

GAHC010240672022



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

Case No. : WP(C)/5258/2022

BORNALI SAIKIA KAKOTI @ BORNALI SAIKIA
D/O. KATIRAM SAIKIA
R/O. BEBEJIA GAON
BOGAR GAON
PURANA TITABOR
DIST. JORHAT
PIN-785632
ASSAM.

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM
EDUCATION (SECONDARY) DEPTT.
DISPUR
GUWAHATI-781009.

2:THE DIRECTOR OF SECONDARY EDUCATION ASSAM

KAHILIPARA
GUWAHATI-19.

3:THE INSPECTOR OF SCHOOLS

JORHAT DISTRICT CIRCLE
JORHAT
ASSAM.

Advocate for : MS D BORGOHAIN

Advocate for : SC

SEC. EDU. appearing for THE STATE OF ASSAM AND 2 ORS

**BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK**

ORDER

16.02.2023.

Heard Ms. D Borgohain, learned counsel for the writ petitioner and Mr. SMT Chistie, learned Standing counsel, Department of School (Secondary) Education, Assam for the respondent Nos. 1, 2 & 3.

2. The Director of Secondary Education (DSE), Assam on 26.05.1992 temporarily appointed the petitioner as Subject Teacher of Economics in the scale of pay of Rs. 1785/- – Rs. 4200/- per month plus other allowances as admissible under the Rules for a period of three months or till the post is filled up by the candidate selected by the State Selection Board, whichever is earlier with effect from the date of joining and posted her at Padma Ram Sarmah Higher Secondary School, Madhapur in the district of Jorhat in a post that was sanctioned by the Government on 16.11.1991.

3. Pursuant to said appointment order issued by the DSE, Assam on 26.05.1992, the petitioner joined her service on 27.05.1992 and since then she is serving in the said school as Subject Teacher of Economics.

4. By another order dated 16.10.2001, the DSE, Assam regularized the service of the petitioner on the basis of the screening conducted in pursuance of the Government instruction issued vide letter No. B (3) S. 21/96/pt/50 dated 16.10.1998.

5. The petitioner took admission in the Deomornoi B.Ed. College, Deomornoi, District-Darrang in the year 2014 and she obtained her B.Ed. degree in the year 2015 from Gauhati University.

6. As the regular Principal of said Padma Ram Sarmah Higher Secondary School,

Titabor on attaining the age of superannuation at 60 years retired from service on 28.02.2022, the petitioner having the requisite eligibility of Master degree as well as B.Ed. degree to hold the post of Principal of provincialised secondary school and being the senior most Subject Teacher serving in the said school, approached the Inspector of Schools, Jorhat to allow her to hold the charge of Principal of said High school as well as to be the Drawing and Disbursing Officer (DDO) of the said school.

7. The petitioner stated that the State Government in the Secondary Education Department vide No. ASE.383/2011/Pt/77 dated 28.07.2014 issued an Office Memorandum, whereby it relaxed the required educational professional qualification of B.Ed./B.T degree for the post of Teachers in provincialised Higher Secondary School/High School/High Madrassa after 01.01.2015, enabling such teachers serving in provincialised High School/High Madrassa to obtain their B.Ed. degrees within 5 years from the date of their joining in their services.

8. By the said Office Memorandum dated 28.07.2014, the State Government in the Secondary Education Department also observed that the Teachers of provincialised Higher Secondary School/High School/High Madrassa shall be deputed for B.Ed. training course for acquiring their degrees in terms of the conditions specified therein, allowing such deputed teachers to pursue their B.Ed. degree from B.Ed. college of the State which have affiliation from the Gauhati University, Dibrugarh University and Assam University in the evening shift classes where normal classes of the schools are not hampered, for which no prior permission shall be required.

9. Accordingly, the petitioner claimed to be the In-charge Principal of said Padma Ram Sarmah Higher Secondary (PRSHS) School, Titabor along with the power of DDO. In that regard, the Inspector of Schools, Jorhat on 20.06.2022 also wrote to the Director of Secondary Education, Assam.

