

GAHC010168172022



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

Case No. : WP(C)/5525/2022

SANJIB KUMAR TALUKDAR
S/O LATE PHATIK CHANDRA TALUKDAR,
RESIDENT OF RAIPUR,
P.O.- RAIPUR,
P.S. PATARCHARKUCHI,
DISTRICT- BARPETA, ASSAM.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,
EDUCATION (SECONDARY) DEPARTMENT, SACHIVALAYA, DISPUR,
GUWAHATI- 781006.

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

3:THE INSPECTOR OF SCHOOLS
BARPETA DISTRICT CIRCLE
BARPETA
ASSAM.

4:RANJAN KUMAR CHAKRABORTY
ASSISTANT TEACHER
BAJALI HIGHER SECONDARY SCHOOL
DIST. BARPETA
ASSAM

Advocate for the Petitioner : MR. P K GOSWAMI

Advocate for the Respondent : SC, SEC. EDU.

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

05/01/2023

Heard Mr. B D Goswami, learned counsel for the petitioner. Also heard Mr. R Mazumdar, learned Standing counsel, Secondary Education Department for the respondent Nos. 1, 2 & 3 and Mr. K N Choudhury, learned Senior counsel assisted by Mr. J Patowary, learned counsel for the private respondent No. 4.

2. Matter pertains to determination of seniority of the petitioner to the respondent No. 4 in Bajali Higher Secondary School, Pathsala, District-Barpeta on the ground of transfer of the respondent No. 4 to the Bajali Higher Secondary School from Paka Higher Secondary School vide order dated 27.04.2005 issued by the Inspector of Schools, Barpeta District Circle, Barpeta.

3. The respondent No. 4 earlier preferred a writ petition being WP(C) No. 4620/2020 that was disposed of on 01.03.2021 with specific directions directing the Commissioner & Secretary, Govt. of Assam in the Secondary Education Department to come to a definite conclusion as to whether the respondent No. 4 was transferred at his own interest or in public interest.

4. Pursuant to the said order of the Court dated 01.03.2021 passed in WP(C) No. 4620/2020, though the matter regarding seniority of the respondent No. 4 was heard by the Special Commissioner that was signed by the Secretary of the Secondary Education Department and the Additional Secretary of the Secondary Education Department, but order was issued on 06.06.2022 by the Secretary to the Government of Assam in the Secondary Education Department, who was not present during the hearing that took place on 25.10.2021.

5. Relying on the decision of the Hon'ble Supreme Court in the case of *Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another.* reported in *AIR 1959 SC 308*, the Court by an order dated 16.06.2022 passed in WP(C) No. 3963/2022 set aside the impugned order dated 06.06.2022 issued by the Secretary, Govt. of Assam in the Secondary Education

Department that was preferred by the petitioner directing the said authority to re-do the exercise afresh in terms of the judgment and order dated 01.03.2021 passed in WP(C) No. 4620/2020 after hearing the petitioner, the respondent No. 4 and the Inspector of Schools, Barpeta District Circle, Barpeta and on verification of all the relevant records, complying with the directions made at paragraphs 11, 12 and 13 of the said judgment and order dated 01.03.2021 passed in WP(C) No. 4620/2020.

6. At paragraphs 8, 11 and 12 of the said judgment and order dated 01.03.2021 passed in WP(C) No. 4620/2020, the co-ordinate Bench of this Court observed as follows:-

“8. We have gone through the records produced by Mr. R. Mazumdar, learned counsel for the Secondary Education Department of Government of Assam. The records reveal that on 13.04.2005, as indicated above, an application was made by the petitioner Sri Ranjan Kumar Chakravarty seeking a transfer on personal interest. The records do not reveal whether the subsequent application for withdrawal of the earlier application by the petitioner Sri Ranjan Kumar Chakravarty was received in the office of the Inspector of Schools but the note-sheet contains an order dated 25.04.2005 by which the application of the petitioner Sri Ranjan Kumar Chakravarty dated 13.04.2005 was rejected on the ground of unavailability of any vacant post in the Bajali Higher Secondary School. The note-sheet further reveals that by an order dated 27.04.2005 Sri Ranjan Kumar Chakravarty was transferred to Bajali Higher Secondary School in place of Sri Tapan Kakati.

11. As the materials on record would be insufficient to arrive at a definite conclusion by this Court on the aforesaid two possibilities, we remand the matter back to the Commissioner and Secretary in the Secondary Education Department of Government of Assam to take a fresh decision on the matter without being influenced by any of the earlier conclusions that he may have arrived and in doing so, the Commissioner and Secretary shall confer with the Inspector of Schools of Barpeta as well as take into consideration all the records, so as to arrive at an appropriate conclusion as to whether the transfer of the petitioner Sri Ranjan Kumar Chakravarty on 27.04.2005 was pursuant to his application dated 13.04.2005 or whether the consideration of the said application came to an end on 25.04.2005 when it was rejected for want of vacant post or whether the process for considering the application dated 13.04.2005 continued till the availability of a vacant post which had occasioned on 26.04.2005 on the requirement to transfer Sri Tapan Kakati.

12. The reasoned order be passed by the Commissioner & Secretary within a period of one month from the date of receiving the certified copy of the order and in doing so, the writ petitioner Sri Ranjan Kumar Chakravarty and the respondent no. 5 Sri Sanjib Kumar Talukdar be given a personal

hearing to substantiate their own respective cases.”

7. Moreover, in the said order dated 16.06.2022 passed in WP(C) No. 3963/2022, it was brought on record by the Standing counsel, Secondary Education, Assam that the relevant date on which the application of the respondent No. 4 for his transfer on personal request was rejected by the Inspector of Schools, Barpeta District Circle, Barpeta i.e., on 25.04.2005, was a holiday being Sunday.

