

GAHC010144592022



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

Case No. : WP(C)/5077/2022

MD. ABDUR REZZAK
S/O- MD. JINNAT ALI, MA, B.ED., GRADUATE ASSISTANT TEACHER, DR.
ZAKIR HUSSAIN HIGHER SECONDARY SCHOOL, R/O- VILL. AND P.O.-
TAPAR PATHAR, PS CHHAYGAON, DIST. KAMRUP, ASSAM, PIN- 781137.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE SECRETARY, TO THE GOVT. OF ASSAM,
SECONDARY EDUCATION DEPARTMENT, ASSAM CIVIL SECRETARIAT,
DISPUR, GUWAHATI, ASSAM, PIN- 781006.

2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI
ASSAM
PIN- 781019.

3:THE INSPECTOR OF SCHOOLS
KAMRUP DISTRICT CIRCLE
AMINGAON
DIST. KAMRUP
ASSAM.

4:THE PRINCIPAL
DR. ZAKIR HUSSAIN HIGHER SECONDARY SCHOOL

VILL. TAPAR PATHAR
DIST.- KAMRUP
ASSAM
PIN- 781137

Advocate for the Petitioner : MR. A K DUTTA

Advocate for the Respondent : SC, SEC. EDU.

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

17/02/2023

Heard Mr. B Purkayastha, learned counsel for the petitioner and Mr. S M T Chistie, learned Standing counsel, Department of School Education (Secondary) for the respondent Nos. 1 to 3.

None appeared for the respondent No. 4, though names of the counsels have been reflected in the cause list.

Petitioner was appointed as a Hindi Teacher in Dr. Zakir Hussain M.E. Madrassa under Chhaygaon Education Block, District-Kamrup by the District Elementary Education Officer (DEEO, in short), Kamrup on 15.09.1993 pursuant to which he joined the said school on 15.09.1993 itself.

It is stated by the petitioner that the DEEO, Kamrup, Guwahati by an order dated 20.10.2012 confirmed his service as a Hindi Teacher of said M.E. Madrassa.

Subsequently, the DSE, Assam by an order dated 16.06.2017 amalgamated said Dr. Zakir Hussain M.E. Madrassa with Dr. Zakir Hussain High School under the provisions of the scheme of 'Siksha Khetra'.

Pursuant to the amalgamation order dated 16.06.2017 of the DSE, Assam, the petitioner became a Hindi Teacher of said High School. Said Dr. Zakir Hussain High School was again upgraded as a Higher Secondary School w.e.f. 21.03.2022. The in-charge Principal of said upgraded Higher Secondary School, Siddique Ali Ahmed shall retire from service on 31.03.2023 on attaining the age of superannuation at 60 years.

Petitioner has filed this writ petition on 22.07.2022 praying amongst others for a direction to the respondent authorities to (i) fill up the existing vacant post of Vice Principal of said Dr. Zakir

Hussain Higher Secondary School, (ii) direct the respondent authorities to consider his case to the post of Vice Principal of said Higher Secondary School and (iii) direct the respondent authorities to allow the petitioner to hold the charge of Principal of said Dr. Zakir Hussain Higher Secondary School on retirement of its Principal in-charge on 31.03.2023 stating that he is the only eligible teacher of the said H.S. School.

The Assam Secondary Education (Provincialisation Schools) Service Rules, 2018 that came into force w.e.f. 10.10.2019, i.e., a statutory Rule under Article 309 of the Constitution of India that regulates the recruitment and conditions of service of the teaching and non-teaching employees appointed to Assam Secondary Education (Provincialised Schools) Service.

Both Dr. Zakir Hussain M.E. Madrassa as well as Dr. Zakir Hussain High School are provincialised Secondary Schools and after their amalgamation by order dated 16.06.2017, said High School has now been upgraded to a Higher Secondary School.

Rule 13 of said 2018 Rules provides for recruitment to the post of Vice Principal and the selection procedure thereof.

