

GAHC010237182023



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

Case No. : WP(C)/5699/2023

MONJULA SARMAH,
W/O- MANUJ KUMAR SARMAH,
VILLAGE- NATBARI PART-I,
P.O. AND P.S.- TAMARHAT,
DIST.- DHUBRI, ASSAM.

--VERSUS--

1. THE STATE OF ASSAM AND 6 ORS,
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM,
EDUCATION (ELEMENTARY) DEPARTMENT,
DISPUR, GUWAHATI-6.

2:THE DIRECTOR OF ELEMENTARY EDUCATION, ASSAM,
KAHILIPARA, GUWAHATI-19.

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER, DHUBRI
DISTRICT- DHUBRI, ASSAM.

4:THE DEPUTY INSPECTOR OF SCHOOLS, DHUBRI,ASSAM.

5:THE BLOCK ELEMENTARY EDUCATION OFFICER, AGOMANI,
DISTRICT- DHUBRI, ASSAM.

6:THE HEAD TEACHER OF 41 NO. TAMARHAT JB SCHOOL,
VILLAGE- NATBARI PART-I, P.O. AND P.S.- TAMARHAT,
DISTRICT- DHUBRI, ASSAM.

7:ANJALI ROY,
W/O- SUCHIL CH ROY,
VILLAGE- NATBARI PART-II
P.O. AND P.S.- TAMARHAT, DIST.- DHUBRI, ASSAM.

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

- B E F O R E -
HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR
ORDER

05.12.2023

Heard Mr. A.K. Hussain, learned counsel for the petitioner. Also heard Mr. P.K. Bora, learned Standing Counsel, Elementary Education Department appearing for respondent Nos.1 to 5. None appears for respondent No.6. Mr. G. U. Ahmed, learned counsel appears for respondent No.7

2. The petitioner, an Assistant Teacher working at 41 No. Tamarhat J.B. School, has, by way of instituting the present proceeding, assailed the order dated 14.09.2023 (Annexure -7) by which the respondent No.7 was allowed to act as the in-charge Head Teacher-cum-Member Secretary of the School in question.

3. This Court, while issuing notice vide order dated 27.09.2023, noticing the fact that the petitioner, who was allowed to act as the in-charge Head Teacher-cum-Member Secretary of 41 No. Tamarhat JB School vide order dated 22.08.2023, came to be replaced by the respondent No.7 vide order dated 14.09.2023, passed interim directions that in view of the two conflicting orders, the subsequent order dated 14.09.2023 allowing the respondent No.7 to function as the Head Teacher of the School, shall remain stayed.

4. The respondent No.7 has entered appearance in the present proceedings

and has also filed the connected Interlocutory Application [I.A. (Civil) No.3180/2023] praying for vacation/ modification of the order dated 27.09.2023 passed in the present proceeding.

5. With the consent of the learned counsel of the parties, the present writ petition is taken up for consideration and disposal.

6. Mr. A.K. Hussain, learned counsel for the petitioner, has contended that basing on the length of service rendered by her in the same school, the petitioner is the senior-most teacher of 41 No. Tamarhat J.B. School and, as such, she has a legitimate expectation to be appointed as the regular Head Teacher of the school and till such time regular selection is held, the petitioner is entitled to hold the charge of the post of Head Teacher.

7. Mr. Hussain, learned counsel, further contends that the respondent No.7 had joined the 41 No. Tamarhat Junior Basic School only on 23.09.2003 and, that too, on attachment basis. Mr. Hussain contends that during existence of the order dated 22.08.2023 allowing the petitioner to function as the Head Teacher of the said school, the authorities without any reasoning proceeded to issue the order dated 14.09.2023 allowing the respondent No.7 to function as the in-charge Head Teacher of the said School. This, according to Mr. Hussain, is not sustainable as it amounts to replacement of an *ad hoc* appointee by another *ad hoc* appointee and as such he prays that the impugned order dated 14.09.2023 be interfered with.

