

GAHC010227522022



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

Case No. : WP(C)/7194/2022

LAKHESWAR DEURY
S/O LATE SONESWAR DEURY, R/O VILL- FINGURA, P.O.-CHAPARIA, P.S.-
BARPETA, DIST- BARPETA, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF
ASSAM, EDUCATION (SECONDARY) DEPARTMENT, DISPUR, GUWAHATI-6

2:THE CHAIRMAN
STATE LEVEL RECRUITMENT COMMISSION FOR CLASS-IV POST
ASSAM SACHIVALAYA
DISPUR
GUWAHATI-6

3:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-781019

4:THE INSPECTOR OF SCHOOLS
BARPETA DISTRICT CIRCLE
BARPETA
ASSAM

5:THE PRINCIPAL
PAKA HIGHER SECONDARY SCHOOL
FUNGUA
P.O.-GOLIBANDHA

BARPETA
DIST- BARPETA
ASSAM
PIN-78137

Advocate for the Petitioner : MR. A K HUSSAIN
Advocate for the Respondent : SC, SEC. EDU.

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date : 14.12.2023

ORDER

Heard Mr. A. K. Hussain, learned counsel for the petitioner. Also heard Ms. D. Mushahary, learned standing counsel, Secondary Education Department, Government of Assam; appearing on behalf of respondents No. 1 to 4. However, none has appeared on behalf of respondent No. 5.

2. The petitioner by way of instituting the present petition, has presented a challenge to an order, dated 16.03.2022, by which the Director, Secondary Education Department, while disposing of his representation in pursuance of the directions passed by the Court in WP(c)8790/2018, vide order dated 11.11.2019 had intimated that the selection process for recruitment against the vacant post in Grade IV available in Paka Higher Secondary School shall be carried-out by the State Level Recruitment Commission for Class IV in terms of the Assam Direct Recruitment Commission for Analogous Posts in Class III and Class IV Act, 2021.

The brief facts requisite for adjudication of the issues arising in the proceeding is noted hereinbelow.

The petitioner was initially appointed on honorary basis in Paka Higher Secondary School vide appointment letter, dated 03.02.2009 as a Grade IV employee. The petitioner thereafter is continuing to serve in the said school in the same capacity. Basing on an apprehension that the vacant post available in the said school is to be filled up on pick-and-choose basis, the petitioner instituted WP(c) 3193/2014 before this Court and the Court vide order dated 27.06.2014 disposed of the said writ petition with a direction that the vacant post available in the school in question shall be filled up by holding a selection process as per the rules holding the field. The petitioner thereafter instituted another writ petition being WP(c)8790/2018 praying for the same relief, as prayed for by the petitioner in WP(c)3193/2014. This Court vide order dated 11.11.2019 disposed of the said writ petition by providing that the post in question be advertised and the petitioner be given appointment by giving credit for his long service and experience garnered while working as a Grade IV employee in the said school. The exercise was directed to be completed within a period of 6 months.

The respondent No. 2 vide order dated 16.03.2022 considered the case of the petitioner in pursuance of the directions contained in the order dated 11.11.2019 passed in WP(c)8790/2018 and held that the post of Grade IV available in the school in question cannot be advertised by the authorities of the Secondary Education Department but would be so advertised by the State Level Recruitment Commission for Class IV in terms of the Assam Direct Recruitment Commission for Analogous Posts in Class III and Class IV Act, 2021 and the petitioner can submit his application as and when advertisements are issued by the said body. It is this order that is under challenge in the instant proceeding.

3. I have heard the learned counsels appearing for the parties and also perused the materials placed on record.

4. The petitioner was engaged on honorary basis in a provincialized school. Such engagement was necessitated on account of a need for a hand to do the works of a Grade IV employee in the school. The petitioner had approached this Court by way of instituting writ petitions being WP(c)3193/2014 and WP(c)8790/2018 which were given its due consideration and observations made by the Court was to the effect that the post in question, be filled up by way of selection in terms of the rules by permitting the petitioner to appear in such selection. The respondent No. 2 vide order dated 16.03.2022 had intimated the petitioner that in view of the provisions of the Assam Direct Recruitment Commission for Analogous Posts in Class III and Class IV Act, 2021, the post in question cannot be advertised by the authorities of the Secondary Education Department and the same has to be advertised by the State Level Recruitment Commission for Class IV. The petitioner has made a grievance with regard to the said mode of recruitment.

5. The said Act of 2021 was enacted by the legislature of the State to regulate the direct recruitment for appointment of Class III and Class IV in different offices of the Government of Assam. The said Act of 2021 in terms of Section 20 thereof, was given an overriding effect over other State laws for the time being in force.

Further section 21 of the said Act of 2021 provides that the provisions for direct recruitment in any rule and/or order in respect of Class III and Class IV, other than such posts which are excluded from the purview of the Act of 2021 under Section 3 thereof, shall stand repealed.

Section 3 of the Act of 2021 provides that the provisions of the said Act of 2021 shall apply for recruitment to all Class III and Class IV posts under the Government of Assam and it also provides that the Government may by a specific or general notification exclude certain posts or category of posts from the purview of the Act.

It has been stated in the Bar that with regard to the posts figuring in the Education Department more particularly in the provincialized school, no notification has been issued invoking the power under proviso to Section 3 excluding such posts from the purview of the Act of 2021.

6. In view of the said position, the vacant Grade IV post now lying vacant in Paka Higher Secondary School, shall have to be filled-up by following the provisions of the said Act of 2021 and accordingly, the case of the petitioner shall also have to be considered thereunder.

The manner in which the post presently lying vacant in Paka Higher Secondary School having been determined as above; this Court now proceeds to determine the relief, the petitioner is entitled to. It is seen that the petitioner is agitating the issue with regard to the filling of the Grade IV post since long and this Court, vide various orders required the respondent authorities to initiate the recruitment process strictly in accordance with the provisions holding the field.

7. This Court vide order dated 11.11.2019 passed in WP(c)8790/2018 required extension of certain credit to the petitioner for his long service and experience garnered while serving as the Grade IV employee in the said school, while considering his case for appointment. The observations made in the said order, dated 11.11.2019, passed in WP(c)8790/2018 being relevant for deciding this case, are quoted hereinbelow:

“In that view of the matter, let the post, if lying vacant, be advertised by the authorities and the authorities will give due credit to the petitioner for the long service and experience gathered by the petitioner while serving as a Grade-IV in the said school at the time of consideration for appointment. In fact, it is desirable that because of such long service rendered, the petitioner be given appointment. The aforesaid exercise shall be undertaken within a period of 6(six) months from the date of receipt

of a certified copy of this order.”

8. In view of the said position; this writ petition stands disposed of with a direction to the respondents No. 1, 2 & 3 to expeditiously initiate the process of recruitment for filling up the vacant post of Grade IV including those available in Paka Higher Secondary School and therein, have the case of the petitioner also considered.

9. The said process be initiated within a period of 60 days from today and be concluded expeditiously thereafter. The petitioner shall be eligible to appear in the said recruitment process on advertisement in connection thereof, is issued.

10. It is provided that if in the meantime, the petitioner has become over-aged, the respondent authorities shall suitably condone his over-age thereby permitting him to take part in the selection process. While considering the case of the petitioner in the said selection process, the observation made by this Court vide order, dated 11.11.2019 in WP(c)8790/2018 quoted hereinabove, shall be given due consideration.

11. With the above directions, the writ petition stands disposed of. There shall be no order as to costs.

JUDGE

Comparing Assistant