

GAHC010251582018



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

**Case No. : WP(C)/7736/2018**

ASHIT KUMAR DEB  
S/O. LT. ANIL KUMAR DEB, R/O. TRUNK ROAD, MITRA COMPLEX,  
SILCHAR-788001, DIST. CACHAR, ASSAM.

VERSUS

THE STATE OF ASSAM AND 6 ORS.  
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,  
SECONDARY EDUCATION DEPTT., DISPUR, GUWAHATI-781006.

2:THE COMMISSIONER AND SECY.  
TO THE GOVT. OF ASSAM  
EDUCATION SECONDARY DEPTT.  
DISPUR GUWAHATI-781006.

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

4:THE DIRECTOR OF (ELEMENTARY) EDUCATION  
ASSAM KAHILIPARA  
GUWAHATI-781019.

5:THE INSPECTOR OF SCHOOLS  
CACHAR SILCHAR  
P.O. SILCHAR-788001  
DIST. CACHAR ASSAM.

6:THE DIST. ELEMENTARY EDUCATION OFFICER  
CACHAR SILCHAR-788001 ASSAM.

7:SMT. SUMITA PAUL  
ASSTT. HEADMASTER  
BIKRAMPUR GOLOK NATH H.S. SCHOOL (AMALGAMATED)  
SILCHAR CACHAR

**Advocate for the Petitioner** : MS. M DEV

**Advocate for the Respondent** : SC, EDU

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

**ORDER**

**Date : 23.02.2023**

Heard Ms. M. Dev, learned counsel for the petitioner and Mr. S. M. T. Chistie, learned Standing Counsel, Secondary Education Department for the respondent Nos. 1 to 6. Also heard Mr. S. P. Choudhury, learned counsel for the respondent No. 7.

2. On being selected by the Selection Committee and approved by the Sub-Divisional Level Advisory Board for elementary schools, the District Elementary Education Officer (DEEO), Cachar, Silchar, vide his order under No. DMS-1/84-90/III(b)/8395-8659 dated 19.11.1991, appointed the petitioner to the post of Graduate Science Teacher and posted him at Mohan Lal M.E. School, Nayabill. Accordingly, the petitioner joined the said school on 23.11.1991. In the said appointment order dated 19.11.1991, though it was specifically mentioned that he was appointed as Graduate Science Teacher, but, at that point of time, the scale of pay was yet to be prescribed by the Government. However, the petitioner received the graduate scale of pay of Rs. 1375/- to Rs. 3375/- per month as per Rules. The District Elementary Education Officer (DEEO), Cachar, Silchar, by order dated 01.04.1999, transferred him from Mohal Lal M. E. School to Karaikandhi M.E. School, Katigorah, Cachar in his own grade and scale of pay pursuant to which the petitioner immediately joined the said Karaikandhi M.E.

School and during this period, his service was confirmed against the respective substantive post sanctioned by the Government under No. APG567/91/109 dated 16.11.1991 with immediate effect. By order under No.EHA/B/24/2016/323 dated 05.07.2017, the Director of Elementary Education, Assam, promoted the petitioner, Science Teacher of Ram Kamal M.V. School to the post of Headmaster and posted him at Ram Kamal M.V. School itself with pay scale of Rs. 14,000/- to Rs. 49,000/- including grade pay of Rs. 8700/- under Pay Band-2 plus other allowance as admissible under the Rules w.e.f. the date of his joining after issuance of the said order as the regular Headmaster of the said school in the vacant sanctioned post of Ranada Kanta Nath, retired from service on attaining the age of superannuation. Pursuant to his said promotion order, dated 05.07.2017, the petitioner on 06.07.2017 joined his service as Headmaster of Ram Kamal M.V. School.

