

GAHC010194252021



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

Case No. : WP(C)/6169/2021

GANESH CH DEKA
S/O. KHARGESWAR DEKA, VILL. PAKABANGI, P.O. BORDOULGURI, P.S.
SIPAJHAR, DIST. DARRANG, PIN-784145.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE CHIEF SECRETARY, GOVT. OF ASSAM, DISPUR, GHY.-06.

2:THE COMMISSIONER AND SECY.

TO THE GOVT. OF ASSAM
EDUCATION (SECONDARY) DEPTT.
DISPUR
GHY.-06.

3:THE PRINCIPAL SECRETARY
TO THE GOVT. OF ASSAM
FINANCE DEPTT.
DISPUR
GHY.-06.

4:THE DIRECTOR OF SECONDARY EDUCATION

ASSAM KAHILIPARA
GHY.-19.

5:THE PRINCIPAL CUM SECRETARY

BOROMPUR HS SCHOOL
BARAMPUR
DIST. DARANG

ASSAM
PIN-784145.

6:THE GOVERNING BODY

BOROMPUR HS SCHOOL
BARAMPUR
REP. BY ITS PRESIDENT
DIST. DARANG
ASSAM
PIN-784145

Advocate for the Petitioner : MR. M U MONDAL

Advocate for the Respondent : SC, SEC. EDU.

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

14.08.2023

Heard Mr. M.U. Mondal, learned counsel for the petitioner. Also heard Mr. SMT Chistie, learned Standing Counsel for the Secondary Education Department.

2. This writ petition is filed with the petitioner praying for a direction to the respondent authorities to regularize/adjust/accommodate the services of the petitioner in the post of Subject Teacher (Political Science) at the Barampur Higher Secondary School, District: Darrang against the sanctioned vacant post lying in the department of Political science with effect from 06.08.2002 till date. The petitioner is a OBC Category candidate who is an MA in Political Science as well as a B.Ed degree holder. The petitioner was allowed to join as formal Subject Teacher on 10.11.2000 with effect from 15.11.2000 at the Barampur Higher Secondary School subject to the approval of the Managing Committee of the School. The Managing Committee thereafter by its resolution adopted on 23.03.2004 allowed the petitioner to work as subject teacher in Political Science on honorary basis at

Barampur High Secondary School. This was communicated to the Inspector of School DDC Mangaldoi by communication dated 21.06.2004 by the school authorities. The vacancy in which the petitioner was allowed was created upon the superannuation of the incumbent. By advertisement dated 08.02.2003, the regular selection of the post was held and the petitioner participated in the said selection process. He was issued a call letter for the interview in which he appeared. The select list dated 27.02.2006 was published wherein the name of the petitioner appeared at serial No. 224 and the petitioner was selected as subject teacher in political science at Barampur Higher Secondary School but the select list subsequently was cancelled. The petitioner preferred representations to the concerned authorities but received no response. Thereafter, pursuant to another selection process initiated, the petitioner again appeared for the interview on 28.05.2008 as per the call letter received. Thereafter, repeated representations were made to the concerned authorities for permitting him to be regularized against the said post in which he has been working. The school authorities issued certificate to the effect that the petitioner has been working with effect from 06.08.2000. A resolution of the same was also forwarded to the Director, Secondary Education to do the needful but no action was taken. Several representations, thereafter, were forwarded by the petitioner as well as by the School authorities to the Director of Secondary Education for regularizing the service of the petitioner but no action was taken. Thereafter, in the year 2013, a final merit list was published wherein, the petitioner's name appeared at serial No.4 in the merit list. Upon enquiries made, he came to be informed that 85 marks for B.Ed degree and 50 marks for his experience was not awarded to the petitioner. It is submitted that had these marks been awarded to the petitioner, his total score would have been 304.54 and he would have been selected in the general category, although he is an OBC candidate. The selected candidates at serial No. 1, 2 & 3 of

the said merit list got engagement in other jobs and as such the post of PG Teacher of Political Science in Barampur High School remained vacant and the petitioner was working as honorary teacher with effect from 06.08.200 till date. The petitioner is about 53 years of age and has become overaged now and as such he will not be able to get any job due to his age because of the inaction by the State respondents.

3. The learned counsel for the petitioner submits that considering the services rendered by the petitioner that since 06.08.2000 till date and also considering that the selected persons at Sl. No. 1 and 3 of the merit list did not join in the said post and thereby leaving the same post vacant. The learned counsel for the petitioner referring to the Judgment of the Apex court rendered in *Secretary, State of Karnataka and Ors. Vs. Umadevi and others*, reported in (2006) 4 SCC 1 submits that the Government be directed to accommodate the petitioner as a onetime measure and pass appropriate orders regularizing his services. It is submitted that the various representations filed before the respondents have been kept pending without passing appropriate orders. It is further submitted that since the post has been kept vacant and no steps has been taken by the Director to fill up the said post, the students would have suffered had the petitioner not continued to render the services on an honorary basis.

