

GAHC010132972022



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

Case No. : WP(C)/5013/2022

MOZIRAN NESSA
D/O HASHEM ALI,
VILL.- SUAPATA PART-II, P.O.- BILASIPARA, P.S.- CHAPAR, DIST.- DHUBRI,
ASSAM, PIN- 783348.

VERSUS

THE STATE OF ASSAM AND 7 ORS
REP. BY COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
EDUCATION (SECONDARY) DEPTT., DISPUR, GHY- 6.

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

3:THE DEPUTY COMMISSIONER, DHUBRI, ASSAM.

4:THE INSPECTOR OF SCHOOLS DHUBRI DISTRICT CIRCLE DHUBRI
ASSAM

5:THE GUARDIAN MINISTER OF DHUBRI DISTRICT
ASSAM MR. RANJIT KUMAR DAS
R/O ASSAM SECRETARIAT COMPLEX SUPERMARKET
DISPUR GHY- 06.

6:THE I/C HEAD MASTER OF MASHANER ALGA HIGH SCHOOL
VILL.- SUAPATA P.S.- CHAPAR DIST.- DHUBRI ASSAM PIN- 783348.

7:ABDUL BARI SARKAR S/O LT. JAHOR ALI MUNSHI (HAJI)
VILL.- BILASIPARA WARD NO. 4 P.O.- BILASIPARA P.S.- BILASIPARA
DIST.- DHUBRI ASSAM PIN- 783348.

8:SHOHID ALI AHMED S/O HARAN ALI SHEIKH VILL. SUAPATA PT. I
P.O.- BILASIPARA P.S.- CHAPAR DIST.- DHUBRI ASSAM PIN- 783348

Advocate for the Petitioner : MR. A Y CHOUDHURY
Advocate for the Respondent : GA, ASSAM
Mr. A. K. Hussain

:::BEFORE:::

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date of hearing : 04-12-2023

Date of Judgment & Order : 07-12-2023

JUDGMENT & ORDER(CAV)

Heard Mr. A. Y. Choudhury, learned counsel appearing on behalf of the petitioner. Also heard Mr. U. Sarma, learned standing counsel, Secondary Education Department, Government of Assam, appearing on behalf of respondents No. 1, 2 & 4; and Mr. A. K. Hussain, learned counsel, appearing on behalf of respondent No. 7.

2. The issue arising in the present writ petition, pertains to the selection and appointment of the respondent No. 7 for the post of President of the School Management and Development Committee of Mashaner Alga High School, Dhubri. The manner and method for selection for the post of President and Vice-President of a School Management and Development Committee is laid down in the Notification bearing No. ASE-416/2014/116, dated 24.06.2016, and in terms thereof; the Inspector of Schools after consultation with the Principal, Headmaster and local people is to forward a panel consisting of the required number of persons to the Director of Secondary Education, Government of Assam, for the post of President and Vice-President with the recommendation of the Deputy Commissioner of the District. The Director of Secondary Education, Assam, thereafter, shall upon consideration of the names so forwarded and by giving his

comments thereon, forward the names to the Government for final selection.

3. The said Notification was modified vide a Notification, dated 27.10.2021, and the power to select the President and the Vice-President of Mashaner Alga High School, Dhubri, was delegated to the Deputy Commissioner of the District who is now required to make the selection with the approval of the Guardian Minister of the District. Accordingly, following the procedure; a panel of the names of 4 persons including the writ petitioner and the respondent No. 7 came to be recommended by the Headmaster in terms of the Notification, dated 24.06.2016, and on receiving the approval from the Guardian Minister, the Deputy Commissioner, Dhubri, vide Notification, dated 29.03.2022, selected the respondent No. 7 as the President of the School Management and Development Committee of Mashaner Alga High School, Dhubri, which is presently under challenge in this writ petition.

4. Mr. Choudhury, learned counsel for the petitioner, by referring to the various Notifications and the panel prepared, has submitted that the requirement for selection of a person as the President of the School Management and Development Committee, is that such a person should be a "local, educated, reputed citizen having no political career".

Mr. Choudhury, learned counsel, has also submitted that the petitioner is a resident in the vicinity of Mashaner Alga High School, Dhubri, while the respondent No. 7 resides at a distance of around 20 Kms., from the Mashaner Alga High School, Dhubri, and as such; the respondent No. 7 cannot be denoted to be a

“local person” for being considered for appointment as the President of the School Management and Development Committee of Mashaner Alga High School, Dhubri.

