

GAHC010207612016



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

Case No. : WP(C)/6061/2016

BROJENDRA WAIBRA
S/O- LT. SURJADAN WAIBRA, VILL.- HAGJER NAGAR, P.O.- HAFLONG, NC
HILLS.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE SECY. TO THE GOVT. OF ASSAM, DEPTT. OF ELEMENTARY
EDUCATION, DISPUR, GHY- 6.

2:THE NC HILLS AUTONOMOUS COUNCIL
HAFLONG
REP. BY ITS PRINCIPAL SECY. N.

3:THE PRINCIPAL SECY.
N
N.C. HILLS AUTONOMOUS COUNCIL
HAFLONG- 788819.

4:GOPA BHUSAN THAOSEN
S/O- LT. TALONDAO THAOSEN
VILL.- BIGRIK
P.O. and P.S.- HAFLONG
NC HILLS
PIN- 788819

Advocate for the Petitioner : MR.A K BORA

Advocate for the Respondent : MR.B BARUAHR-4

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 13.03.2023

Heard Mr. S.K. Talukdar, learned counsel for the petitioner, Mr. A. Phukan, learned counsel for the respondent no.1 as well as Mr. A. Khanikar, learned standing counsel for the respondent nos. 2 and 3. None appears on call for respondent no.4.

2. The promotion of respondent no.4 to the post of Block Primary Education Officer (BPEO for short), NC Hills Autonomous Council vide order dated 06.08.2016 (annexure-5) is under challenge in this writ petition filed under Article 226 of the Constitution of India.

3. In this writ petition, it is projected that the petitioner is the senior most Sub-Inspector of Schools and in this regard reference is made to the appointment of the petitioner as Sub-Inspector of Schools by order dated 27.06.1991 (annexure-1). The learned counsel for the petitioner has submitted that the respondent no.4 was appointed as Sub-Inspector of Schools by order dated 14.03.1992 (annexure-2). Accordingly, it is submitted that by the impugned order dated 06.08.2016, the respondent no.4 was illegally promoted to the post of BPEO, NC Hills in the vacancy cause due to retirement of the erstwhile BPEO. It is submitted that despite representation filed by the petitioner in the matter, no action was taken by the respondent authorities and therefore, this writ petition.

4. The learned standing counsel for the NC Hills Autonomous Council has referred to the instruction received by him and it is submitted that the respondent no.4 had initially joined service on 01.06.1982 as LP School teacher and in this regard, he has referred to order dated 01.06.1982 (annexure-A) to the affidavit-in-opposition filed by the respondent no.4.

5. In view of the said position, although the learned counsel for the petitioner has made an attempt to justify the challenge on the ground that the seniority would be counted from the date the petitioner as well as the respondent no.4 entered into service as Sub-Inspector of Schools, but the petitioner has not been able to demonstrate anything from the record that on joining the post of Sub-Inspector of Schools vide order dated 14.03.1992, the respondent no.4 would have lost his seniority w.e.f. 01.06.1982, having joined government service as LP School teacher w.e.f. 01.06.1982, inasmuch as the appointment to the said post was made by the Principal Secretary, NC Hills District Council.

6. Therefore, in the absence of any materials on record that the past service of the respondent no.4 could not have been considered and that his appointment to the post of Sub-Inspector of Schools would not entitled him to the benefit of his past service rendered as LP School teacher, the Court is of the considered opinion that the petitioner has not been able to make out a case for interference with the appointment of respondent no.4 as BPEO, NC Hills Autonomous Council.

7. At this stage, the learned counsel for the petitioner submits that he

has sought for instruction whether the issue involved in this writ petition is alive as on date.

8. Be that as it may, notwithstanding whether the subject matter of writ petition is alive or not, but as the Court finds that the petitioner has not been able to make out a case for exclusion of past service of the respondent no.4, this writ petition fails and the same is dismissed.

9. There shall be no order as to cost.

10. Instruction produced by the learned standing counsel for the respondent nos. 2 and 3 is kept as a part on record.

JUDGE

Comparing Assistant