8. Though, the Secretary to the Govt. of Assam in the Secondary Education Department pursuant to the said order dated 16.06.2022 passed in WP(C) No. 3963/2022 complied with the directions passed in the said judgment and order dated 01.03.2021 in WP(C) No. 4620/2020 after hearing the petitioner, the respondent No. 4, the Inspector of Schools, Barpeta District Circle, Barpeta and the Deputy Director of Secondary Education, Assam and taking note of their submissions, passed the order No. ASE.389/2020/Pt/369 dated 12.08.2022 holding that the respondent No. 4 was transferred from Paka Higher Secondary School to Bajali Higher Secondary School on public interest and accordingly, found the respondent No. 4 to be senior in service than the petitioner, but on perusal of the said order dated 12.08.2022 passed by the Secretary, Govt. of Assam in the Secondary Education Department it clearly reflects that the same is not in conformity with the direction of the Court passed in the said judgment and order dated 01.03.2021 in WP(C) No. 4620/2020, more particularly, at paragraphs 8 and 11, noted above.

9. It is also seen from the impugned order dated 12.08.2022 that the concerned Secretary did not consider the relevant records, whereby the Secretary to the Secondary Education Department was directed to arrive at an appropriate conclusion on perusal of such records as to whether the transfer of the respondent No. 4 on 27.04.2005 was pursuant to his application dated 13.04.2005 and as to whether the consideration of the said application came to an end on 25.04.2005 (Sunday) when it was rejected for want of vacant post or whether the process for considering the application dated 13.04.2005 continued till the availability of vacant post that occurred on 26.04.2005 on the requirement of transfer of one Sri Tapan Kakati from Bajali Higher Secondary School.

10. In WP(C) No. 3963/2022 on perusal of the records that was placed before the Court, it was observed that on 18.05.2022, the Additional Secretary, Govt. of Assam in the Secondary Education Department wrote to the Secretary, Govt. of Assam in the Secondary Education Department for issuance of a speaking order specifically observing that the respondent No. 4 was transferred to Bajali Higher Secondary School in the same District by the Inspector of Schools, Barpeta District Circle, Barpeta by order No. E/A/Misc./2/04/3652-657 dated 24.04.2005 and the Court during the

deliberation of the matter, found that 24.04.2005 was a Sunday (holiday).

11. It is found that the materials on record was insufficient to arrive at a definite conclusion on two possibilities, whether the respondent No. 4 was transferred from Paka Higher Secondary School to Bajali Higher Secondary School in place of said Tapan Kakati in continuation of the consideration of his application dated 13.04.2005 that was filed by the respondent No. 4 for his transfer to Bajali Higher Secondary School or whether, it was a fresh consideration in the public interest, not connected with his (respondent No. 4) said application dated 13.04.2005, noted above.

12. As the Court found and have also come to the conclusion that the impugned order No. ASE.389/2020/Pt/369 dated 12.08.2022 issued by the Secretary to the Govt. of Assam in the Secondary Education Department is not in conformity with the judgment and order dated 01.03.2021 passed in WP(C) No. 4620/2020, the same is hereby set aside and quashed. The said authority i.e., the Secretary to the Department of School Education (Secondary) shall now re-do the exercise in terms of the specific directions and observations made in said judgment and order dated 01.03.2021 passed in WP(C) No. 4620/2020. For the said purpose, the matter is now remanded back to the Secretary to the Govt. of Assam in the Department of School Education (Secondary) to pass a specific and reasoned order in terms of the said direction of the Court dated 01.03.2021 passed in WP(C) No. 4620/2020 within a period of thirty days from the date of receipt of certified copy of this order to be furnished by either of the parties.

13. As the present petitioner, the respondent No. 4, the Inspector of Schools, Barpeta District Circle, Barpeta and the Deputy Director of Secondary Education, Assam were already heard on 02.08.2022, therefore, no further hearing need to be given to them. The Secretary to the Govt. of Assam in the Department of School Education (Secondary) shall now pass the order, as directed above, on verification of the relevant files, the note sheets therein and the documents with it, pertaining to transfer of the respondent No. 4 from Paka Higher Secondary School to Bajali Higher Secondary School.

14. The petitioner and the respondent No. 4 forthwith shall submit a certified copy of this order before the Secretary to the Govt. of Assam in the Department of School Education (Secondary).

15. Since the order No. ASE.389/2020/Pt/369 dated 12.08.2022 issued by the Secretary to the Govt. of Assam in the Secondary Education Department has now been set aside and quashed, therefore, the consequential order of the Director of Secondary Education, Assam under No. GB-

EST/DSE/CC/248/2016/ Pt/21 dated 17.08.2022 allowing the respondent No. 4, Assistant Teacher of Bajali Higher Secondary School, District-Barpeta to be the Principal in-charge of the said Higher Secondary School is also set aside and quashed. Till such decision of the concerned Secretary in the Department of School Education (Secondary) as directed above, the Inspector of Schools, Barpeta District Circle, Barpeta shall hold the charge of Principal in-charge of Bajali Higher Secondary School, Pathsala, District-Barpeta in addition to his normal duties as Inspector of Schools, Barpeta, along with financial power as per the provisions of F.R.49(C) as the Drawing and Disbursing Officer towards payment of salary etc. of the teaching and non-teaching staff of the said Higher Secondary School and shall also look after the management and functioning of the said Higher Secondary School.

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

JUDGE

Comparing Assistant