

GAHC010187642023



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

Case No. : WP(C)/4939/2023

MRS. AYSHA KHATUN
S/O SRI DEWAN SHAJAHAN, R/O VILL-BARBHITHA, P.O.-B.D. PATHAR, P.S.-
PATACHARKUCHI, DIST-BARPETA, ASSAM, PIN-781318

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, EDUCATION SECONDARY DEPARTMENT,
DISPUR, GUWAHATI-06

2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19

3:THE INSPECTOR OF SCHOOLS
BDC
BARPETA
ASSAM
DIST-BARPETA
ASSAM
PIN-781301

4:JAGEN BARMAN
I/C HEADMASTER
BARBHITHA DALOR PATHAR HIGH SCHOOL
SITUATED AT VILL AND P.O.-BARBHITHA DALOR PATHAR
DIST-BARPETA
ASSAM
PIN-78141

Advocate for the Petitioner : MR H TALUKDAR

Advocate for the Respondent : SC, SEC. EDU.

**BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA**

ORDER

30.08.2023

Heard Mr. H Talukdar, learned counsel for the petitioner. Also heard Mr. SMT Chistie, learned counsel appearing for the Secondary Education Department, Government of Assam.

2. The petitioner Aysha Khatun is aspiring to be the in-charge Headmistress of Barbhitha Dalor Pathar High School in the Barpeta district which was previously functioning in the name of Barbhitha Dalor High Madrassa. Earlier by an order dated 20.04.2021 of the Director of Secondary Education Assam Jogen Barman was temporarily allowed to hold the charge of Superintendent of Barbhitha Dalor Pathar High Madrassa in addition to his normal duties as Assistant Teacher. The said appointment was assailed by another teacher namely, Laba Ram Kalita in WP(C)No.2883/2021 wherein the judgment 03.08.2022 had been rendered, the relevant paragraph of which is extracted as below:

“The materials on record reveal that the respondent No. 4 is enjoying only intermediate scale of pay. Further in terms of Rule 14 of the 2018 Rules, the respondent No. 4, who is only enjoying an intermediate scale of pay and does not have 10 years experience, as graduate teacher, he is not eligible to hold the post of Superintendent. Further, the petitioner, despite enjoying graduate scale of pay, does not have the requisite qualification of B.Ed degree and,

therefore, he is also not eligible for holding the post of Superintendent of the said High Madrassa. Therefore, neither the petitioner nor the respondent No. 4 fulfills the criteria as laid down in Rule 14 of the 2018 Rules. Accordingly, the order dated 20-04-2021, issued by the Director of Secondary Education, Assam, is set aside and quashed."

3. A reading of the afore-extracted judgment of this Court makes it discernible that there is a judicial pronouncement against the eligibility of Jogen Barman to be the in-charge Headmaster and over and above by the same order even the writ petitioner therein Laba Ram Kalita had also been declared to be ineligible. By the said judgment, the Court also issued a direction to the Secretary to the Government of Assam in the Secondary Education Department, Assam to take final decision with regard to selection of the teachers for holding the post of Superintendent of Barbhitha Dalor Pather High Madrassa which now has to be read as Headmaster Barbhitha Dalor Pathar High School. As the regular selection process is yet to be initiated, the writ petitioner Aysha Khatun who claims herself to be the in-charge Headmistress has made a representation dated 28.02.2023 before the Commissioner and Secretary to the Government of Assam in the Secondary Education Department as well as to the Director of Secondary Education Assam that in the interregnum her case be considered for the purpose of being the in-charge Headmistress of Barbhitha Dalor Pathar High School. As no response has been made by the respondents to such representation, this writ petition has been instituted.

4. In the circumstance, we direct the Director of Secondary Education Assam to give a consideration to the representation dated 28.02.2023 of the writ petitioner claiming to be the in-charge Headmistress of the school. By requiring

the representation to be considered, we clarify that it is not a direction or suggestion to appoint the petitioner in any manner, but it is a requirement of the Director to consider the matter on its own merit and pass a reasoned order thereon. In doing so, if the Director is of the view that any person is also required to be given a hearing, the Director shall issue notice to such person.

5. The above requirement be done within a period of four weeks from the date of receipt of a certified copy of this order.

6. From the facts and circumstances of this case as indicated above, we are of the view that the respondent No.4 is not a necessary party in the present proceeding and accordingly, the name of respondent No.4 be deleted from the array of respondents.

7. Writ petition stands disposed of in the above terms.

JUDGE

Comparing Assistant