

GAHC010196942017



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

Case No. : WP(C)/3248/2017

DILIP KUMAR ROY
S/O. LT. UPENDRA CHANDRA ROY, C/O. SHYAM SUNDAR BHANDER,
HEADMASTER, DURGASHANKAR PATSHALA, AMBICAPATTY, SILCHAR,
R/O. JANIGANJ, BHUIYA ROAD, P.O. and P.S. SILCHAR, DIST. CACHAR,
ASSAM, PIN-788001.

VERSUS

THE STATE OF ASSAM and 4 ORS.
REP. BY THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM,
EDUCATION ELEMENTARY DEPTT., ASSAM CIVIL SECRETARIAT, DISPUR,
GUWAHATI-788006.

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM

KAHILIPARA
GUWAHATI-781019
ASSAM.

3:THE DIST. ELE. EDUCATION OFFICER

CACHAR
SILCHAR
ASSAM
PIN-788003.

4:THE DY. INSPECTOR OF SCHOOLS
SILCHAR

CACHAR
ASSAM

PIN-788001.

5:SMTI. SONALI KAR

ASSISTANT TEACHER
DURGASHANKAR PATSHALA
AMBICAPATTY
SILCHAR
DIST. CACHAR
ASSAM
PIN-788004

Advocate for the Petitioner : MR.A K DUTTA

Advocate for the Respondent : MR.M P SARMAR-5

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 20.03.2023

Heard Mr. B. Purkayastha, learned counsel for the petitioner. Also heard Mr. R. Mazumdar, learned standing counsel for the Elementary Education Department, respondent nos.1 to 4, and Mr. M.P. Sarma, learned counsel for the respondent no.5.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the order dated 18.05.2017, passed by the District Elementary Education Officer, Cachar, Silchar (DEEO for short), by which the petitioner was directed to hand over the charges to Smti. Sonali Kar (respondent no.5).

3. The case projected by the petitioner is that the respondent no.5 was allowed to function as Head Teacher of Durga Sankar Pathsala as the then

senior most Assistant Teacher of the said school expressed her unwillingness to act as a Head Mistress. It is also projected that his transfer was made as a measure of rationalization process to maintain the appropriate teacher student ratio, which is in accordance with the Right of Children to Free and Compulsory Education Act, 2009 (RTE Act for short) and rules framed thereunder. The DEEO, Cachar district by the impugned order had directed the respondent no.5 to function as the Head Teacher as the earlier Head Teacher had retired on 31.01.2017. The petitioner projects that he is the senior most Assistant Teacher of the school and therefore, his candidature should have been considered for appointment as an in-charge Head Teacher. As the representation of the petitioner did not give any favourable result, the present writ petition has been filed.

4. The learned standing counsel for the Elementary Education Department has submitted that the seniority of teachers is determined on the basis of their joining in service as Assistant Teacher at L.P. School and that under the rationalization policy adopted by the respondent authorities, the transfer of the petitioner was made to maintain appropriate pupil teacher ratio and therefore, it is submitted that the transfers have been made in public interest. It is submitted that as per the records, while the petitioner had joined his service on 24.04.1992, as stipendary teacher at Sotaputikhal Primary School, the respondent no.5 has joined her service on 20.06.1992 at Durga Sankar Pathsala on ad-hoc basis and subsequently, their services have been regularized. It is projected that as the senior most Assistant Teacher expressed her unwillingness to act as Head Teacher, the petitioner was allowed to hold the charge of Head Teacher by order dated 02.02.2017, which was subsequently withdrawn by order dated 18.05.2017, thereby allowing the respondent no.5 to

act as Head Teacher. On the ground that the petitioner had been transferred to the school in the year 1992, it is submitted that as per the records, the petitioner is senior to respondent no.5 considering their initial date of joining.

5. The learned counsel for the respondent no.5 has submitted that the respondent no.5 is senior to the petitioner and moreover, by referring to the affidavit-in-opposition filed by the respondent no.5, it is submitted that the service of the respondent no.5 was regularized on 04.05.1993 and she received her 1st increment on 31.05.1993, whereas the service of the petitioner was regularized in November, 1993. It is stated by the learned counsel for the respondent no.5 that the service of the petitioner as Assistant Teacher was confirmed against 988 Kazidahar L.P. School. It is also submitted that under the guidelines for the purpose of rationalization, the junior most teacher ought to have been transferred and therefore, the petitioner could not have been transferred under the rationalization policy. It is also submitted that the service of the petitioner was initially attached to Nazirpatty Model L.P. School vide memo dated 02.07.2008 and later on, vide memo dated 11.08.2010, he was allowed to work at Durga Sankar Pathsala and accordingly, it is submitted that it appears that the petitioner had sought transfer in his own request and therefore, he could not have been placed above the respondent no.5. It is also submitted that the rationalization of transfer was pursuant to memo dated 25.08.2011, which was effected after the RTE Act was implemented, which is sometime in the year 2012 and accordingly, it is submitted that the transfer process could have been initiated in the year 2010.

6. From the transfer orders annexed to the writ petition, it is seen that the transfer of the petitioner was not a stand-alone transfer. He was transferred

along with many incumbents. As per the U-Dise 2015-16 draft data, the petitioner had joined his service on 24.04.1992 and the respondent no.5 had joined on 20.06.1992. It is an admitted position that as per the date of joining, the petitioner would be senior to the respondent no.5. However, it appears to be no clarity in the transfer policy as to how seniority would be maintained in case of transfer within the sub-division, within the district or within the State.

7. Be that as it may, as the petitioner has demonstrated that he has been transferred along with several other persons, the Court is unable to return a finding that the transfer of the petitioner was made at his own request.

8. As per the projection made by the respondent no.5 in his affidavit-in-opposition, it is noted that by transfer order dated 11.08.2010, the petitioner along with another Assistant Teacher were both allowed to work at Durga Sankar Pathsala as Assistant Teacher. Therefore, at this stage, the Court has no material to infer that the transfer of the petitioner was made at his own request, because in case of such own request transfer, two persons from different schools could not have been accommodated at Durga Sankar Pathsala. Hence, the only logical conclusion which can be presumed is that the transfers are made to implement the RTE Act and to maintain the pupil teacher ratio. In the affidavit-in-opposition, the respondent no.5 appears to have supported the claim of the petitioner.

9. One of the difference taken by the learned counsel for the respondent no.5 is that as per the transfer policy as per Office Memorandum dated 25.08.2011, the junior most Assistant Teacher should have been transferred first. We assume that the same was not done in the case of the petitioner, that by itself would not render the transfer to be not in accordance

with the Office Memorandum dated 25.08.2011. Therefore, the Court is of the considered opinion that as the transfer of the petitioner was justified by the pupil teacher ratio, the petitioner is entitled to maintain the seniority notwithstanding that he has been transferred from another school. Accordingly, the impugned order under memo no. DEO-132/DIS/2016/1753-62 dated 18.05.2017 is not found to be sustainable and the same is set aside. Resultantly, the matter is remanded back to the DEEO, Cachar, Silchar to pass appropriate orders for allowing the most eligible candidate as Head Teacher cum Member Secretary of the Durga Sankar Pathsala after examining the candidature of the petitioner along with all other eligible candidates. The same shall be done preferably within a period of 30 (thirty) days from the date of receipt of certified copy of this order.

10. With the above direction, this writ petition stands disposed of.

11. The petitioner shall produce a certified copy of this order to the office of the respondent no.3 to bring the order to the notice of the said authority.

JUDGE

Comparing Assistant