

GAHC010206792016



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

Case No. : WP(C)/5274/2016

TILAK DULAL
S/O. SRI KRISHNA LAL DULAL, ADDL. ASSTT. TEACHER, UTTAR SEKHAR
M.E. SCHOOL, VILL. NO.2 BAMUNJULI, P.O. KALIKHOLA, DIST. UDALGURI
BTAD, ASSAM, PIN-784526.

VERSUS

THE STATE OF ASSAM AND 8 ORS
REP. BY THE COMM. and SECY. TO THE GOVT. OF ASSAM, EDUCATION
ELEMENTARY DEPTT., DISPUR, GHY.-06.

Advocate for the Petitioner : MR.A ADHIKARY
Advocate for the Respondent : MR.H SARMAR-9

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

26-06-2023

Heard Shri S. Upadhyay, learned counsel for the petitioner also heard Ms. R. B. Bora, learned Standing Counsel, BTC whereas the respondent no. 9 is represented by Shri H. Sarma, learned counsel.

2. Considering that this writ petition is pending since the year 2016, wherein the necessary pleadings have been exchanged, the same is taken up for disposal at the admission stage.

3. The grievance of the petitioner is with regard to the regularization of the services of the respondent no. 9 who according to the petitioner is junior to him in service. As per the facts projected, the petitioner was inducted as an Addl. Assistant Teacher in the Uttar Sekhar M. E. School in the district of Udalguri vide a resolution by the School Management Committee on 01.05.1995 pursuant to which he has joined the School on 03.05.1995. The petitioner claims that his services were approved by the District Elementary Education Officer, Darrang on 24.05.2000. As per the petitioner, the respondent no. 9 was appointed in the said School in the year 1998 and therefore much junior to the petitioner.

4. According to the petitioner, the services of the respondent no. 9 was however regularized vide an order dated 20.01.2015 which is the subject matter of challenge.

5. Shri Upadhyay, the learned counsel for the petitioner submits that admittedly when the respondent no. 9 is much junior to the petitioner, the benefit of regularization of services could not have been given to him.

6. On the other hand, Ms. Bora, learned Standing Counsel, BTC has submitted that the projection made on facts by the petitioner is wholly incorrect and there is no candid disclosure of all the facts.

7. By referring to the affidavit-in-opposition filed by the BTC, more particularly paragraph-3 thereof, it is submitted that it is not a case of regularization of the services of the respondent no. 9 *vis a vis* the case of the petitioner. The actual facts were that a selection process was held for regular appointment in which the respondent no. 9 had participated and the petitioner had chose not to participate. Pursuant to the said selection, the respondent no. 9 was initially appointed in Rajagarh M. E. School which however turned out to be a Hindi Medium School and therefore the order dated 20.01.2015 had to be passed by which the services of the respondent no. 9 was brought back to the parent school.

8. Shri H. Sarma, learned counsel for the respondent no. 9 while endorsing the submission of the BTC has also submitted that though the petitioner may be senior to him with regard to the date of joining in the School in question, the same is not at all relevant as the order dated 20.01.2015 is not an order of regularization but an order relating to a regular appointment pursuant to a selection process. By referring to the affidavit-in-opposition filed by the respondent no. 9, more particularly the averments made in paragraph 8 thereof, Shri Sarma, the learned counsel has submitted that in the recruitment process, the respondent no. 9 was adjudged the first nominee and accordingly he was initially appointed in the Rajagarh M. E. School which appeared to have been done inadvertently as the said School was a Hindi Medium one. Accordingly, the order dated 20.01.2015 was passed by which the respondent no. 9 was appointing in the Uttar Sekhar M. E. School.

9. After hearing the parties, this Court is of the opinion that the challenge made to the order dated 20.01.2015 is based upon certain grounds which are factually incorrect. A Writ Court exercising powers under Article 226 of the Constitution of India is a Court of Equity wherein the conduct of the petitioner is of paramount importance which requires a candid disclosure of the facts. In the instant case, it appears that the facts of the recruitment process pursuant to which the appointment of the respondent no. 9 was made has not been disclosed at all.

10. Be that as it may, giving the benefit of doubt to the petitioner on the said aspect, what transpires is that the disclosure made by the contesting respondents has not been denied by the petitioner. In any case, it is clear from the records and materials placed before this Court that the appointment of the respondent no. 9 vide the order dated 20.01.2015 is not an order of regularization of service but an order of fresh appointment pursuant to a recruitment process.

11. Under those facts and circumstances, this Court is of the unhesitant opinion that

the instant case has been preferred on the basis of certain grounds which are neither tenable in law nor on facts.

12. Accordingly, the writ petition stands dismissed.

JUDGE

Comparing Assistant