

GAHC010134452018



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

**Case No. : Review.Pet./123/2018**

SRI SANJIB KUMAR TALUKDAR  
S/O SRI RAMPOD CHAKRAVARTY, R/O WARD NO. 2, PATHSALA TOWN, P.O.  
AND P.S. PATHSALA, DIST. BARPETA, ASSAM.

VERSUS

SRI RANJAN CHAKRAVARTY  
S/O SRI RAMPOD CHAKRAVARTY, R/O WARD NO. 2, PATHSALA TOWN, P.O.  
AND P.S. PATHSALA, DIST. BARPETA, ASSAM.

2:THE STATE OF ASSAM.  
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM  
EDUCATION (SECONDARY) DEPARTMENT  
DISPUR  
GUWAHATI-781006.

3:THE DIRECTOR OF SECONDARY EDUCATION

ASSAM  
KAHILIPARA  
GUWAHATI-781019.

4:THE SCHOOL MANAGING AND DEVELOPMENT COMMITTEE

REPRESENTED BY ITS PRESIDENT  
BAJALI H.S SCHOOL  
PATHSALA  
DISTRICT - BARPETA  
ASSAM.

5:THE INSPECTOR OF SCHOOLS

BARPETA DISTRICT CIRCLE  
BARPETA  
ASSAM

**Advocate for the Petitioner** : MR. B D GOSWAMI

**Advocate for the Respondent** : SC, ELEM. EDU

**BEFORE**

**HON'BLE MR. JUSTICE MANASH RANJAN PATHAK**

**ORDER**

**22-08-2023**

Heard Mr. B. D. Goswami, learned counsel for the review petitioner and Mr. J. Patowary, learned counsel for the respondent No. 1. Also heard Ms. H. Terangpi, learned Standing counsel, Department of School (Secondary) Education, Assam for the respondent Nos. 2, 3 & 5.

**2.** The respondent No. 1 herein as the petitioner preferred a writ petition being WP(C) No. 2914/2018 praying amongst others for direction to the respondent authorities in the Secondary Education Department to hold the present review petitioner i.e., the respondent No. 5 therein to be junior to him and to consider him to be the senior most in the cadre of Assistant Teachers in Bajali Higher Secondary School by adjudicating that the order dated 27.04.2005 transferring him to Bajali H.S. School from Paka H.S. School was in public interest and further to restrain the respondent authorities in the Secondary Education Department from proceeding with any fresh round of selection for the post of Vice-Principal in said Bajali H.S. School.

**3.** After hearing the learned counsels for the parties and considering the entire aspect of the matter, the Court by order dated 21.05.2018 disposed of said WP(C) No. 2914/2018 preferred by the respondent No. 1 herein directing the respondent authorities in the Secondary Education Department to fill up the post of Vice-Principal of said Bajali H.S.School as per the provisions of Rules 14(1), 15 and 16 of the Assam Secondary Education (Provincialised) Service Rules, 2003, as amended, after determining the combined seniority of the eligible Post-Graduate Teachers as well as the Graduate Teachers of said Bajali H.S. School including the writ petitioner, i.e., the respondent No. 1 and the

respondent No. 5, i.e., the review petitioner herein.

**4.** By this petition, the review petitioner, i.e., the respondent No. 5 of said WP(C) No. 2914/2018 has prayed for review of the said order dated 21.05.2018 passed in WP(C)No. 2914/2018 stating that as he was appointed by the direct recruitment, his seniority is to be determined in terms of the provisions of Rule 24 (1) of the said 2003 Rules whereas the respondent No. 1/petitioner of said WP(C) No. 2914/2018 having joined Bajali H.S. School admittedly on transfer, his seniority is to be decided in terms of the provisions of Rule 24 (3) of the said 2003 Rules and not as per Rule 24 (1) of said 2003 Rules as mentioned in the order under review and to that extent, as per the review petitioner, there is an error on the face of the records and as such, said order dated 21.05.2018 passed in WP(C) No. 2914/2018 should be rectified or reviewed suitably.

**5.** It is an admitted position that the review petitioner was directly appointed as an Assistant Teacher in said Bajali H.S.School whereas by order dated 27.04.2005, the respondent No. 1/petitioner of said WP(C) No. 2914/2018 was transferred to Bajali H.S.School. Whether the respondent No. 1 i.e., the petitioner therein was transferred from Paka H.S. School and was posted at Bajali H.S. School by order dated 27.04.2005 on public interest or at his own request, the issue relating to the same is presently pending before the Hon'ble Division Bench of this Court for adjudication.

**6.** The Assam Secondary Education (Provincialised) Service Rules, 2003 is a statutory Rule under Article 309 of the Constitution of India that was in force at the time of said order dated 21.05.2018 passed in said WP(C)No. 2914/2018.

**7.** It is to be noted herein that the Assam Secondary Education (Provincialised Schools) Service Rules, 2018 came into force only w.e.f. 10.10.2019.

**8.** Rule 14 of the said 2003 Rules relates to "Recruitment to the Post of Vice- Principal of H.S. School and H.S. & Multipurpose School" wherein the seniority of the teachers for the post of Vice-Principal in any such H.S. School and H.S. M.P. School is to be determined as per the provisions of Rule 24 (1) of said 2003 Rules.

**9.** Rule 24 of said 2003 Rules relates to "Seniority" and Rule 24(1) of said 2003 Rules stipulates as follows –

*"The seniority of a member in a cadre appointed by direct recruitment shall be determined according to the order of the preference in the respective select list finally*

*approved by the appointing authority under rule 7(7) in respect of Post Graduate Teacher and rule 8(9) in respect of Graduate teacher, if he joins the appointment within 15 days from the date of receipt of the order of appointment or within the extended period as mentioned in rule 19.”*

**10.** Though the review petitioner is praying for inclusion of Rule 24 (2)(iii) with regard to determine the seniority between the review petitioner and the respondent No. 1 herein but on clear reading of said 24(2)(iii) of the 2003 Rules, it is found that the same relates to determination of seniority for promotion to the post of Headmaster/Superintendent/Assistant Headmaster/ Assistant Superintendent and as such, Rule 24 (2)(iii) is not applicable for determining the inter-seniority of teachers of Graduate teacher and Post-Graduate teacher in a school for filling up of the post of Vice-Principal.

**11.** Considering the above, it is made clear that said 2003 Rules is a statutory Rule under Article 309 of the Constitution of India and the Court by way of considering this review petition preferred by the petitioner cannot incorporate Rule 24(2)(iii) as prayed for in determining the inter-se-seniority between the review petitioner vis-à-vis the respondent No. 1 herein, for the post of Vice-Principal in said Bajali H.S. School, Bajali during the force of the Assam Secondary Education (Provincialised Schools) Service Rules, 2018.

**12.** For the reasons above, this review petition being devoid of merit, stands dismissed.

**JUDGE**

**Comparing Assistant**