

GAHC010139992022



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

Case No. : WA/363/2022

RANJAN TAMULI
S/O- LATE ROMA KANTA TAMULI, SUBJECT TEACHER, CHAKALAGHAT
HIGHER SECONDARY SCHOOL, DIST. NAGAON, ASSAM

VERSUS

HARESH CHANDRA SARMAH AND 5 ORS. F
S/O- LATE BADAN CHANDRA SARMAH, R/O- SOUTH HAIBARGAON, NEW
COLONY PATH, HAIBARGAON, DIST. NAGAON, ASSAM, PIN- 782002.

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

3:THE DIRECTOR OF SECONDARY EDUCATION
GOVERNMENT OF ASSAM
KAHILIPARA GUWAHATI-781019.

4:THE INSPECTOR OF SCHOOLS
NAGAON DISTRICT CIRCLE NAGAON.

5:THE PRINCIPAL
CHAKALAGHAT HIGHER SECONDARY SCHOOL
P.O. CHAKALAGHAT
DIST. NAGAON ASSAM PIN- 782124.

6:KHIROD KR. BARUAH
S/O- LATE BHULARAM BARUAH
R/O- VILLAGE NO. 2 MULLAPATTY HAIBARGAON
P.O. HAIBARGAON
DIST. NAGAON ASSA

For the appellant : Mr. B. Chakraborty, Advocate
For the respondents: Mr. R. Mazumdar,
Standing Counsel, Education.

– B E F O R E –

HON'BLE THE CHIEF JUSTICE
HON'BLE MRS. JUSTICE MITALI THAKURIA

24-05-2023

S. Mehta, C.J.

Mr. B. Chakraborty, learned counsel has put in appearance on behalf of the appellant and Mr. R. Mazumdar, learned Standing Counsel has put in appearance on behalf of the respondent Education Department. No one has appeared for the respondent No.1/writ petitioner, Haresh Chandra Sarmah despite service of notice.

2. The instant writ appeal is directed against the order dated 21.06.2022 passed by the learned Single Judge whereby the writ petition, being, WP(C) 2229/2019 filed by the writ petitioner (respondent No.1 herein) was accepted and the respondents were directed to fill up the sanctioned post of Principal of Chakalaghat Higher Secondary School of Nagaon district by initiating a fresh process of advertisement and selection, as provided under the Assam Secondary Education (Provincialised Schools) Service Rules, 2018.

3. We have heard the learned counsel appearing for the parties and have gone through the impugned order and also perused the material available on record.

4. Brief facts relevant and essential for disposal of the appeal are noted

hereinbelow.

An advertisement for selection and appointment to the post of Principal of Chakalaghat Higher Secondary School, Nagaon was issued on 21.06.2016 and after undertaking the process of selection, one Shri Khirod Kr. Baruah, Subject-Teacher (respondent No.6 herein) was appointed as the Principal of the said school. The writ petitioner/respondent No.1 challenged the selection and appointment of Shri Khirod Kr. Baruah by filing writ petition, being, WP(C) 2744/2017.

However, since Shri Baruah, i.e. the respondent No.6 herein, was due to retire on 31.01.2019 on attaining the age of superannuation, a fresh advertisement dated 10.11.2018 was issued for initiating selection process for appointment to the post of Principal of the said school and a selection committee was constituted for the said purpose.

It may be stated here that during the pendency of WP(C) 2744/2017, on the prayer made by the respondent No.1/writ petitioner, this Court passed an ad-interim order dated 15.12.2018 staying further proceedings sought to be undertaken as a consequence of the Advertisement dated 10.11.2018. IA(Civil) No.216/2017 was filed seeking vacation of the order dated 15.12.2018, which came to be accepted on 29.01.2019 observing that the fresh advertisement dated 10.11.2018 was altogether alien to the writ petition as there were no pleadings of the writ petitioner for challenging the said advertisement. Thus, the application was allowed and the ad-interim stay order was vacated. The writ petition finally came to be disposed of as infructuous vide order dated 21.06.2022 because the respondent No.6 herein had in the meantime retired from service on 31.01.2019 on attaining the age of superannuation.

It is noteworthy that after vacation of the ad-interim stay order, the

exercise as a consequence of the Advertisement dated 10.11.2018 was resumed and after conducting the requisite procedure, the name of the appellant herein was recommended on 04.02.2019 for being appointed as the Principal of the said school.

