grade-B, Assam Lower School Services, in Government M.E. School, Harangajao vide order dated 07.01.1977 issued by the Inspector of Schools, N.C. Hills, Halflong, for which his past service was not taken into account for promotion to the post of Vice Principal. His further stand was to the effect that for promotion to the post of Vice Principal, the seniority in High School and Higher Secondary School from Graduate Teacher serving in Class-II (Junior) is taken into account. It is also projected that in this case, the respondent no. 7 was considered for promotion on account of the fact that there were two backlog vacancies for ST(P) category for the post of Vice Principal as per 100 point roster policy vide notification dated 22.03.2013. It was projected that the petitioner was temporarily upgraded to the post of Assistant Teacher (Class II) vide order dated 29.07.1987, which was subject to approval, but the up-gradation of the service of the petitioner as Assistant Teacher, (Class II) A.S.S. (Junior) was approved by order dated 19.12.1990 issued by the Director of Secondary Education, Assam. Accordingly, it is claimed that the petitioner was born in the

cadre of Assistant Teacher Class-II, ASS Service on 19.12.1990 and therefore, the appointment to the backlog vacancies as well as the promotion of respondent no. 7 had been justified.

4. Referring to affidavit-in-reply filed by the petitioner, the learned counsel for the petitioner has submitted that as per the gradation list of Graduate Teachers, the name of the petitioner is at serial no. 1 and his date of joining is shown as 29.07.1987 and his date of birth has been recorded as 22.10.1954, and that the name of the respondent no. 7 is at serial no. 2, whose joining date is shown as 09.07.1988 and his date of birth has been recorded as 05.01.1964. Hence, it is projected that the seniority for the purpose of filling up the post of Vice Principal ought not to be considered school wise but ought to have been considered district wise. Submissions has also been made to project that one of the persons who was an ST(P) candidate, got appointment by projecting herself to be ST(H) candidate by dint of her marriage to ST(H), which according to him, was not permissible as the said person was ST(P) by birth. However, the said submissions regarding the status of the concerned persons regarding ST(H) and ST(P) has not been gone into as the said persons are not impleaded as respondents in this writ petition and therefore, enquiry regarding their ST(P) and/or ST(H) cannot be made without hearing them.

5. The learned amicus curiae, in course of his submissions has submitted that as per the Annexure-R produced by the petitioner in her affidavit-in-reply, there are two schools in which seniority list was maintained, being (i) Government Boys' Higher Secondary School, and (ii) Government Girls' Higher Secondary School. Accordingly, it is submitted that if there are only two posts of Vice Principal available in the District, there is no legal requirement of following

the roster policy in view of the decision of this Court in *Debo Kumar Dutta & Anr. v. State of Assam & Ors., (2012) 2 GLR 207*. However, it is submitted that the pleaded case of the contesting parties for the post of Vice Principal on promotion was based on the 100 points roster. Therefore, from the submissions made by the learned amicus curiae, the following question arises for determination in this case, being-

When only two posts of Vice Principal is available to be filled up on promotion, whether in light of the ratio of the case of Debo Kumar Dutta (supra), 100 point roster is required to be followed?

6. On the said legal issue being raised by the learned amicus curiae, the learned standing counsel for the State respondents has not been able to advance his submissions on the said legal point.

7. Under such circumstances, and in view of the decision of this Court in the case of *Debo Kumar Dutta (supra)*, the Court deems it appropriate to relegate the parties for a decision by the Additional Director of Education (Hills), Assam (respondent no. 2).

8. Accordingly, the Additional Director of Education, Hills (respondent no.2), is directed to examine the claim of the petitioner as well as the respondent no. 7 on the basis of the query of the Court as formulated herein before. The respondent no. 2 shall issue notice to the respondent no. 7 to participate in the hearing.

9. The petitioner shall produce a certified copy of the order before the respondent No. 2 within a period of 15 days from today and on receipt of the same, the respondent no. 2 shall decide the matter within a period of 6 (six)

weeks from the date of service of notice on the respondent no. 7.

10. This writ petition stands disposed of in terms of the aforesaid observations.

JUDGE

Comparing Assistant