3. The State Government in the Education Department vide Order No. ASE.666/2017/215 dated 03.08.2017 amalgamated Bikrampur Golak Nath M.E. School and Ram Kamal M.V. School, wherein the petitioner was serving as the regular Headmaster pursuant to the order of the DEE, Cachar dated 05.07.2017; with Bikrampur Golok Nath Higher Secondary School (Bikrampur G.N.H.S. School) under the scheme of "Siksha Khetra" with the observation that after amalgamation, the name of the Schools and the School Managing Committees of the amalgamated schools shall be Bikrampur Golok Nath Higher Secondary School and, accordingly, it was reconstituted by the Inspector of Schools, Cachar, Silchar as per Government existing instruction. On the said order of amalgamation dated 03.08.2017, the post of employees of Bikrampur G.N.H.S. School included the name of teaching staff of said Bikrampur Golok Nath M.E. School as well as Ram Kamal M.V. School along with the vacant posts of these

three schools wherein the name of the respondent No. 7 was shown as the Assistant Headmaster of the amalgamated Bikrampur G.N.H.S. School.

4. The petitioner, being aggrieved with appointment of the respondent No. 7 as an Assistant Headmaster of the said amalgamated Bikrampur G.N.H.S. School, has filed this writ petition, claiming, amongst others, for a direction to the respondent authorities to modify the order of amalgamation.

5. The petitioner stated that in the said amalgamation order dated 03.08.2017, his name was shown as Asit Kr. Das, Assistant Teacher, Science from Ram Kamal M.V. School, whereas his name should have been Ashit Kr. Deb. After such amalgamation, the petitioner immediately filed application before the Inspector of Schools, Cachar, Silchar through the Principal of Bikrampur G.N.H.S. School for rectification of his name as Ashit Kr. Deb, Headmaster of Ram Kamal M.V. School instead of Asit Kr. Das. In his said application, the petitioner also submitted before the Inspector of Schools, Cachar, Silchar, that instead of respondent No. 7, he should have been allowed to appoint as an Assistant Headmaster after said amalgamation, in Bikrampur G.N.H.S. School since he is senior to the respondent No. 7 in service and also a regular Headmaster of Ram Kamal M.V. School, whereas the respondent No. 7 was serving as Headmaster-in-Charge -cum- Assistant Teacher of Bikrampur G.N.M.E. School only, who was appointed in the year 1993 in an under graduate post, whereas since the year 1991, the petitioner was serving in a graduate post receiving Graduate Scale of Pay. The petitioner on 03.10.2017 also submitted an application before the District Elementary Education Officer, submitting his grievances.

6. The petitioner through the Principal of Bikrampur G.N.H.S. School on 08.05.2018 submitted an application before the Director of Secondary Education, Assam for rectification of his name as Ashit Kr. Deb in the said amalgamation order dated 03.08.2017 and also to include his name as an Assistant Headmaster of said Bikrampur G.N.H.S. School, being the senior Headmaster, Ram Kamal M.V. School vis-a-vis Bikrampur Golok Nath M.E. School. As the respondent authorities did not consider his prayer, being aggrieved, the petitioner has filed this writ petition, praying, amongst others, (i) to modify the said amalgamation order dated 03.08.2017 of the Commissioner and Secretary to the Government of Assam in the Secondary Education Department as regards the petitioner's schools is concerned, namely, Bikrampur G.N.H.S., Cachar, re-fixing the position of seniority of the petitioner vis-à-vis the respondent No. 7 (ii) to designate the petitioner as Assistant Headmaster of said amalgamated Bikrampur G.N.H.S. School, Cachar and (iii) to correct the name of the petitioner in the amalgamation order dated 03.08.2017 as Ashit Kr. Deb instead of Asit Kr. Das.

7. The Court, while issuing notice to the respondents by order dated 14.11.2018, in the interim, stayed the designation and appointment of the respondent No. 7 as the Assistant Headmaster of Bikrampur G.N.H.S. School, which is still in force.

8. In spite of such notice issued on 14.11.2018, the respondent authorities did not file any affidavit in the matter. The respondent No. 7 has filed its affidavit in the matter on 02.08.2019 submitting that, being the Headmistress of Bikrampur G.N.M.E. School therefrom at the time of amalgamation of said Bikrampur G.N.M.E. School and Ram Kamal M.V. School with Bikrampur G.N.H.S.

School, she became the Assistant Headmistress of the amalgamated Bikrampur G.N.H.S. School in view of the Office Memorandum dated 20.09.2017 issued by the State Government in the Secondary Education Department, where it is specified that the Headmaster of the M.E. School shall be the Headmaster of the amalgamated school and, accordingly, she rejected the claim of the petitioner that he is the senior most Headmaster amongst both the upper primary schools at the time of amalgamation of both the schools with Bikrampur G.N.H.S. School.