In spite of the fact that the writ petitioner/respondent No.1 did not file any application for being appointed in pursuance to the Advertisement dated 10.11.2018, he preferred the captioned writ petition, WP(C) 2229/2019 which has been accepted by the learned Single Judge by the impugned order with the following observations and directions:

“Since after more than 3 years of such selection on 04.02.2019 and in spite of the order of the Court dated 29.01.2019 passed in I.A.(Civil) No. 216/2019 in WP(C) No. 2744/2017, noted above, as the respondent authorities in the Secondary Education Department did not fill up the post of Principal of said Chakalaghat H.S. School, District-Nagaon and as in the meanwhile the Assam Secondary Education (Provincialised Schools) Service Rules, 2018 has come into force of w.e.f. 10.10.2019, it can be well presumed that the State Government in the Secondary Education have abandoned the process of selection for the vacant post of Principal in said Chakalaghat H.S. School, Nagaon for which advertisement was issued on 10.11.2018.”

5. It was contended by the appellant’s counsel that the impugned order, whereby the selection process undertaken consequent to the Advertisement dated 10.11.2018 has been interfered assuming that the State Government had abandoned the process of selection, is absolutely unjustified and contrary to the record. This Court’s attention was drawn to the averments made in paragraph 11 of the affidavit filed by the Director of Secondary Education Department,

wherein it is clearly stated that the selection process was undertaken with due adherence to the Rules and procedures. It was further contended that as the writ petitioner did not respond pursuant to the Advertisement dated 10.11.2018, he cannot claim to be aggrieved by the process being undertaken thereon.

6. Learned counsel for the appellant urged that there is no indication in the affidavit filed on behalf of the department that the selection process in question had been abandoned. He contended that the selection procedure was completed and the appellant was recommended for appointment as Principal since he was placed at the top of the merit list. The observation made by the learned Single Judge that the selection process had been abandoned by the authorities is contrary to the record and unjustly infringes upon the appellant's right for being considered for the post of Principal in spite of standing first in merit. He thus contended that there is no justification for the direction given by the learned Single Judge that a fresh selection process should be held after issuing a new advertisement and the same is liable to be reversed.

7. Mr. R. Mazumdar, learned counsel representing the Secondary Education Department supported the contention of the appellant's counsel that the selection process initiated under the Advertisement dated 10.11.2018 was never abandoned. He too, drew the Court's attention towards the affidavit-in-opposition filed on behalf of the department wherein no such indication is given that the selection process stood abandoned, rather it is only indicated that the writ petitioner/respondent No.1, who was not recommended in the earlier process, has filed the writ petition with ulterior motives to cause delay in the process of selection. It is further pointed out that the matter is yet to be finalised by the State Selection Board as well as by the Government.

8. Having considered the entirety of facts and circumstances as available on record, we are of the firm view that the writ petition filed by the respondent No.1, Haresh Chandra Sarmah, for questioning the legality and validity of the Advertisement dated 10.11.2018 was tainted with ulterior and *mala fide* motives.

9. Perusal of the impugned order would indicate that there is no whisper or discussion in the said order that the writ petitioner, who did not apply for selection, had any cause of action to challenge the advertisement dated 10.11.2018. The learned Writ Court, without any reason, went on to discuss the proceedings of the previous selection process undertaken vide Advertisement dated 21.06.2016, which had come to an end with the retirement of Khirod Kr. Baruah.

10. We feel that the observations made by the learned Single Judge that as the respondent authorities did not fill up the post of Principal for three years of the selection process undertaken on 04.02.2019 and since, during the intervening period, the Assam Secondary Education (Provincialised Schools) Service Rules, 2018 had come into force, it could very well be presumed that the authorities had abandoned the process of selection initiated vide Advertisement dated 10.11.2018, was absolutely unfounded and contrary to the record. There is no material available on the record of the writ petition that the proceedings of selection had been abandoned by the Secondary Education Department. On the contrary, the department had pertinently refuted this suggestion in paragraph 11 of its affidavit-in-opposition. Though it is true that the selection process initiated in pursuance of the Advertisement dated 10.11.2018 was not completed for three years, but in all probability, the said

delay can be attributed to the pendency of the maliciously filed writ petition by the writ petitioner/respondent No.1 herein and the fact that for two years the entire system was stalled owing to the Covid pandemic.

11. In any event, the fact that the appellant stood first in merit after facing process of selection, his rights could not have been frustrated by erroneous observations regarding the selection proceed having been abandoned. As a matter of fact, the impugned order is totally silent on this aspect as well as on the aspect that the writ petitioner Haresh Chandra Sarmah, without even applying in pursuance of the advertisement dated 10.11.2018 was precluded from challenging the same.

12. Consequently, the impugned order dated 21.06.2022 passed by the learned Single Judge suffers from error apparent on the face of record and cannot be sustained and the same is thus reversed. The respondents shall expedite the process of appointment to the post of Principal of Chakalaghat Higher Secondary School in Nagaon District pursuant to the Advertisement dated 10.11.2018 and shall endeavour to complete the same within next two months.

The writ appeal is allowed in these terms.

No order as to cost.

JUDGE

CHIEF JUSTICE

Comparing Assistant