8. *Per contra*, Mr. G.U. Ahmed, learned counsel appearing for the respondent No.7 contends that between the petitioner and the respondent No.7, it is admittedly the respondent No.7, who is senior. But on a vacancy arising in the school for the post of Head Teacher, her case was not considered and the

petitioner was allowed to function as the Head Teacher of the school by the Block Elementary Education Officer (BEEO), Agomani. On being apprised of the said development the District Elementary Education Officer (DEEO), Dhubri vide his communication dated 02.09.2023, while cancelling the order dated 22.08.2023, required submission of service details of the incumbents in the school. The particulars as called for, came to be submitted and basing thereon a conclusion was arrived that it is the Respondent No.7 who is the senior most teacher in the school. Thereafter, the impugned order dated 14.09.2023 came to be issued by the District Elementary Education Officer (DEEO), Dhubri allowing the respondent No.7 to function as the In-Charge Head Teacher cum Member Secretary of the school in question.

9. Mr. P.K. Bora, learned Standing Counsel, Elementary Education Department, in response to a query made by this Court, furnished written instructions from the District Elementary Education Officer, Dhubri dated 05.12.2023, wherein it has been clarified that the respondent No.7, although earlier shown to have been placed in the school in question on attachment basis, was subsequently adjusted in the school in question and she was drawing her salaries from 41 No. Tamarhat J B School. It was also highlighted that the respondent No. 7 was also confirmed against a post in the said school. Basing on the said instructions it is the submission of the learned Standing Counsel, Elementary Education Department that the Respondent No. 7 is a teacher of 41 No. Tamarhat J B School and her seniority is to be reckoned in the said school itself.

10. I have heard the learned counsel for the parties and also considered the materials placed on record.

11. The contention of Mr. A.K. Hussain, learned counsel for the petitioner that in view of the fact that the petitioner was vide order dated 22.08.2023 allowed

to function as In-Charge Head Teacher of the school in question, the subsequent interim arrangement made involving the respondent No.7 vide order dated 14.09.2023 cannot be sustained inasmuch the same amounts to an *ad hoc* appointee being replaced by another *ad hoc* appointee is to be considered. Examination of the records available, reflects that the order dated 22.08.2023 issued by the Block Elementary Education Officer (BEEO) was so issued without there being any exercise carried out to determine the inter-se seniority of the teachers working at that relevant point of time in the school in question and also by ignoring the case of the Respondent No. 7 who admittedly was senior to the Petitioner as regards length of service and who suffered no disability for being denied the charge of the post of Head Teacher of the school in question. Further, the engagement of the petitioner by the Block Elementary Education Officer, Agomani was disputed before the District Elementary Education Officer, Dhubri, which led to issuance of a communication dated 02.09.2023, by which, while cancelling the order dated 22.08.2023 required the Block Elementary Education Officer, Agomani, to submit a proposal indicating the seniority position of the Assistant Teachers working in the school. Accordingly, on 12.09.2023, the BEEO, Agomani forwarded to the DEEO, Dhubri, the *inter se* seniority list of the incumbents of the school, wherein the name of the petitioner was placed at 2 and that of the Respondent No. 7 was placed at 1. Accordingly, on examination of the proposal contained in the said communication dated 12.09.2023, the District Elementary Education Officer, Dhubri, on drawing satisfaction that it was the Respondent No.7 who was the senior-most incumbent in the school, issued the order dated 14.09.2023 allowing the respondent No.7 to function as the Head Teacher-cum-Member Secretary of 41 No. Tamarhat JB School. In view of the said discussion, the contention of the petitioner that by issuing the order,

dated 14.09.2023, had the effect of an *ad hoc* being replaced by another *ad hoc* appointee cannot be accepted and the said contention stands rejected.

12. The facts of the matter reveals that on account of a person who admittedly is senior being appointed as the In-charge Head Teacher of the school in question by the authority competent to do so, no infringement occasioned of any of the rights of the petitioner and as such, the impugned order dated 14.09.2023 does not call for any interference.

13. Accordingly, the writ petition stands dismissed.

14. The interim orders passed earlier stands vacated.

15. The parties are left to bear their own costs.

JUDGE

Comparing Assistant