As per the provisions of Rule 13 (1), the post of Vice Principal in such provincialised Higher Secondary School is filled up by way of promotion on the basis of combined seniority in the concerned school from the candidates amongst the Post Graduate Teachers and Graduate Teachers on the recommendation of the District Promotion Committee constituted under Rule 16(4) and the eligibility criteria to hold such post of Vice Principal in a provincialised Higher Secondary School are prescribed in Sub Rule (2) of Rule 13 of the said 2018 Rules.

As per the provisions of said Rule 13(4) of 2018 Rules, the District Promotion Committee constituted under Rule 16(4) after verifying the records pertaining to the seniority of service in the graduate scale of pay considering the satisfactory Annual Confidential Report for the last 3 (three) years, verification of records and merits of the candidates, is required to prepare the select list equal to the numbers of vacancies and the said select list, so prepared by the District Promotion Committee, is required to be approved by the Director of Secondary Education (DSE, in short), Assam after necessary verification. Only after receipt of the approval of the DSE, Assam on the basis of the select list, so prepared by the District Promotion Committee, the Inspector of Schools concerned is required to promote the concerned incumbent to the post of Vice Principal in a provincialised Higher Secondary School.

The petitioner in this writ petition did not state with regard to any sanctioned post of Vice Principal in the said Higher Secondary School. Even assuming that there is a vacant post of Vice Principal in the said upgraded Higher Secondary School, then the Vice Principal can be appointed in it only after following the provisions laid down in Rule 13 of the said 2018 Rules. As on date, no such process for selection of candidates for the post of Vice Principal in said Higher Secondary School has been initiated either by the Inspector of Schools, Kamrup or by the concerned District Promotion Committee.

Since the list prepared by the District Promotion Committee for promotion to the post of Vice Principal in the concerned Higher Secondary School is required to be approved by the DSE, Assam and such stage has not yet been reached, the Court is of the opinion that the prayer of the petitioner, for the aforesaid reason, being pre-mature in nature is infructuous.

During the deliberation of the matter, Mr. B Purkayastha, learned counsel for the petitioner placed a copy of the order dated 29.09.2022 issued by the Director of Secondary Education, Assam allowing one Sri Kamal Bhattarai, M.A., B.Ed., Assistant Teacher of Kusumtola Anchalik Higher Secondary School, a newly upgraded Higher Secondary School in the District of Sonitpur to hold the charge of Principal of said Higher Secondary School along with financial power to draw and disburse the salary etc. of the staff of the said school in addition to his normal duties as an Assistant Teacher under FR 49(c) vice one Sri Lalit Borah, Headmaster in-charge of the said H.S. School, relieved from the charge specifying that the said order is purely temporary in arrangement.

In the case in hand, the concerned incumbent holding the charge of Principal of said upgraded Higher Secondary School, namely, Siddique Ali Ahmed is yet to retire from service.

The DSE, Assam after consideration is required to pass an order enabling someone from the said Higher Secondary School to be its Principal in-charge.

The petitioner may have such grievances only when his claim is not considered and someone else is allowed to hold the post of Principal in-charge of said Higher Secondary school.

From the order dated 29.09.2022 of the DSE, Assam allowing said Sri Kamal Bhattarai, M.A., B.Ed., Assistant Teacher of Kusumtola Anchalik Higher Secondary School to hold the charge of Principal of the said Higher Secondary School, a newly upgraded Higher Secondary School can be seen that only after relieving the concerned in-charge Principal of the said Higher Secondary School, the DSE, Assam shall pass the necessary order.

As on date, since no such consideration is required to be made as the incumbent holding the charge of Principal of said Dr. Zakir Hussain Higher Secondary School is in service, the prayer of the petitioner for a direction to the respondent authorities to consider his case for the post of in-charge Principal of said Dr. Zakir Hussain Higher Secondary School is pre-mature in nature.

Accordingly, this writ petition, being pre-matured, stands rejected.

JUDGE

Comparing Assistant