9. The respondent No. 7 categorically stated that by order, dated 28.02.1994, issued by the DEEO, Cachar, Silchar, she was appointed as an Assistant Teacher at Bikrampur M.E. School on ad-hoc basis. Thereafter, she was transferred to Bikrampur G.N.M.E. School as an Assistant Teacher vide an order, dated 23.06.1994 that was issued by the DEEO, Cachar, Silchar. Accordingly, her service was regularized on 04.07.1995 as per resolution adopted in the meeting of Sub-Divisional Level Advisory Board for Elementary Education, regularising her service w.e.f. the date of her joining, i.e. 28.02.1994. She submitted that considering the date of regularisation of her service, she is senior to the petitioner, whose service was confirmed only on 05.07.2007. The respondent No. 7 denied of receipt of graduate scale of pay by the petitioner, being a Science Graduate Teacher, and submitted that she had received revised scale of pay that was re-fixed at Rs. 14,000/- to Rs. 49,000/- per month and her initial pay was re-fixed at Rs. 38,500/- at the PB-Rs.29,800/- with grade pay of Rs. 8700/- w.e.f. 01.04.2016 and that her next increment was due on 01.07.2017 as per the Revision of Pay Rules, March/2017. The respondent No. 7 along with her affidavit annexed the order of her appointment dated 23.06.1994, issued by the DEEO, Cachar as well as the order of DEEO, Cachar, dated 04.07.1995,

regularizing her service w.e.f. the date of her joining.

10. It is seen that payment of Graduate Scale of Pay to the Science Graduate Teacher in provincialised M.E. Schools of the State appointed by the State Government in the year 1991 and onwards has already been decided by a Co-ordinate Bench of this Court in the case of *Sitangshu Sekhar Das and Another -vs- State of Assam and Others* reported in 2009 (2) GLT 685.

11. On being enquired that amongst the petitioner vis-à-vis respondent, who is senior, Mr. S. P. Choudhury, learned counsel for the respondent No. 7, submitted that for the post of Headmaster in the M.E./M.V./M.E. Madrassa is required to be made on the basis of seniority -cum- efficiency. Mr. Choudhury submitted that the promotion to the post of Assistant Headmaster in such provincialized Secondary School, amongst others, considering the seniority of service in graduate scale of pay and in the case in hand, the service of the petitioner was confirmed only on 05.07.2007, whereas the service of the respondent No. 7 was regularized way back on 04.07.1995 from the date of her joining since the petitioner received same pay from her date of joining, she is much senior to the petitioner and, accordingly, the respondent authority, after amalgamation of said Bikrampur G.N.M.E. School and Ram Kamal M.V. School with Bikrampur G.N.H.S. School, has rightly shown her as Assistant Headmaster.

12. From the affidavit filed by the respondent No. 7, it is seen that the DEEO, Cachar, Silchar, by order dated 28.02.1994, appointed her as an Assistant Teacher in Bikrampur M.E. School on ad-hoc basis for a period of three months in the scale of pay of Rs. 1185/- to Rs. 2395/- per month plus other allowance

as admissible under the Rules against the vacant post, stating that her said appointment has the approval of Chairman of Sub-Divisional Level Advisory Board in the Secondary Education Department. Thereafter, by an order dated 23.06.1994, one Jitendra Kr. Sinha, Headmaster of Bikrampur G.N.M.E. School, was transferred to Bikrampur M.E. School in his own grade and scale of pay of Headmaster as one Sri Gobinda Sinha, Headmaster of Bikrampur M.E. School, retired from service. From the said order dated 23.06.1994 of the DEEO, Cachar, Silchar, annexed in her affidavit by the respondent No. 7, it is seen that the said respondent No. 7, who was temporarily appointed as an Assistant Teacher in Bikrampur M.E. School, was appointed against the resultant vacancy of Assistant Teacher vice said Sri Gobinda Sinha, Headmaster of Bikrampur M.E. School, retired from service and was transferred as an Assistant Teacher in Bikrampur G.N.M.E. School against the resultant vacancy of said Jitendra Kr. Sinha, Headmaster of Bikrampur G.N.M.E. School, who had been transferred to Bikrampur M.E. School as in-Charge Headmaster, vice Sri Gobinda Sinha retired from service. By the said order dated 23.06.1994, the DEEO, Cachar, Silchar, also allowed the senior most Assistant Teacher in Bikrampur G.N.M.E. School to hold the charge of Headmaster of said school in his own grade and scale of pay till a regular Headmaster is posted. Later, the DEEO, Cachar, Silchar by order dated 04.07.1995, regularised the service of the respondent No. 7, who was initially appointed on ad-hoc basis for a period of three months in the Bikrampur M.E. School w.e.f. the date of her joining. Prior to the coming of the Right of Children to Free and Compulsory Education Act, 2009 and the Assam Right of Children to Free and Compulsory Education Rules, 2011, the Assam Elementary Education (Provincialization) Rules, 1977, a statutory Rule under Article 309 of the Constitution of India, was in force so as to regulate the recruitment and

