

GAHC010178642022



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

Case No. : WA/323/2022

WAJ UDDIN
HINDI TEACHER, RAMPUR CHALAPATHER SAHED ALI HIGH SCHOOL,
NAGAON, ASSAM 782120

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, EDUCATION (SECONDARY) DEPARTMENT, DISPUR,
GUWAHATI 781006

2:THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
EDUCATION (SECONDARY) DEPARTMENT
DISPUR
GUWAHATI 781006

3:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI 781019

4:THE INSPECTOR OF SCHOOLS

NAGAON DISTRICT CIRCLE
NAGAON
ASSAM
782120

5:MOFIDA @ MAFIDA KHATUN
W/O ABUTALEB SIDDIQUE
VILLAGE KADAMONI GAON

PO KADAMONI
PS BATADROVA
DIST NAGAON
ASSAM
78212

Advocate for the Petitioner : MR K K MAHANTA (Sr. Advocate)

Advocate for the Respondent : SC, SEC. EDU.

**BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

22.02.2023

Heard Mr. K. K. Mahanta, learned senior counsel assisted by Ms. N. Begum, learned counsel appearing for the appellant. Also heard Mr. R. Mazumdar, learned Standing Counsel, Education Department, Assam appearing for the respondent Nos.1 to 4 and Mr. A. Deka, learned counsel appearing for the respondent No.5.

This intra-Court appeal is presented against the order dated 17.08.2022 passed by the learned Single Judge in WP(C) No.6178/2021 inter-alia providing that the issue of seniority between the parties be reconsidered and the Respondent No.3 i.e. the Director of Secondary Education, Assam to take steps for appointment of the jurisdictional Inspector of Schools to act as the Headmaster In-Charge of the Rampur Chalapathar Sahed Ali High School.

The facts of the case, in a nutshell, is to the effect that the appellant herein and the respondent No.5 are both serving as Teachers in the Rampur Chalapathar Sahed Ali High School, Nagaon. The post of Headmaster of the said school fell vacant on 05.12.2020 due to the death of the incumbent Headmaster. As such,

by order dated 27.10.2021 issued by the respondent No.3, the appellant herein was allowed to hold the charge of Headmaster in-charge along with financial power to draw and disburse the salary etc. of the staff of the school vice Inspector of Schools, Nagaon relieved. The order dated 27.10.2021 was issued on the basis of the earlier Government order dated 21.10.2021 whereby the appellant, who was working as Hindi Teacher of Rampur Chalapathar Sahed Ali High School, was declared to be senior to the respondent No.5, who was serving as Assistant Teacher in the said school.

Being aggrieved by the order dated 27.10.2021, the respondent No.5 as writ petitioner had preferred writ petition being WP(C) No.6178/2021 which was disposed of by the learned Single Judge by order dated 17.08.2022.

By referring to the impugned order, Mr. Mahanta, learned senior counsel for the appellant has argued that the order dated 21.10.2021, by means of which, the appellant was declared to be senior to the respondent No.5 has neither been assailed nor interfered with by the Court. If that be so, there was no justifiable ground for the learned Single Judge to issue a direction to reconsider the seniority position of the appellant and the writ petitioner/respondent No.5. It is also the submission of Mr. Mahanta that neither the appellant nor the respondent No.5 has a B. Ed. Degree nor do they have 10 years of experience, as mandated by the Rules. Therefore, neither of them is qualified to be appointed as Headmaster of the School. However, since the impugned order dated 27.10.2021 merely puts in place a temporary arrangement by making the appellant as the In-charge Headmaster and in view of the fact that the appellant has been declared to be senior to the respondent No.5, submits Mr. Mahanta, there was no justifiable ground for the learned Single Judge to

reopen the issue of inter-se seniority between the parties.

Responding to the above, Mr. A. Deka, learned counsel for the respondent No.5 submits that since the appellant is not qualified to hold the post of Headmaster on substantive basis, he could not have been appointed as the In-charge Headmaster of the school as well.

Mr. R. Mazumdar, learned Standing Counsel, Education Department, Assam submits that although both the contesting candidates are ineligible for being appointed as Headmaster of the school, yet, in the absence of any other eligible candidate, the authorities had to make some stop gap arrangement so as to ensure that the school continues to function. Under the circumstances, the impugned order of the learned Single Judge does not call for any interference. On a careful reading of the materials available on record, we find that it is the undisputed position of fact that neither the appellant nor the respondent No.5 is eligible for being appointed as the headmaster of the school on regular basis. The authorities have also not made any substantive appointment to fill up the post of Headmaster. By the impugned order dated 17.08.2022 the learned Single Judge has asked the respondent No.3 to appoint the Inspector of Schools to act as the Headmaster In-charge. There is nothing on record to show that the said order has caused any undue difficulty in the administration of the school.

It is correct that the appellant has been declared to be senior to the writ petitioner/respondent No.5 and the aforesaid determination prima-facie appears to be based on materials available on record which goes to show that the appellant had joined service before the respondent No.5. Since the order dated 21.10.2021 was not challenged by the respondent No.5 in the writ

petition, as such, we are of the unhesitant opinion that there was no occasion for the learned Single Judge to reopen the issue of inter-se seniority between the parties. However, in so far as the direction to appoint the Inspector of Schools as the In-Charge Headmaster of School is concerned, here also, we do not find any infirmity in the said order, particularly in view of the admitted position of fact that there is no eligible candidate available in the school for being appointed as Headmaster on regular basis.

In view of the above, by expunging the observations made by the learned Single Judge pertaining to the question of inter-se seniority of the appellant and the respondent No.5 and also by setting aside the direction to reconsider the said issue, we dispose of the writ appeal by providing that the respondent No.3 may pass appropriate orders for administration of the school, if necessary, by appointing the Inspector of Schools as the In-charge Headmaster. If a decision is taken to appoint the appellant as the In-charge Headmaster in view of his seniority, then in that event, the financial powers may be directed to be retained by the Inspector of Schools.

With the above observation, this writ appeal stands disposed of.

JUDGE

CHIEF JUSTICE

Comparing Assistant