

GAHC010200102023



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

Case No. : I.A.(Civil)/2785/2023

SRI ASIT KUMAR BHOWMIK
S/O- LATE DINESH BHOWMIK, R/O VILLAGE- CHILAMARI, P.O.
KHOIRABARI, DISTRICT- UDALGURI, BTC, ASSAM, PIN- 784522

VERSUS

SUNIL KR DAS AND 6 ORS.
SON OF HARENDRA CHANDRA DAS, RESIDENT OF VILLAGE- GURIHATI,
P.O. KHOIRABARI, DISTRICT- UDALGURI, ASSAM, PIN- 784522

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI- 781019

3:THE PRINCIPAL SECRETARY
BTR
KOKRAJHAR
P.O. AND DISTRICT- KOKRAJHAR
BTAD
ASSAM
PIN- 783370

4:THE DIRECTOR OF EDUCATION
BTC
KOKRAJHAR
ASSAM
PIN- 783370

5:THE DISTRICT ELEMENTARY EDUCATION OFFICER
UDALGURI
ASSAM

DISTRICT- UDALGURI
ASSAM
PIN- 784509

6:THE BLOCK ELEMENTARY EDUCATION OFFICER
KHOIRABARI
DISTRICT- UDALGURI
ASSAM
PIN- 784522

7:THE STATE OF ASSAM

REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM
ELEMENTARY EDUCATION DEPARTMENT
DISPUR
GUWAHATI-

Advocate for the Petitioner : MR J ABEDIN

Advocate for the Respondent : MR S C DAS

Linked Case : WP(C)/4408/2023

SUNIL KR DAS
SON OF HARENDRA CHANDRA DAS
RESIDENT OF VILLAGE- GURIHATI
P.O. KHOIRABARI
DISTRICT- UDALGURI
ASSAM
PIN- 784522

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM
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7:SRI ASIT KUMAR BHOWMIK
S/O- LATE DINESH BHOWMIK
VILLAGE- CHILAMARI
P.O. KHOIRABARI
DISTRICT- UDALGURI
BTC
ASSAM
PIN- 784522

Advocate for : MR S C DAS

Advocate for : SC

ELEM. EDU appearing for THE STATE OF ASSAM AND 6 ORS

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

ORDER

13.10.2023

Heard Mr. J Abedin, learned counsel for the applicant. Also heard Mr. AK Purkayastha, learned counsel for the writ petitioner, Mr. A Phukan, learned counsel for the Elementary Education Department, Government of Assam and Mr. S Bora, learned counsel or the authorities in the Department of Education, BTC.

2. The applicant was an Assistant Teacher in the Kacharidag M.E School having been appointed on 18.01.1989. The writ petitioner, on the other hand, was appointed as a Primary Teacher on 20.10.1993 in the Kacharidag LP School. Subsequently, both the schools were provincialised. But thereafter by the order dated 22.01.2018, the Kacharidag LP School was amalgamated with Kacharidag ME School. We also notice that there was a subsequent scheme of amalgamation and merger of different school as per the office memorandum dated 03.08.2021, although the merger of the two schools may not have taken place under the said office memorandum.

3. In this writ petition, there is a dispute between the applicant in the interlocutory application and the writ petitioner as to who between the two should be the Headmaster of the amalgamated ME School. In this respect, there is an order dated 28.06.2023 of the Director of Education, BTC whereby a factual determination was arrived that the scale of pay of the writ petitioner Sunil Kumar Das is Rs.7400/- per month as a trained graduate teacher, whereas the pay of the applicant Asit Kumar Bhowmik is Rs.8700/- per month.

Accordingly, as the writ petitioner was found that his scale of pay is Rs.7400/- per month, whereas the scale of pay of the applicant Asit Kumar Bhowmik is Rs.8700/- per month, therefore, the applicant having been paid a higher scale of pay was held to have been entitled to the post of Headmaster of the amalgamated Kacharidag ME School.

4. Mr. AK Purakayastha, learned counsel for the writ petitioner also pointed out that by a subsequent order dated 29.08.2019, the scale of pay of the writ petitioner Sunil Kumar Das was also upgraded w.e.f., 01.04.2019. We have noticed the two schemes of amalgamation, wherein the respective rights of the teachers after amalgamation depending on the category of school had been crystallized and clearly provided, but the respective rights of the teachers upon a LP School being amalgamated with a ME School had not been clearly provided in either of the two schemes. In the absence of any such provision, it is difficult to determine the respective legal rights claimed as to who ought to be the Headmaster between the writ petitioner, who admittedly is a teacher of the erstwhile LP School prior to amalgamation and the applicant a teacher of the erstwhile ME School prior to the amalgamation, where both are presently teachers of the amalgamated ME school. As it is for the framers of the scheme of amalgamation to provide the respective rights of the teachers after such amalgamation and the same having not been provided in either of the two schemes, we direct the Secretary in the School Education Department to examine the two schemes of amalgamation and provide for a definite provision as regards the rights and entitlements of the teachers of the LP School and the ME Schools after the schools are amalgamated.

5. Whatever entitlements are determined by the Secretary upon considering the matter shall govern the writ petitioner and the applicant in respect of their claims to be the Headmaster of the amalgamated ME school concerned.

6. The Secretary in the School Education Department is directed to do the needful within a period of one month from the date of receipt of a certified copy of this order and upon the respective entitlements being determined in relation to the scheme of amalgamation, the Director of Education BTC shall give a hearing to the writ petitioner and the applicant and pass a reasoned order as to who between the two should be the Headmaster of the amalgamated ME School. Once a decision is taken by the Secretary regarding the entitlement, the petitioner and the applicant both be given a hearing by the Director while deciding upon the respective claim to be the Headmaster.

7. It is also stated that presently neither the writ petitioner in WP(C)No.4408/2023 nor the applicant in this interlocutory application is holding the post of Headmaster and it is stated that the concerned Block Elementary Education Officer is discharging the functions of the Headmaster of Kacharidag ME School. The said status be continued till a decision is taken by the Director of Education BTC.

8. Interlocutory application accordingly stands disposed of.

JUDGE

Comparing Assistant