condition of service of teachers under the Elementary Schools and that said 1977 Rules came into force w.e.f. 19.03.1979. The said 1977 Rules specifically provided for appointment of teachers in provincialized lower and upper primary schools on the basis of advertisement and selection and on the basis of merit, where the validity of the selection list was for one year. The said 1977 Rules was amended w.e.f. 10.11.2005 and, then, from 25.10.2012. Prior to the amendment of said 1977 Rules in the year 2005, matriculation was the minimum qualification for the post of teachers in the Elementary Schools. Pursuant to the 2012 amendment of said 2005 Amendment Rules, the requisite eligibility for appointment of Assistant Teachers/Hindi Teachers/Arabic Teachers was specified and the requisite eligibility for appointment of Science Teacher was B.Sc Degree from any recognised university.

13. In the case of *Sitangshu Sekhar Das* (supra), the Court upheld the decision of the Government regarding the appointment of Graduate Science Teacher in the graduate scale of pay in the upper primary schools of the State. Whether the 1977 Rules amended in 2005 and 2012 are coming into force the RTE Act, 2009 and the RTE Rules, 2011, no such teacher in any such provincialized Elementary Schools of the State of Assam, who have been appointed without any advertisement and selection, that too, on ad-hoc basis as well as no such provision in the statutory rules for appointment of Assistant Teachers on ad-hoc basis in the provincialized Elementary School of the State. Moreover, the post of Headmaster in M.E. school is filled up by way of promotion on the recommendation of the DLC to be constituted by the Director of Elementary Education, Assam on the basis of seniority -cum- efficiency and recommendation of such District Level Scrutiny Committee of the teachers serving in provincialized M.E./M.V./M.E. Madrassa/Senior Basic Schools.

14. It is seen from the first appointment order that she was appointed by the DEEO, Cachar, Silchar on ad-hoc basis for a period of three months in Bikrampur M.E. School. From the reading of the order dated 23.06.1994, Annexure-B to the affidavit of the respondent No. 7, it can be seen that she was appointed on 28.02.1994 against the vacancy that arose due to the retirement of the headmaster of the Bikrampur M.E. School. Further, from the said order dated 23.06.1994 of the DEEO, Cachar, Silchar, it can be seen that the petitioner was transferred to Bikrampur G.N.M.E. School in the post of one Jitendra Kr. Sinha, Headmaster of said Bikrampur G.N.M.E. School, was transferred to Bikrampur M.E. School as the post of Headmaster of said school was fell vacant due to his retirement. When the post of Headmaster of such provincialized M.E./M.V./M.E. Madrassa/Senior Basis Schools is filled up by way of promotion, no other teacher/Assistant Teacher of an M.E. School would have been transferred in such vacancy for the post of Headmaster in such provincialized upper primary schools. It is also seen that service of the respondent No. 7 was regularized by an order, dated 04.07.1995 issued the DEEO, Cachar, Silchar, who was appointed as an Assistant Teacher in the Bikrampur M.E. School on 28.02.1994 on ad-hoc basis and serving in the Bikrampur G.N.M.E. School w.e.f. the date of her joining IN service.

