

GAHC010190152019



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

Case No. : WP(C)/6042/2019

NAYAN KUMAR SAHA
S/O. LT. NARAYAN CH SAHA, R/O. WARD NO.9, P.O. KOKRAJHAR, DIST.
KOKRAJHAR, ASSAM, PIN-783370.

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, EDUCATION
(SECONDARY) DEPTT., DISPUR, GUWAHATI-06.

2:THE DIRECTOR OF EDUCATION

BODOLAND TERRITORIAL COUNCIL
KOKRAJHAR.

3:THE INSPECTOR OF SCHOOLS

KOKRAJHAR.

4:BODOLAND TERRITORIAL COUNCIL LEVEL SELECTION BOARD
REP. BY THE MAMBER SECRETARY
KOKRAJHAR.

5:APURBA KR. SARKAR
S/O. SAISH CH. SAHA
R/O. WARD NO.3
BIDHAN PALLY
P.O. KOKRAJHAR
DIST. KOKRAJHAR
ASSAM
PIN-783370

Advocate for the Petitioner : MR. J LASKAR

Advocate for the Respondent : SC, SEC. EDU.

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

27-02-2023

Heard Mr. R. Das, learned counsel appearing on behalf of Mr. J. Laskar, learned counsel for the petitioner and Mr. U. Sarma, learned Standing counsel, Department of School Education, Assam for the respondent No. 1. Also heard Mr. S.R. Rabha, learned Standing counsel, BTC for the respondent Nos. 2, 3 & 4.

2. None appears on behalf of the respondent No. 5 though notice has been served upon him by Dasti Service on 20.01.2020 pursuant to the order dated 21.11.2019.

3. The School Managing Committee of Rainadabri High School, District-Kokrajhar on 03.07.1993 appointed the petitioner as an Assistant Teacher who is a Science Graduate with honours and pursuant to his such appointment, he joined the said High School during its venture stage on 07.07.1993.

4. The services of the petitioner along with other teaching and non-teaching staff of said High School were provincialised by order under No. PC/Sec/118/2013/28 dated 21.08.2013 w.e.f. 01.01.2013 under the provisions of the Assam Venture Educational Institution (Provincialisation of Services) Act, 2011 as amended in 2012, during its force.

5. After such provincialisation when the regular Headmaster of said High School retired from service on attaining the age of superannuation at 60 years, the Inspector of Schools, Kokrajhar District Circle, Kokrajhar vide order under Memo No. ISK/Apptt./18/2016/6 dated 20.03.2017 allowed the petitioner Assistant Teacher of said Rainadabri High School to act as the Headmaster in-charge of said High School under F.R. 49 (C) in addition to his own duties as Assistant Teacher and also allowed him to act as drawal and disbursal authority of monthly salary of the teaching and non-teaching staff of

said High School enabling him to operate Bank account of said High School.

6. The petitioner completed his B.Ed degree on being sent on deputation pursuant to the letter No. DE/BTC/Genl./133/2016/510 dated 17.06.2017 of the Director of Education, BTC, Kokrajhar and in compliance of the order dated 07.04.2017 passed by the Court in WP(C) No. 2043/2017, the Inspector of Schools, Kokrajhar District Circle, Kokrajhar vide order dated 25.07.2017 allowed him to draw one advance increment for obtaining B.Ed. degree w.e.f. 01.07.2016.

7. Pursuant to the order under No. ASE.16/2017/pt/188 dated 09.08.2017 of the State Government in the Secondary Education Department, Rainadabri M.E. School with DISE Code 18010519102 was amalgamated with Rainadabri High School with DISE Code 18010579103 as the Base School under the 'Siksha Khetra' Scheme.

8. In the said order of amalgamation dated 09.08.2017 of the State Government in the Secondary Education Department, the name of the petitioner was shown as an Assistant Teacher & Headmaster in-charge of said Rainadabri High School at Sl. No. 3 whereas the name of the respondent No. 5 was shown as an Assistant Teacher (Science) at Sl. No. 18.

9. The respondent authorities in the BTC on 03.11.2018 issued a notice informing all concerned about the selection to the post of Headmaster/Headmistress Superintendent etc. in provincialised High Schools/High Madrassas under the BTC area following the provisions of Rule 14 of the Assam Secondary Education (Provincialised) Service Rules, 2003 clarifying that 17.12.2018 shall be the last date for submission of duly filled up applications by the intending candidates.

10. In the said notice dated 03.11.2018 pertaining to the selection for the post of Headmaster/Headmistress/Superintendent etc. of such provincialised High Schools/High Madrassas under the BTC area at Clause C notified that the minimum qualification for the posts shall be Graduate in Arts, Science or Commerce with B.T./B.Ed. degree and B.Ed. degree from NCTE recognized institutions shall be accepted and that the qualification shall be reckoned as the date of its advertisement/notice.

11. In the said notice dated 03.11.2018 at Clause D, the teaching experience for the post of Headmaster/Headmistress/Superintendent is specified as minimum 10 years as Graduate Teacher.

12. The Inspector of Schools, Kokrajhar District Circle, Kokrajhar by its communication under No. ISK/PL/H.M./pt-1/27/2017/165 dated 12.11.2018 informed that the post of

Headmaster/Headmistress/Superintendent of provincialised High School/High Madrassa shall be taken for consideration for the vacancy upto 31.12.2019.

