

GAHC010243382022



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

Case No. : WP(C)/7692/2022

AFZAL HOSSAIN MONDAL
S/O- LATE JAMAL UDDIN MONDAL,
R/O- VILLAGE- NARARBHITA, P.O.- NARARBHITA,
P.S.- MERERCHAR, DISTRICT- BONGAIGAON, ASSAM, PIN- 783384.

VERSUS

1: THE STATE OF ASSAM AND 4 ORS REPRESENTED BY 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
BONGAIGAON ASSAM PIN- 783384.

4: THE BLOCK ELEMENTARY EDUCATION OFFICER
SRIJANGRAM BONGAIGAON ASSAM PIN- 783384.

5: SHAHIDUL ISLAM
S/O- LATE MOMTAZ UDDIN AHMED
RESIDENT OF VILLAGE- SHIMLABARI PART-II
P.O- RANGAPANI P.S.- MERERCHAR DIST- BONGAIGAON
ASSAM PIN- 783384

Advocate for the Petitioner : G UDDIN

Advocate for the Respondent : SC, ELEM. EDU

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

ORDER

Date : 14-12-2023

Heard Mr. G. Uddin, learned counsel for the petitioner. Also heard Ms. S. Chutia, learned standing counsel, Education (Elementary) Department, representing the respondent Nos.1 to 4 and Mr. S. Rana, learned counsel, representing the respondent No.5.

The petitioner, by way of instituting the present writ proceeding, has raised a grievance against the impugned orders dated 19.07.2022; 27.07.2022 and 14.11.2022 issued by the District Elementary Education Officer, Bongaigaon, by which the respondent No.5 was allowed to act as the In-charge Head Teacher of 882 No. Nararvita Bartichar L.P. School. The petitioner further seeks a direction to allow him to act as the In-charge Head Teacher of the School in terms of the order dated 25.07.2022.

The facts requisite for adjudication of the issue arising in the present proceeding is noted herein-below.

The petitioner was working as the Headmaster of Nararbhitā Nabajyoti M.E.M. when the School was in venture stage. Thereafter, the case of the teachers in the said School was considered for provincialisation and the services of the petitioner was provincialised. The said School was thereafter amalgamated and the service of the teachers therein was allowed to be utilized in the base School, i.e. Nararvita Bartichar L.P. School and vide the speaking order dated 25.07.2022, the petitioner was allowed to function as the Headmaster of Nararvita Nabajyoti M.E.M.

The respondent No.5 was thereafter, vide a communication dated 19.07.2022 issued by the District Elementary Education Officer, Bongaigaon,

allowed to act as the In-charge Head Teacher along with delegation of financial power of 882 No. Nararvita Bartichar L.P. School.

Making a challenge to the same, the writ petitioner has instituted the present proceeding.

I have considered the submissions advanced by the learned counsel appearing for the parties and have also perused the materials available on record.

Before entering into the merits of the issue raised in the present proceeding, it is to be noted that the services of both the petitioner as well as the respondent No.5 were provincialised as "Tutors". The learned counsel for the petitioner and the respondent No.5 have also submitted that the services of the petitioner and the respondent No.5 were provincialised as "Tutors".

The provisions of Section 2(u) of the Assam Education (Provincialisation of Services of Teachers and Re-organisation of Educational Institutions) Act, 2017 (hereinafter referred to as "the 2017 Act") defines the word "Tutor". The said provision being of relevance is quoted herein-below:-

"2(u) "tutor" means and includes Teachers, Assistant Teachers, Classical Teachers and also includes Lecturers, Assistant Professors, Associate Professors, Professors, Principal, Vice-Principal, Demonstrator, Headmaster, Assistant Headmaster, Superintendent, Assistant Superintendent in a provincialised educational institution under this Act who are not eligible for provincialisation of their services and whose services cannot be provincialised in the post of Teacher under this Act due to lack of his/her educational and professional qualifications required as per the Right of Children to Free and Compulsory Education Act, 2009 (Central Act No.35 of 2009), National Council for Teachers Education Act, 1993 (Central Act No.73 of 1 993), University Grants Commission Act, 1956 (Central Act No.3 of 1956) and the relevant rules and regulations framed thereunder and any other Act, as the case may be, as applicable on the date of provincialisation, however, his/her service is provincialised as tutor with separate terms and conditions of service, to be notified by the competent Administrative

Department:

Provided that a tutor shall not be eligible to hold the post of Professors, Principal, Vice-Principal, Headmaster, Assistant Headmaster, Superintendent, Assistant Superintendent, as the case may be, in an educational institution provincialised under this Act.”

The proviso to Section 2(u) of the 2017 Act categorically bars a “Tutor” from holding the post of Professor, Principal, Vice-Principal, Headmaster, etc., in an educational institution provincialised under the said Act. The petitioner and the respondent No.5 admittedly being provincialised as “Tutors”, in terms of the proviso to Section 2(u) of the said 2017 Act, they are not entitled to even act as a Head Teacher of the School in question. In such view of the matter, the orders passed by the respondent authorities in favour of the petitioner as well as the respondent No.5, permitting them from time to time to act as Head Teacher of the School in question is of no consequence and the same cannot override the provisions of the 2017 Act. The orders issued from time to time, by the authorities, permitting the petitioner and the respondent No.5 to act as the Head Teacher of the School in question were so issued in clear violation of the provisions of Section 2(u) of the 2017 Act.

In that view of the matter, neither the petitioner nor the respondent No.5 being eligible to hold the charge of the post of Head Teacher, the issues arising in the present writ petition with regard to the orders passed allowing the respondent No.5 and the petitioner at different points of time to hold the charge of the post of Head Teacher need not be adjudicated.

The writ petition accordingly stands dismissed as being without merit.

Before parting with the records, it is observed that the respondent authorities may make alternative arrangements to man the post of Head Teacher in the School in question by either allowing a departmental authority to

hold the charge of the post of Head Teacher and/or by transferring a qualified person from any other School to the School in question.

JUDGE

Comparing Assistant