15. The Hon'ble Apex Court in the case of *Union of India -vs- Dharam Pal and others*, reported in (2009) 4 SCC 170 has held that where an initial appointment is ad-hoc and not according to the rules and the appointment is made as a stop-gap arrangement, the period of officiating does not come for seniority. When ad-hoc appointment is made, the same should be done according to the rules. If mandatory provisions of the rules are not complied with, the period does not come for seniority. An employee, who posted

according to the rules, is entitled to seniority from the date of its appointment and not from the date of confirmation. It is one thing to say that the said appointment is made on ad-hoc basis but it is another thing to say that inter-say seniority would be determined on the basis of the laid down Rules.

16. It is not the case of respondent No. 7 that she was appointed on the basis of proper advertisement and selection following the provision of Article 309 of the Constitution of India as an ad-hoc assistant teacher for a period of three months by order dated 28.02.1994 issued by the DEEO, Cachar, Silchar, posting her at Bikrampur M.E. School.

17. A Three Judges Bench of the Hon'ble Apex Court, in the case of *M.K. Shanmugam and another -vs- Union of India and others*, reported in (2000) 4 SCC 476, have laid down the law that ad-hoc service held does not count for seniority in all cases and it will count only in those cases where initial appointment though ad-hoc is made by the same selection process as is applicable to regular appointment and is not to stop-gap arrangement.

18. Since the appointment of Assistant Teacher in terms of the said 1977 Rules is as per direct process of advertisement and selection, whether there is no such provision of ad-hoc appointment, any such appointment on on-hoc basis that too without any selection and regularization shall amount to void ab-initio.

19. In the case of the petitioner, it is seen that he was appointed as a Graduate Science Teacher by the DEEO, Cachar, Silchar vide order dated 19.11.1991, on being selected by the Selection Committee and approved by the

Sub-Divisional Level Advisory Board for Elementary Schools and was initially appointed in Mohal Lal M.E. School.

20. From the said decision of this Court in the case of *Sitangshu Sekhar Das* (supra), it is seen that the State Government in the Elementary Education took a policy decision to absorb Graduate Science Teachers in upper primary schools (M.E./M.V./M.E. Madrassa/Senior Basic School) so as to develop the standard of Mathematics and Science amongst the students of upper primary school as even at that point of time, the minimum educational qualification for upper and lower primary school was only matriculation (Class 10 passed). The said decision of this Court in the case of *Sitangshu Sekhar Das* (supra), the policy decision of the State Government in the Elementary Education Department was upheld and also upheld such sanction of Graduate Science Teacher for upper primary school in the graduate scale of pay.

21. Considering the entire aspect of the matter, the State Government in the Department of School Education, the Director of Secondary Education, Assam and the Director of Elementary Education, Assam are directed to determine the seniority of the petitioner, who was a regular Headmaster of Ram Kamal M.V. School, while it was amalgamated with Bikrampur G.N.H.S. School, vis-a-vis the respondent No.7, Assistant Teacher of Bikrampur G.N.M.E. School for the post of Assistant Headmaster of said amalgamated Bikrampur G.N.H.S. School, following the provisions of the Siksha Khetra scheme dated 22.09.2016 under No. ASE.4148/2016/2017.

22. The respondent authorities shall also, after due verification of the record, consider the prayer of the petitioner to correct his name as Ashit Kr.

Deb, Headmaster of Ram Kamal M.V. School instead of Asit Kr. Das, Science Teacher of Ram Kamal M.V. School.

23. For that purpose, the petitioner shall submit a representation before the Secretary to the Department of School Education, Assam on or before 15.03.2023 along with a certified copy of this order. On receipt of such representation of the petitioner, the respondent authorities within a period of sixty days shall dispose of the representation of the petitioner after giving an opportunity of hearing to both the petitioner as well as the respondent No. 7 and shall determine their seniority for the post of Assistant Headmaster under the Siksha Khetra scheme dated 22.09.2016 in said Bikrampur G.N.H.S. School, Cachar, Silchar, intimating the petitioner as well as the respondent No. 7 about its outcome.

24. Till such decision of the respondent authorities in the Department of School Education, Assam, the respondent No. 7 shall not be allowed to hold the post of Assistant Headmaster of said amalgamated Bikrampur G.N.H.S. School.

25. With the above observation and discussion, this writ petition stands disposed of.

**JUDGE**

**Comparing Assistant**