4. In the above facts the learned counsel for the petitioner prays for appropriate direction to the respondents to consider the case of the petitioner for regularization, adjustment etc. as an onetime measure.

5. The respondents have filed their affidavit-in-opposition. It Is contended by the respondents that the Managing Committee had appointed the petitioner after the Provincialization of the School. As such his initial appointment was irregular and contrary to the Assam Secondary Education (Provincialisation) Service Rules, 2003. Therefore there can be no claim for regularization of the petitioner's services. The

respondents have referred to the Government letter No. A(I)E 621/2003/322 dated 30.06.2004, wherein it is provided that "*the honorary teachers have no legal equitable rights to claim for regularization of service. The Cabinet Sub-Committee on Education also decided in its meeting held on 22.08.2003 that the Honorary Teachers shall not be regularized in future and should be ensured their discontinuation in attending duties in the School*". The respondents have also relied upon the Judgment of the Division Bench of this Court rendered in Dambaru Dhar Kalita in W.A. No. 252/2003 by order dated 17.06.2003, wherein this Court had held that persons appointed by the Managing Committee after Provincialization of the school on honorary basis are not eligible for regularization.

6. The learned counsels from the parties have been heard. Pleadings on record have been carefully perused. Judgments cited at the bar have also been carefully noted.

7. There is no dispute that the petitioner was appointed by the Managing Committee after the Provincialization of the school. Once the school is Provincialised, the Rules which Govern the recruitment will have to be applied. Under the said Rules, there is a procedure prescribed for filling up of posts which fall vacant on superannuation. The Managing Committee has no role under the Rules to appoint any teacher dehors the procedure prescribed under the Rules.

8. Under such circumstances, the appointment given to the petitioner on honorary basis by the Managing committee of the school cannot be considered to be regular in terms of the prescription under the Rules. Having said that, it is also noticed that there is no denial by the respondents in respect of the averments made in the writ petition that the petitioner participated in the selection process pursuant to the advertisement issued in 2003.

9. In the absence of relevant particulars made available, this Court is handicapped from adjudicating the claims raised by the petitioner that he has a

right to be considered for selection and appointment in respect of the post concerned.

10. What is evident from the facts pleaded is that in the select list which was published, the petitioner was at serial No. 4. If the selected candidates above the petitioner refused or declined to join in the said post of subject teacher (political Science) in terms of the selection, a right may have accrued in so far as the petitioner to be considered for appointment in the said post as he was placed in serial No.4.

11. However, as discussed above, in the absence of specific facts being pleaded, this court is not able to arrive at a conclusive finding that any right had indeed accrued to the petitioner for being appointed to the said post in terms of the select list where the petitioner was stated to be a serial No. 4. The said Select List is not a part of the pleadings.

12. That apart, it is also not pleaded by the parties as to the period of validity of the said Select List. In terms of the Rules ordinarily the Select List is valid for a period of one year from the date of its publication. All these facts have not been pleaded by the petitioner nor brought on record by the contesting parties.

13. Under such circumstances, since there is no denial by the respondents with regard to the averments made by the petitioner that he was selected pursuant of the selection process initiated and was placed at serial No. 4, this Court is of the considered view that ends of justice will be served, if the writ petition is disposed of with a direction to the respondent authorities, namely the Director, Secondary Education, to look into the claims of the petitioner that he was placed at serial No. 4 in the said Select list published pursuant to the selection process initiated by the Department and that the first three selected candidates having not joined in the said post, the petitioner ought to have been appointed. If that be the case and also considering the submissions of the learned counsel for the petitioner that the said

post of subject teacher (Political Science) is still vacant as on date, the respondent authorities, more particularly, the Director, Secondary Education will examine the entire issue and pass an appropriate order regarding the claims raised by the petitioner seeking his appointment as to why inspite of the first three candidates having failed to join the said post, the petitioner who claims to be at the fourth position in the select list was not permitted to join the said post.

14. While deciding this issue, the respondent authorities will also look into the aspect of the validity of the select list which was published in which the petitioner claimed to have been placed at serial No. 4.

15. The claims of the petitioner will be disposed of by the Director, Secondary Education within a period of 60 days from the date of receipt of a certified copy of this order.

16. In terms of the above, the writ petition stands closed. No order as to cost.

JUDGE

Comparing Assistant