

GAHC010237142022



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

Case No. : WP(C)/7431/2022

DULAL BORA
S/O- LATE GANESH BORA,
R/O- MACHKHOWA NO. 1 BORAJAN,
P.O. AND P.S.- MACHKHOWA,
DIST.- DHEMAJI, ASSAM.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM,
EDUCATION (SECONDARY) DEPARTMENT,
SACHIVALAYA, DISPUR, GUWAHATI-6.
2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19.
3:THE DEPUTY DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19.
4:THE INSPECTOR OF SCHOOL
D.D.C.
DHEMAJI
DISTRICT- DHEMAJI
ASSAM.
5:HEMURAM BORAH
PRINCIPAL IN CHARGE
MACHKHOWA SR. SECONDARY SCHOOL
P.O. AND P.S.- MACHKHOWA
DISTRICT- DHEMAJI
ASSAM
PIN- 787058

Advocate for the Petitioner : MR S BORTHAKUR

Advocate for the Respondent : SC, SEC. EDU.

**BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK**

ORDER

27.01.2023

Heard Mr. S Borthakur, learned counsel for the petitioner and Mr. SMT Chistie, learned Standing counsel, Department of School (Secondary) Education, Assam for the respondent Nos. 1 to 4.

2. Petitioner, a post-graduate degree holder belonging to the OBC category served in Machkhowa Junior College, District-Dhemaji since 20.06.1997. He has also obtained B.Ed. degree in the year 2017.

3. Said Machkhowa Junior College, District-Dhemaji was provincialised by order dated 01.06.2012 under the provisions of the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 and was renamed as Machkhowa Senior Secondary School.

4. It is stated that the petitioner is the only qualified teacher of the said school to hold the post of Principal in-charge, having the requisite eligibility to apply for the post of Principal in any such provincialised secondary schools of the State.

5. The petitioner also stated that disregarding his eligibility, the Director of Secondary Education, Assam by order No. PC/Sec/47/2017/211 dated 25.03.2021 allowed the respondent No. 5 to be the Principal in-charge of the said Machkhowa Senior Secondary School along with financial power to draw and disburse the salary etc. of the staff of the said school in addition to his normal duties under F.R.49(C) as Sri Dambarudhar Gogoi, in-charge Principal of the said school retired on 28.02.2021 on attaining the age of superannuation.

6. Being aggrieved with said order dated 25.03.2021 of the Director of Secondary Education (DSE), Assam allowing the respondent No. 5 to be the Principal in-charge of the said school, the petitioner has filed this writ petition on 18.11.2022.

7. Placing the provisions of the Assam Secondary Education (Provincialised Schools) Service Rules, 2018, a statutory Rule under Article 309 of the Constitution of India, Mr. Borthakur submitted that the maximum age of a person to participate in the process of selection to the post of Principal in any provincialised secondary school of the State is 57 years, whereas, at the time of issuance of the impugned order dated 25.03.2021 by the DSE, Assam the respondent No. 5 was approximately of 58 years 3 months.

8. It is to be noted herein that one lecturer of the said senior secondary school committed suicide and in that regard an FIR against the petitioner was lodged, which was registered as Dhemaji Police Station Case No. 242/2018 under Section 306 of the IPC, corresponding to Sessions Case No. 50(DH)/2019.

9. The petitioner approached this Court challenging the said FIR pertaining to Dhemaji P.S. Case No. 242/2018 by filing Criminal Petition No. 1053/2019 for quashing the said criminal proceeding and all other proceeding consequent thereto against the petitioner.

10. During the deliberation of the matter, Mr. SMT Chistie, learned Standing counsel, Department of School (Secondary) Education, Assam placed before the Court that the impugned order dated 25.03.2021 of the DSE, Assam, allowing the respondent No. 5 to hold the charge of Principal of the said school has already been revoked by the DSE, Assam and by order No. GB-EST/Apptt/FP/42/2016/293 dated 29.11.2022 the Inspector of Schools, Dhemaji District Circle, Dhemaji was allowed to hold the charge of Principal of said Machkhowa Senior Secondary School, Dhemaji along with financial power to draw and disburse the salary etc. of the staff of the said school in addition to her normal duties under F.R. 49 (C) relieving the respondent No. 5, Sri. Hemuram Borah, In-charge Principal of said senior secondary school.

11. As such, Mr. Chistie submitted that as the prayer of the petitioner with regard to allowing the respondent No. 5 to hold the charge of in-charge Principal of the said school has already been withdrawn, nothing survives in this writ petition.

12. However, Mr. Borthakur, learned counsel for the petitioner submitted that he not

only challenged the said order dated 25.03.2021 of the DSE, Assam, allowing the respondent No. 5 to hold the charge of Principal of the said school, but also prayed for a direction to the respondents herein to allow the petitioner to hold the charge of Principal In-charge of said Machkhowa Senior Secondary School, District–Dhemaji.

13. In that regard, the petitioner placed before the Court the order dated 11.11.2022 (Annexure-F to this petition) issued by the DSE, Assam, whereby the said authority found that it is only the petitioner having the requisite eligibility i.e., B.Ed. degree, to hold the charge of Principal In-charge of the said school. Since the Inspector of Schools, Dhemaji District Circle, Dhemaji vide communication dated 05.11.2022 submitted that a criminal case is pending against the petitioner and therefore, the respondent No. 5 was considered for the post of Principal in-charge of the said school.

14. Petitioner submitted that a staff of the said school lodged an FIR against the petitioner alleging forgery of some documents of the school that was registered as Dhemaji P.S. Case No. 92/2021 under Sections 420/468 of the IPC, but after investigation of the said case the concerned Investigating Officer submitted the Final Report vide FR No. 33/2021 dated 31.03.2021, stating that there is no sufficient incriminating material pertaining to the accusation against the petitioner.

15. However, the learned Judicial Magistrate First Class, Dhemaji is yet to accept the said Final Report No. 33/2021 dated 31.03.2021 and a complaint case being C.R. 24/2022 has been registered in the Court of the learned Judicial Magistrate First Class, Dhemaji.

16. Mr. Borthakur, learned counsel appearing for the petitioner by submitting two additional affidavits in the matter brought to the notice of the Court that the learned JMFC, Dhemaji is yet to take cognizance of the offences against the petitioner and the next date of the said C.R. 24/2022 is fixed on 06.03.2023 for further examination of the complainant's witness.

17. Considering the entire aspects of the matter, this writ petition is disposed of directing the petitioner to submit a fresh representation before the Director of

Secondary Education, Assam submitting before the said authority to allow him to hold the charge of Principal in-charge of said Machkhowa Senior Secondary School, District–Dhemaji being eligible to hold the said post, along with a certified copy of this order, copy of this writ petition including the annexures appended thereto as well as copy of the additional affidavits including the annexures submitted therewith, at the earliest.

18. In the event of filing such representation by the petitioner, the Director of Secondary Education, Assam after considering the matter shall pass a necessary order within a period of forty five days from the date of receipt of certified copy of this order, regarding the Principal in-charge of said Machkhowa Senior Secondary School, District–Dhemaji, considering the fact that the learned Judicial Magistrate First Class, Dhemaji is yet to take cognizance of offences against the petitioner in said complaint case, C.R. No. 24/2022.

19. However, it is up to the authorities in the Secondary Education Department of the State, including the Director of Secondary Education, Assam to pass necessary order in case the learned JMFC, Dhemaji takes cognizance against the petitioner in said C.R. No. 24/2022.

20. With the above observation and directions, this writ petition stands disposed of.

JUDGE

Comparing Assistant