

GAHC010239452017



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

Case No. : WP(C)/4610/2017

ANIL KR. GOGOI
S/O LATE NAGEN GOGOI, R/O VILL-NAPAM, PO-LILABARI, DIST.
LAKHIMPUR, ASSAM

VERSUS

THE STATE OF ASSAM and 5 ORS.
REP BY THE SECRETARY TO THE GOVT. OF ASSAM, EDUCATION
SECONDARY, DISPUR, GUWAHATI-6

2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19

3:THE INSPECTOR OF SCHOOL
LAKHIMPUR DISTRICT CIRCLE
DIST. GOALPARA
ASSAM

4:THE SELECTION COMMITTEE FOR SELECTION OF PRINCIPAL OF
BOGINODI H.S. SCHOOL
REP. BY ITS MEMBER SECRETARY
SHRI BISHNU BORBORAH
BOGINODI H.S. SCHOOL
VILL and PO-BOGINODI
DIST. LAKHIMPUR
ASSAM-781030

5:THE STATE SELECTION BOARD
FOR SELECTION OF THE PRINCIPAL
THE DIRECTOR OF SECONDARY EDUCATION
ASSAM

KAHILIPARA
GUWAHATI-781019

6:DR. GORKEY BORGOHAIN
SUBJECT TEACHER/ PRINCIPAL
BOGINODI H.S. VILL and PO- BOGINODI
DIST. LAKHIMPUR
ASSAM-78103

Advocate for the Petitioner : MS.I GOHAIN

Advocate for the Respondent : MR. M MAHANTA

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

03-03-2023

Heard Mr. K. R. Patgiri, learned counsel for the petitioner and Mr. U. Sarma, learned Standing counsel, Department of School (Secondary) Education for the respondent Nos. 1, 2, 3 and 5. Also heard Mr. M. Mahanta, learned counsel for the respondent No. 4.

2) Matter pertains to selection and appointment of regular Principal in Boginodi Higher Secondary School, district- Lakhimpur, a provincialised Secondary School of the State.

3) It is contended by the petitioner that he is a Master Degree holder in Mathematics and has also obtained B.Ed. Degree. Pursuant to the order dated 06.10.1993, whereby, the Director of Secondary Education, Assam appointed him as a Subject Teacher of Mathematics and posted him at Boginodi Higher Secondary School, Lakhimpur. He joined his said service in the said Higher Secondary School forthwith and since October, 1993 he is serving in said Boginodi Higher Secondary School as its Subject Teacher in Mathematics.

4) It is stated by the petitioner that at the request of the respondent No.6 who was a Subject Teacher in Economics in Murajhar Higher Secondary School, District-Nagaon, the DSE, Assam by an order dated 19.11.1999 transferred him from said Murajhar Higher

Secondary School and posted him at Boginodi Higher Secondary School, Lakhimpur in his own Grade and Scale of Pay against the post of one N.C. Kaman, Subject Teacher expired, clarifying that the respondent No.6 shall not be able to claim seniority over the existing staff of said Boginodi Higher Secondary School, Lakhimpur and further, no TA/DA will be admissible to him for the said purpose.

5) On the recommendation of the State Selection Board, Assam and in pursuance of the approval of the State Government in the Secondary Education Department vide communication dated 18.07.2017, the DSE, Assam by order dated 24.07.2017, appointed the respondent No.6 as a regular Principal in said Boginodi Higher Secondary School, district-Lakhimpur against an existing vacant post w.e.f., from the date of his joining in the said post.

6) Being aggrieved with the appointment of the respondent No. 6 as the regular Principal, the petitioner has preferred this writ petition contending that on his transfer at his own request to Boginodi Higher Secondary School, the petitioner lost his seniority in the said School and therefore, cannot be considered for the post of Principal in the said School as there are teachers including the petitioners senior to him serving in said Boginodi Higher Secondary School prior to joining of the respondent No. 6 on his such transfer.

7) In the case in hand, as the Principal of the School was appointed by the impugned order dated 24.07.2017, prior to the coming of the Assam Secondary Education (Provincialised Schools) Rules, 2018 w.e.f., 10.10.2019, therefore, the Assam Secondary Education (Provincialised) Service Rules, 2003 as amended, was applicable.

8) Said 2003 Rules that came into force w.e.f., 12.08.2003 was a statutory Rule under Article 309 of the Constitution of India that regulated the recruitment and conditions of service of the persons appointed to the Assam Secondary Education (Provincialised) Service that was in force upto 09.10.1999.

9) Rules 12 and 13 of the said 2003 Rules stipulates the recruitment of Principal in provincialised Higher Secondary Schools of the State which were filled up by direct recruitment and not by promotion.

