

GAHC010155962023



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

Case No. : WP(C)/4109/2023

SMTI BABITA DAS
W/O MURALI DHAR DEKA, VILL- MIRZA - NEW COLONY, P.O.-MIRZA,
DIST-KAMRUP (ASSAM), PIN-781125

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY GOVERNMENT
OF ASSAM, DEPARTMENT OF EDUCATION (SECONDARY), DISPUR,
GUWAHATI-6

2:THE DIRECTOR
SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19

3:THE INSPECTOR OF SCHOOLS
KAMRUP
AMINGAON
GUWAHATI-3

Advocate for the Petitioner : MR K BHUYAN

Advocate for the Respondent : SC, SEC. EDU.

BEFORE
HON'BLE MR. JUSTICE LANUSUNGKUM JAMIR

ORDER

26.07.2023.

Heard Mr. K. Bhuyan, learned counsel for the petitioner.

The present Writ Petition has been preferred with the following prayers:

- (i) to allow the petitioner to hold the charge of in-charge Principal of Amranga Borihat Higher Secondary School based on her requisite qualification and 29 years of continuous service period till regular appointment is made,
- (ii) call for the records and after perusal of the records, causes shown, if any, and upon hearing the parties, be pleased to make the rule absolute and/or pass any other order/ orders, direction or writ as Your Lordships may deem fit and proper so as to grant adequate relief to the petitioner in the interest of justice, and
- (iii) further, it is also prayed that pendency of this petition shall not be bar to consider the representation dated 15-11-2022 (Annexure-8) in the interest of justice.

The petitioner had earlier approached this Court by filing WP(C) No.5754/2020, praying for a direction for her appointment as In-charge Principal of Amranga Borihat Higher Secondary School, which was disposed of by the order dated 10.11.2022 and the relevant portion of the said order reads as under:

“Though, the petitioner is eligible for the post of Principal of a provincialised Higher Secondary School as she has served more than 26 years, the Director of Secondary Education, Assam by the impugned order No. GB-EST./Apptt/FP/29/ 2020/159 dated 07.12.2020 allowed the Inspector of Schools, Kamrup District Circle, Dadara, Kamrup to be the In-charge of said Amranga Borihat Higher Secondary School along with financial power to draw under FR 49(C) so as to draw and disburse salary etc. of the staff of the said school as the earlier Principal In-charge of said school, Dr. Mira Rani Kalita retired from service on attaining the age of superannuation on 30.11.2020.

Being aggrieved with the same, the petitioner filed a representation before the Director of Secondary Education, Assam on 01.12.2020 which according to the petitioner is still pending for disposal.

By this writ petition, the petitioner has prayed for setting aside the said order dated 07.12.2020 passed by the Director of Secondary Education, Assam, whereby the Inspector of Schools, Kamrup District Circle, Kamrup has been allowed to hold the charge of In-charge Principal of said Amranga Borihat Higher Secondary School.

In spite of issuance of notice on 04.01.2021 and specific order of the Court dated 19.09.2022, the respondents in the Secondary Education Department did not file any affidavit in the matter.

There is no such post of In-charge Principal in provincialised Higher Secondary Schools of Assam under the Rules applicable for provincialised Secondary Schools of the State. In absence of a regular Principal of a provincialised Higher Secondary School, the Director of Secondary Education, Assam use to appoint a competent education officer or a suitable teacher having the eligibility to be a Principal of said provincialised Higher Secondary School as its Principal In-charge for administration of the concerned Higher Secondary School.

As such, the petitioner cannot claim any right for her appointment to be the In-charge Principal of said Amranga Borihat Higher Secondary School.

Accordingly, the prayer of the petitioner made in this writ petition being not sustainable in law stands rejected. However, considering the fact that the representation of the petitioner dated 01.12.2020 is still pending for consideration, the Director of Secondary Education, Assam may dispose of the same with a reasoned order in accordance with law.

Petitioner shall submit a certified copy of this order before the Director of Secondary Education, Assam along with the copy of her representation dated 01.12.2020, obtaining necessary acknowledgment in that regard.

In the event of submitting a certified copy of this order before the Director of Secondary Education, Assam, the said authority shall dispose of the said representation of the petitioner with a reasoned order on or before 31.12.2022, which is pending for consideration.”

This Court has already adjudicated the matter, with regard to whether the petitioner has any right to claim for her appointment as the In-charge Principal of the Amranga Borihat Higher Secondary School and the prayer of the petitioner was rejected.

However, a direction was issued to the Director of Secondary Education, Assam to dispose of her representation dated 01.12.2020, with a reasoned order, in accordance with the law.

Subsequent thereto, the Director of Secondary Education, Assam issued notice dated 14.02.2023, addressed to the petitioner, directing her to attend the office chamber on 17.02.2023, at 2:00 p.m., without fail, along with her original documents of M.A., B. Ed. Degree and other relevant documents.

As the prayer of the petitioner in the present Writ Petition is identical to the prayer made in the WP(C) No.5754/2020, with regard to her claim for appointment as the In-charge Principal of the Amranga Borihat Higher Secondary School, prayer of the petitioner is accordingly dismissed.

However, as the Director of Secondary Education, Assam has already issued a notice dated 14.02.2023, to which the petitioner responded, the Director of Secondary Education, Assam may pass an appropriate order, on the basis of hearing of the petitioner.

With the above direction, the Writ Petition is accordingly disposed of.

JUDGE

Comparing Assistant