

GAHC010205042019



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

Case No. : WP(C)/6297/2019

ROMESH CHOWHAN
S/O. LT. SRI RAMAKANTA CHOWHAN ASSTT. TEACHER PHAKUAGRAM
HIGHER SECONDARY SCHOOL, DIST. KARIMGANJ, R/O. VILL.
GHUNGOOR, P.O. NIT, P.S. SILCHAR SADAR, DIST. CACHAR, ASSAM, PIN-
788010.

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE COMM. AND SECY., TO THE GOVT. OF ASSAM, DEPTT. OF
SECONDARY EDUCATION, DISPUR, GUWAHATI, ASSAM, PIN-781006.

2:THE DIRECTOR OF SECONDARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI
ASSAM
PIN-781019.

3:THE INSPECTOR OF SCHOOLS

KDC
KARIMGANJ
P.O. AND DIST. KARIMGANJ
ASSAM.

4:THE PRINCIPAL

PHAKUAGRAM HIGHER SECONDARY SCHOOL
DIST. KARIMGANJ
ASSAM

PIN-788723.

5:THE NATIONAL COUNCIL FOR TEACHER EDUCATION

EASTERN REGIONAL COMMITTEE
REP. BY ITS REGIONAL DIRECTOR
15 NILAKANTHA NAGAR
NAYAPALLI
BHUBANESWAR
ORISSA
PIN-751012

Advocate for the Petitioner : MR. A K DUTTA

Advocate for the Respondent : SC, SEC. EDU.

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 10.03.2023

Heard Mr. B. Purkayastha, learned counsel for the petitioner. Also heard Mr. R. Mazumdar, learned standing counsel for the Secondary Education Department, representing respondent nos.1, 2 and 3, and Mr. I. Alam, learned standing counsel for the respondent no. 5. None appears on call for the respondent no. 4.

2. The petitioner claims that he possesses the requisite NCTE prescribed qualification and pursuant to employment advertisement dated 16.12.2015, the petitioner had applied for the post and was selected and appointed to the post of Assistant Teacher in Hindi in the Phakuagram H.S. School, Karimganj vide order dated 09.06.2017, issued by the Inspector of Schools, K.D.C., Karimganj. Accordingly, the petitioner had joined his service on and from 14.06.2017. It is projected that on and from 16.06.2017, the

respondent no. 4 had restrained the petitioner from attending the school and discharging his duties and although the petitioner had submitted his representation dated 16.06.2017 before the Inspector of Schools, Karimganj (respondent no. 3), but as nothing happened, the petitioner approached this Court by filing W.P.(C) 5700/2017 and this Court, by order dated 16.09.2017, disposed of the said writ petition by directing the respondent no. 3 to consider the petitioner's representation on the obstruction given to the appointed Graduate Teacher (Hindi), to join Phakuagram H.S. School and that necessary steps should be taken by the respondent no. 3 to facilitate the joining of the appointed person, with further direction to the said authority to decide the matter within two weeks from the date of receipt of the representation. Consequently by order dated 08.12.2017, the Inspector of Schools, KDC, Karimganj, had cancelled the petitioner's appointment order dated 09.06.2017, which was in compliance of the order dated 05.12.2017, issued by the Director of Secondary Education, Assam (respondent no.2). Hence, by filing this writ petition under Article 226 of the Constitution of India, the petitioner has prayed, *inter alia*, for (i) setting aside the order dated 08.12.2017; (ii) for directing the respondent authorities to allow the petitioner to continue his service as Graduate Teacher (Hindi) in Phakuagram H.S. School, Karimganj; (iii) for setting aside the letter dated 14.08.2019 issued by respondent no. 2 in so far it concerns the post of Graduate Teacher (Hindi) in Phakuagram H.S. School, Karimganj, which was advertised on 28.01.2017.

3. The learned counsel for the petitioner has submitted that by filing W.P.(C) 1801/2018, the petitioner had prayed, *inter alia*, for a direction to modify the relevant provisions of Schedule-II of the Assam Secondary Education (Provincialised) Service Rules, 2003 in the light of the mandate of notification

dated 11.12.2014, issued by the NCTE in exercise of power under the provisions of the NCTE Act, 1993, or in the alternative to declare the impugned provisions of Assam Secondary Education (Provincialised) Service Rules, 2003 as illegal, ultra vires, null and void, unconstitutional and to set aside and quash the order of cancellation/termination dated 08.12.2017. The petitioner had also prayed for directing the respondent authorities to do his duties as Assistant Teacher (Hindi) in Phakuagram H.S. School, Karimganj as per his joining dated 14.06.2017, submitted pursuant to his appointment order dated 09.06.2017. However, as the Assam Secondary Education (Provincialised) Service Rules, 2003 had been repealed, the said writ petition was disposed without prejudice to the interest of the parties in this writ petition.