10) As per the provisions of Rule 13 (2) the candidate must be (i) M.A./ M.Sc/M.Com with B.T/B.Ed. Degree from any recognized University and having uniform good academic career, (ii) must have rendered at least 15 years of service as Post Graduate Teacher or Vice-Principal or both in any provincialised Higher Secondary School or (iii) must have 17 years of teaching experience as Graduate Teacher in any provincialised Higher Secondary School; (iv) the age must not be less than 40 years as on the 1st January of the year of recruitment and (v) the candidate must possess commanding personality, administrative ability and leadership skills.

11) As per Rule 13 of said 2003 Rules, it is the School Selection Committee selects the eligible candidate for the post of Principal after scrutiny of the applications holding interview and preparing a panel of names of three candidates on the basis of qualities such as leadership skills, administrative ability, integrity and commanding personality and that the same panel prepared by the concerned School Selection Committee is required to be forwarded by the Inspector of Schools to the State Selection Board, who, in turn, prepares a Select List equal to the number of vacant posts taking into consideration of such leadership skills, administrative ability, integrity and commanding personality. The panel names so prepared and recommended by the State Selection Board was to be submitted to the Government, which after causing such verification as may deemed necessary, accords approval for appointment.

12) The validity of the said Select List so prepared and approved used to remain in force for a period of one year from the date of its approval by the Government.

13) From the affidavit filed by the DSE, Assam it is seen that following the aforesaid provisions and the ACRs of the candidates the School Selection Committee of said Boginodi Higher Secondary School, district- Lakhimpur recommended one Mr. Jiten Saikia in the first position, the respondent No.6 in the second position and the petitioner in third position. It is seen that the State Selection Board recommended said Mr. Jiten Saikia who was in the first position for the post of Principal in said Boginodi Higher Secondary School. Said Jiten Saikia, Subject Teacher of Physics Gogamukh Higher Secondary School, Dhemaji was also selected and recommended for the post of Principal in said Gogamukh Higher Secondary School, Dhemaji and the Government gave approval in his name for his appointment as regular

Principal in that Higher Secondary School at Gogamukh, Dhemaji. Accordingly, the DSE, Assam on 02.05.2017 appointed said Jiten Saikia as the regular Principal of said Gogamukh Higher Secondary School, Dhemaji.

14) Since said Jiten Saikia joined as Principal in Gogamukh Higher Secondary School, Dhemaji the second selected and empanelled candidate of said Boginodi Higher Secondary School, the respondent No. 6 was considered and recommended by the State Selection Board. Thereafter, the Government on 18.07.2017 approved the said recommendation of the respondent No. 6 and accordingly, the DSE, Assam by the impugned order dated 24.07.2017 appointed the said respondent No. 6 as the regular Principal of said Boginodi Higher Secondary School, Lakhimpur.

15) It is seen from the records in original placed before the Court pertaining to the selection of Principal in said Boginodi Higher Secondary School that both the petitioner as well as the respondent No. 6 had the eligibility to be Principal of a provincialised Secondary School as per said 2003 Rules and both of them had completed more than 15 years of service as a Subject Teacher in provincialised Higher Secondary Schools.

16) The petitioner is aggrieved on the ground of selection and appointment of the respondent No. 6 as Principal in said Boginodi Higher Secondary School since the said respondent No. 6 is junior to all the Teachers of the said School as he joined the said Boginodi Higher Secondary School on transfer at his own request pursuant to the order dated 19.11.1999. The post of Principal in a provincialised Higher Secondary School is filled up by way of direct recruitment after due advertisement and selection and not by promotion.

17) Petitioner had no grievances regarding the empanelment of the candidates including him and the respondent No.6 at Srl. Nos. 3 and 2 respectively, in the list of Principal of said Boginodi Higher Secondary School.

18) From the records, it is seen that by following the due procedure, the respondents in the Secondary Education considered the respondent No.6 for the post of regular Principal of said Boginodi Higher Secondary School following the provisions of Rules 12 and 13 of said 2003 Rules. Moreover, the respondent No.6 joined as a Subject Teacher on 14.12.1987 whereas,

the petitioner joined as Subject Teacher on 08.10.1993.

19) After hearing the learned counsels for the parties, considering the entire aspect of the matter and on verification of records, no such infirmity or illegality is found with regard to the impugned order dated 24.07.2017 of the Director of Secondary Education, Assam appointing the respondent No. 6 as the regular Principal of said Boginodi Higher Secondary School, Lakhimpur requiring interference of this Court under Article 226 of the Constitution of India.

20) Accordingly, this writ petition being devoid of merit stands dismissed.

21) The record in original submitted by Mr. U. Sarma, learned Standing Counsel, Department of School (Secondary) Education pertaining to State Level Selection Committee and the approval of the respondents in the Secondary Education Department as well as the record of the School Selection Committee of Boginodi Higher Secondary School relating to the post of its Principal be returned to Mr. U. Sarma, learned Standing Counsel, Department of School (Secondary) Education obtaining necessary acknowledgement from him in that regard.

JUDGE

Comparing Assistant