10. As the respondent authorities did not pass any order allowing the petitioner to be the In-charge Principal of said school, being aggrieved, she has preferred this writ petition on 10.08.2022, praying amongst others, (i) to direct the respondent No. 2 to appoint the petitioner as In-charge Principal cum DDO of Padma Ram Sarmah Higher Secondary School, Jorhat and (ii) to direct the respondent authorities to release her B.Ed. advance increment with effect from March, 2016 on obtaining her B.Ed. degree.

11. By filing an additional affidavit on 15.12.2022, the petitioner placed a copy of the communication dated 20.11.2009 of the National Council for Teachers Education (NCTE), Eastern Regional Committee, Bhubaneswar, whereby the NCTE granted its recognition to Deomornoi B.Ed. College, Deomornoi, Darrang for conducting B.Ed. course of secondary level for one year duration with annual intake of 100 from the academic session 2009-10 under Clause 7 (II) of the NCTE (Recognition Norms & Procedure) Regulations, 2007 subject to fulfillment of the conditions.

12. In the said additional affidavit, the petitioner has also placed a certificate issued by the Deomornoi B.Ed. College, Deomornoi, Darrang dated 08.12.2022 wherein it is stated that the petitioner was a trainee of Deomornoi B.Ed. College for the session 2014-15, who had completed her B.Ed. course and passed B.Ed. final examination in the year 2015 and that during the said period the petitioner attended most of the special classes that were provided to the needy students/trainees during the evening shift.

13. By placing those documents, the petitioner contended that her B.Ed. degree studying at Deomornoi B.Ed. College, Darrang obtained from the Gauhati University duly recognized by the NCTE is a valid B.Ed. degree.

14. The Court on 17.08.2022 directed the respondent authorities to file their affidavit(s) and passed an interim order of Status-Quo as on said date to be maintained by parties till the next date of listing of the matter. The said interim order of Status-Quo passed on 17.08.2022 is in force till date.

15. Pursuant to the order of the Court, the respondent authorities have placed the relevant records in original regarding consideration of the case of the petitioner in allowing her to hold the post of Principal In-charge of said Padma Ram Sarmah Higher Secondary School, Titabor.

16. From the perusal of the records placed by the respondent authorities, it is seen that the petitioner approached the Departmental Minister on two occasions, praying before the said authority to direct the respondent authorities to allow her to hold the post of Principal In-charge of said Higher Secondary School.

17. Pursuant to the directions of the Departmental Minister concerned, the Director of Secondary Education, Assam directed the Inspector of Schools, Jorhat to make an enquiry

in the matter.

18. Accordingly, the petitioner appeared before the enquiry authority on 15.07.2022 and submitted all the relevant documents before the said authority in support of her case.

19. In the meanwhile, one Mitali Sonowal, Science Teacher belonging to Scheduled Tribe (Plains) category also filed application before the Departmental Minister and also before the Direction of Secondary Education, Assam through the Inspector of Schools, Jorhat alleging that the B.Ed. degree obtained by the petitioner is not in accordance with law.

20. It is also seen that said Mitali Sonowal through RTI obtained the information on 21.01.2022 from the authorities of said P.R.S.H.S. School, Titabor that during the period from 2014-15 the petitioner, Subject Teacher of Economics is rendering her service in the said school regularly and that there is no such document available in the office of the said school of taking leave by the petitioner while obtaining her B.Ed. degree.

21. Said Mitali Sonowal also submitted application before the DSE, Assam that since the B.Ed. degree obtained by the petitioner is not in accordance with law and there is doubt regarding her said B.Ed. degree, therefore, said Mitali Sonowal being eligible to hold the post of Principal of provincialised secondary school having her B.Ed. degree, should be considered for the post of Principal In-charge of the said school.