Mr. Choudhury, learned counsel appearing on behalf of the petitioner, has further submitted that the respondent No. 7 who was the Headmaster of Mashaner Alga High School, Dhubri, had retained some documents of the School which was not returned even after his retirement.

It is, therefore, submitted by Mr. Choudhury, that the said conduct of the respondent No. 7 makes him ineligible for being considered for appointment to the post of President of the School Management and Development Committee of Mashaner Alga High School, Dhubri.

5. Per contra, Mr. Hussain, learned counsel for respondent No. 7, by referring to the affidavit-in-opposition filed by and on behalf of respondent No. 7; has contended that he was born and brought up in the same village wherein the Mashaner Alga High School, Dhubri, is situated and was a founder Assistant Teacher of the said School. The respondent No. 7, prior to his retirement, was serving as the Headmaster of the School, in question, and presently, his residence is at a place from where he can commute to the school in a short time.

Mr. Hussain, learned counsel, has also contended that the contention of the writ petitioner that he had retained some documents of the said School, is clearly misplaced in-as-much as for the purpose of processing his pension and pensionery benefits, which were subsequently settled by the Government; the School

authorities on 09.02.2019, issued a certificate certifying that there was no outstanding liability against his name in the said School.

It is submitted on behalf of respondent No. 7 that his selection was made strictly in terms of the Government Notifications governing the issue and there is no illegality or irregularity in the same.

6. I have heard the learned counsels appearing for the parties and also perused the materials made available on record.

7. The Notifications available towards laying down the procedure for selection to the post of President of the School Management and Development Committee, does not define the term "local" and it is only the contention of the petitioner that the term "local" is to be interpreted basing on the distance between the residence of the person who is being considered for the post of the President of the School Management and Development Committee and the site of the school, and a person residing far away from the school, cannot be denoted as a 'local person'.

8. The said contention on the face of it, looks attractive but when examined in the context of the authorities involved in the process of selection of President of the School Management and Development Committee, i.e. Inspector of Schools, the Deputy Commissioner and the Guardian Minister of the District, the same cannot be sustained inasmuch as all the authorities involved in the process exercise jurisdiction within the district wherein the school is so situated and as such a person being considered for the post of President of the School, in question, can be

a person who resides within the District provided he was so nominated by the School as well as the general public.

9. In such view of the matter; the contention of the petitioner that given the long distance between the school, in question, and the residence of respondent no. 7, renders the respondent No. 7 ineligible for consideration for selection as the President of the School Management and Development Committee of Mashaner Alga High School, Dhubri, clearly cannot be accepted and requires to be rejected. The Respondent no. 7 is a resident of the district wherein the school is situated and was duly nominated for the post of President, School Management and Development Committee of Mashaner Alga High School, Dhubri, by the school authorities and the general public and as such, he is eligible for being considered for the post, in question.

10. The second contention of the petitioner that the respondent No. 7 while functioning as the Headmaster of the school, had retained some documents which even after his retirement, was not returned; clearly indicates that he is not a person who is beyond doubt or suspicion or a person having a good reputation in the locality, is now considered. The said contention is considered only to be rejected *firstly*; on the ground that there is no material produced on record to specify the nature of the documents pertaining to the school in question, purportedly retained by the Respondent No. 7 even after his retirement and *secondly* on the ground that in the certificate, dated 09.02.2019, issued to the Respondent No. 7; the School authorities while certifying that he had no outstanding liabilities towards his School, no mention came to be made of any

document of the school being retained by the Respondent No. 7 even after his retirement.

11. Accordingly, both the contentions raised by the petitioner does not merit acceptance. Further, it is to be noted herein that on account of the selection made in respect of the respondent No. 7 to the post of President of the School Management and Development Committee of Mashaner Alga High School, Dhubri; no fundamental and/or legal right of the petitioner came to be infringed. There is no *mala fide* alleged in the writ petition against the authorities involved in the process of selection of the respondent No. 7 for appointment as the President of the School Management and Development Committee of Mashaner Alga High School, Dhubri.

12. In view of the conclusions reached herein above; no right of the petitioner having been infringed, the present writ petition has no merit and the same is accordingly dismissed. However, there shall be no order as to costs.

JUDGE

Comparing Assistant