13. The Director of Education-cum-Member Secretary, BTC Level Selection Board, Kokrajhar vide Notice under No. DE/BTC/Apptt-219/pt-1/2018/8 dated 08.02.2019 informed the candidates who applied for promotion to the post of Headmaster/Headmistress/Superintendent etc. of provincialised High Schools/High Madrassas of Kokrajhar District under the BTC area to appear before the BTC Level Selection Board with Service Book and all original certificates, mark sheets of academic qualifications and professional qualifications on or before 20.02.2019 from 10:00 am onwards.

14. Accordingly, both the petitioner as well as the respondent No. 5 appeared before the concerned Selection Committee for their promotion to the post of Headmaster/Headmistress of said Rainadabri High School.

15. The Director of Education, BTC, Kokrajhar by order under No. DE/BTC/Apptt-219/Pt-I/2018/22 dated 05.03.2019 on the recommendation of the Council Level Selection Board, BTC and on the approval of the Additional Principal Secretary, BTC dated 04.03.2019 promoted the respondent No. 5 Assistant Teacher of Rainadabri High School in the District of Kokrajhar to the post of Headmaster of said High School in the Scale of Pay of Rs. 22,000/- to 87,000/-with Grade Pay of Rs. 11,500/- (Pay Band-3, ROP, 2017) plus other allowances as admissible under the rules w.e.f. the date of his joining in the said High School to the post of Headmaster that fell vacant due to superannuation of one Sarbananda Barman retired Headmaster of said High School superseding the earlier order dated 20.03.2017.

16. Being aggrieved with the same, the petitioner has filed this writ petition on 07.08.2019 stating that the respondent authorities disregarding his seniority and eligibility promoted the respondent No. 5 to the post of Headmaster of said Rainadabri High School, praying amongst others for direction to the respondent authorities to set aside the impugned order dated 05.03.2019, noted above.

17. It is also stated by the petitioner that at the time of amalgamation, the respondent No. 5 was an Assistant Teacher of said Rainadabri High School wherein he was the Headmaster in-charge.

18. The respondent authorities in the BTC have filed their affidavit in the matter and submitted that in the minutes dated 25.02.2019 of the Council Level Selection Board, BTC for appointment to the promotional post of Headmaster/ Headmistress/Superintendent etc. in provincialised High School/High Madrassa under the BTC area, the concerned Board after considering the case of the petitioner as well

as that of the respondent No. 5 found that the respondent No. 5 was appointed as a Science Graduate Teacher on 15.06.1992 and since then, said respondent No. 5 received the Graduate Scale of Pay but with regard to the case of the petitioner, he received Graduate Scale of Pay only from the date of provincialisation of his service i.e., w.e.f. 01.01.2013 under the provisions of the said 2011 Act as amended in 2012, during its force, much after the respondent No. 5 and therefore, the concerned Board on 25.02.2019 came to the conclusion that the respondent No. 5 is senior to the petitioner as he received Graduate Scale of Pay since 15.06.1992 and accordingly, the said Board decided to promote the said respondent No. 5 to the post of Headmaster of said Rainadabri High School.

19. It is seen that notice was issued by the respondent authorities in the BTC on 03.11.2018 inviting all the intending eligible teachers to submit their applications as per the proforma annexed to said notice along with all necessary testimonials in support of their qualifications in the office of the Inspector of Schools of the concerned Districts (Annexure - F to this petition).

20. Both the petitioner and the respondent No. 5 have the requisite eligibility i.e. Graduation with B.T./B.Ed. degree obtained from the NCTE recognized Institutions for their promotion to the post of Headmaster/Headmistress/Superintendent in provincialised High School/High Madrassa under BTC area in terms of the Rule 14 of said 2003 Rules as notified in said Notice dated 03.11.2018 issued by the Director of Education, BTC, Kokrajhar.

21. Moreover, said Notice dated 03.11.2018 (Annexure-F) also specified that the minimum 10 years of teaching experience as Graduate Teacher is required for promotion to the post of Headmaster/Headmistress/Superintendent of provincialised High School/High Madrassa under the BTC area and also notified that last date of submission of application as 17th December, 2018.

22. In the case in hand, the service of the petitioner was provincialised by order dated 21.08.2013 issued by the Director of Secondary Education, Assam w.e.f. 01.01.2013 under the provisions of said 2011 Act as amended, during its force (Annexure-A to this petition) and since then, he received his Graduate Scale of Pay. However, he did not fulfill the requisite criteria of 10 years of teaching experience as Graduate Teacher for holding the post of Headmaster in Rainadabri High School till 17.12.2018 i.e., the last date of filing of such application in terms of the said Notice dated 03.11.2018. As such, the petitioner at the time of consideration of his case for the post of Headmaster lacked the requisite eligibility of 10 years of service as a Graduate Teacher for the post of Headmaster as on 17.12.2018, since from 01.01.2013 to 17.12.2018, the petitioner had only five years, eleven months and seventeen days of regular service in the Graduate Scale of Pay.

23. Since the petitioner lacked the eligibility criteria to the extent noted above, his claim for promotion to the post of regular Headmaster in said Rainadabri High School, District-Kokrajhar is not tenable in law.

24. For the reasons above, this writ petition being devoid of merit, stands dismissed.

JUDGE

Comparing Assistant