22. Said Mitali Sonowal also contended before the respondent authorities that she obtained her Master Degree in Arts from J.B. College Study Centre, Jorhat of Dibrugarh University in the year 2019 and also obtained her B.Ed. degree from District Institute of Educational Training, Jorhat (Titabor) in the year 2019 on being sent on deputation by the authorities in the Secondary Education Department of the State.

23. From the perusal of records, it is seen that the Inspector of Schools, Jorhat after making the enquiry with regard to the petitioner's claim and her B.Ed. degree submitted its report before the DSE, Assam on 20.06.2022 and on the basis of the said report, the authorities in the Directorate of Secondary Education, Assam found that the petitioner attended the normal classes in the school, her way of obtaining B.Ed. degree is irregular and that she could not establish as to how she attended the B.Ed. classes in the college concerned regularly from Madhapur, Jorhat to Deomorno, Darrang, Mangaldoi which is

350 KMs away, since she did not take any leave for acquiring the B.Ed. Degree course that requires 80% regular attendance in B.Ed. classes, which could not be found with regard to the petitioner and the petitioner has failed to place before the authority and she also failed to produce No Objection Certificate for the B.Ed. course from the authority concerned where the final examination of B.Ed., 2015 was held in the month of August.

24. Relying on the provisions of Rule 13 of the Assam Civil Services (Conduct) Rules, 1965 that reads as – *No Government Servant while in Government Service shall join or attend any educational institution for the purpose of preparing himself for or shall appear at an examination of a recognized Board or University without obtaining previous permission from the appointing authority*, the respondent authorities found that the B.Ed. degree obtained by the petitioner is irregular and is in violation of the said 1965 Rules, noted above.

25. It is also brought to the notice of the Court that presently the Inspector of Schools, Jorhat is in-charge of Principal as well as DDO of said Padma Ram Sarmah Higher Secondary School, Titabor for payment of salaries etc. of the teaching and non-teaching staff of the said HS school.

26. After hearing the learned counsels for the parties and on perusal of the records, it is directed that the Director of Secondary Education, Assam and/ or not below the rank of Deputy Director of Secondary Education, Assam, after giving an opportunity of hearing to the petitioner as well as said Mitali Sonowal, Science Teacher of said HS school and other eligible teachers of the said P. R. S. H. S. School, Titabor to hold the post of Principal in a provincialised Higher Secondary School of the State, shall pass a reasoned order regarding holding of charge of Principal of said Padma Ram Sarmah Higher Secondary School, Titabor, Jorhat as well as entitlement of increment of B.Ed. degree obtained by the petitioner in the year 2015 from Deomorno B.Ed. College, Darrang under the Gauhati University.

27. While considering such matters of the petitioner, said Mitali Sonowal, who also submitted her claim before the DSE, Assam for the post of In-charge Principal of said H. S. School and other eligible teachers of the said school the authorities concerned i.e., the DSE, Assam shall consider all the relevant documents, records and the relevant Rules, as applicable.

28. The petitioner shall file an application along with the certified copy of this order before the Director of Secondary Education, Assam forthwith, along with a copy of this writ petition including the Annexures appended thereto, obtaining necessary acknowledgment from the said authority in that regard.

29. In the event of filing such application as directed above, the Director of Secondary Education, Assam within a period of 90 (Ninety) days shall dispose of the same, intimating the petitioner and others concerned about the outcome of the same.

30. Till such decision is taken by the Director of Secondary Education, Assam, the Inspector of Schools, Jorhat shall continue to hold the post of Principal In-charge of said Padma Ram Sarmah Higher Secondary School, Titabor, Jorhat along with the power of DDO.

31. With the above observation and direction, this writ petition stands disposed of.

32. Return the records of GB-EST/Apptt/FP/17/2021 of the Directorate of Secondary Education, Assam placed before the Court by Mr. SMT Chistie, Standing counsel, Department of School Education, Assam.

JUDGE

Comparing Assistant