4. It is submitted that now the NCTE prescribed norms has been incorporated under Entry no. 3 of Schedule-II of the Assam Secondary Education (Provincialised Schools) Rules, 2018. Hence, it has been submitted that as the petitioner holds the requisite qualification of having 56.5% marks in Post Graduation in Hindi, he was eligible for continuing in service and accordingly, it is submitted that the petitioner is entitled to all reliefs as prayed for, and that the petitioner should be treated as if he is in service without any break with all service benefits.

5. The learned standing counsel for the Secondary Education Department has submitted that as per the advertisement published in newspapers on 28.01.2017, the desired qualification to be selected and appointed as Hindi Teacher in Graduate Scale was "*Pravin/ Ratna in Hindi with 50% marks having degree qualification from any recognized University or B.A. with Hindi as one of the subjects with 50% marks and B.T./B.Ed. degree from*

any recognized University (Parangat to be treated as equivalent to B.Ed. degree only for the purpose of Hindi Teaching)." But on the date of appointment, the petitioner was a Graduate with Hindi, and though he had 50% marks in Hindi, but his aggregate marks was not 50% or above. It was also submitted that in view of the qualification prescribed in the advertisement, the authorities did not take into consideration the Post Graduate degree of the petitioner. Hence, it is submitted that the appointment letter was erroneously issued and therefore, the said mistake was rectified by cancelling the appointment order of the petitioner and therefore, this was not a case of termination of the petitioner from service.

6. The learned standing counsel for the NCTE had submitted that their stand in the affidavit-in-opposition is that as per NCTE notification dated 12.11.2014, for recruitment as Assistant Teachers one must have either graduation or post graduation with 50% marks and B.Ed. Degree and also TET pass certificates as mandatory. It was also submitted that the further stand of the NCTE was to the effect that Education Department of the Government of Assam was required to comply with the NCTE guidelines and that the candidates must fulfill the eligibility criteria prescribed by notification dated 12.11.2014.

7. In this writ petition, the eligibility criteria as prescribed in the advertisement published in newspapers on 28.01.2017 has not been challenged by the petitioner. In the considered opinion of the Court, the respondent authorities in the Secondary Education Department could not have appointed persons who did not meet the qualification criteria contained in the said advertisement published on 28.01.2017. A different treatment cannot be meted out to the petitioner because there may be many persons, who may be similarly situated as the petitioner having post graduation degree with 50% or more

marks in the aggregate, but may not have applied in light of the qualification prescribed in the employment advertisement.

8. It would be appropriate to refer to the case of *State of Bihar v. Madhu Kant Ranjan*, 2021 STPL 12176 SC: AIR 2022 SC 1310, where the Supreme Court of India, while dealing with recruitment for the post of police constable, held that as per the settled proposition of law, a candidate/applicant has to comply with all the conditions/ eligibility criteria as per the advertisement before the cut-off date mentioned therein unless extended by the recruiting authority, further holding that only those documents, which are submitted alongwith the application form, which are required to be submitted as per the advertisement, have to be considered. Accordingly, the dismissal of the writ petition was upheld.

9. It is reiterated at the cost of repetition that as per the advertisement, the candidate was required to be "Pravin/ Ratna in Hindi with 50% marks having degree qualification from any recognized University" or "B.A. with Hindi as one of the subjects with 50% marks" and "B.T./B.Ed. degree from any recognized University". However, as a graduate degree holder, the petitioner did not have 50% marks in the aggregate. However, although the petitioner was a Post Graduate in Hindi with 56.5% marks, but that was not the qualification prescribed in the advertisement for being appointed as "Hindi Teacher in Graduate Scale". The subsequently prescribed qualification vide Entry No. 3 of Schedule-II of the Assam Secondary Education (Provincialised Schools) Rules, 2018 would not enable the petitioner to be granted reliefs as prayed for in this writ petition because the legal prescription came after the appointment order dated 09.06.2017 was cancelled by the Inspector of School, KDC, Karimganj

vide order under memo no. K-IS/Apptt/CT/Hindi/15/2017/15230-37 dated 08.12.2017, in compliance with the order dated 05.12.2017, issued by the Director of Secondary, Assam.

10. At this stage, the learned counsel for the petitioner has submitted that the matter be adjourned to enable the petitioner to amend the writ petition to assail the qualification prescribed in the said advertisement published on 28.01.2017. The Court is unable to accept the said prayer after the matter was heard. Moreover, it has already been indicated herein before that the case of the petitioner cannot be considered because there may be many persons, who may be similarly situated as the petitioner, having post graduation degree with 50% or more marks in the aggregate, but may not have applied in light of the qualification prescribed in the employment advertisement.

11. We do not find any infirmity in the cancellation of appointment order dated 09.06.2017 vide the impugned cancellation order dated 08.12.2017. Thus, this writ petition, in the considered opinion of the Court, fails on all the herein before discussed counts.

12. Resultantly, the petitioner has not been able to make out any case for interference with the orders impugned in this writ petition and accordingly, this writ petition stands dismissed. However, the parties are left to bear their own cost.

JUDGE

Comparing Assistant