

GAHC010266262022



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

Case No. : WP(C)/8336/2022

MANTU TALUKDAR
S/O- PRABIN RAM TALUKDAR,
A RESIDENT OF VILL- KHATA RUPIA BATHAN,
P.S.- BELSOR, DIST- NALBARI,
ASSAM.

VERSUS

THE STATE OF ASSAM AND 4 ORS
TO BE REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM,
EDUCATION SECONDARY DEPARTMENT,
DISPUR, GHY-06.

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

3:INSPECTORS OF SCHOOLS
KAMRUP(M) DISTRICT CIRCLE
DISTRICT- KAMRUP(M)
ASSAM.

4:THE NATIONAL COUNCIL OF TEACHERS EDUCATION (NCTE)
EASTERN REGIONAL COMMITTEE

BHUBENESWAR
ORRISA.

5:BHARAT CH. SHARMA

HINDI ASSISTANT TEACHER

PANBARI HIGH SCHOOL

KAMRUP(M)
ASSAM

Advocate for the Petitioner : MR. A R BHUYAN

Advocate for the Respondent : SC, SEC. EDU.

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

30-01-2023

Heard Mr. A.R. Bhuyan, learned counsel for the petitioner and Mr. S.M.T. Chistie, learned Standing counsel, Department of School (Secondary) Education, Assam for the respondent Nos. 1 to 3. Also heard Mr. I. Alom, learned Standing counsel, National Council for Teachers Education for the respondent No. 4.

The petitioner submitted that being a Graduate, he joined as an Assistant Teacher on 01.11.1996 in Panbari High School, District-Kamrup (Metro) on being appointed by the Headmaster-cum-Secretary of said High school pursuant to the resolution dated 13.10.1996 of its Managing Committee while it was in venture stage.

The respondent No. 5 being a Graduate and 'Praveen' in Hindi, was also appointed as a Hindi Teacher in said Panbari High School as per the resolution dated 22.12.1991 adopted by its Managing Committee, pursuant to which, said respondent No. 5 joined as a Hindi Teacher in said High school on 23.12.1991 while it was in venture stage.

By order No. PC/Sec/206/2014/12 dated 22.09.2014 issued by the respondent authorities in the Secondary Education Department, said Panbari High School along with one Headmaster, three Graduate Teachers (Arts), two Graduate Teachers (Science), one Hindi Teacher, one Sanskrit Teacher, one Junior Assistant and one Grade-IV, altogether 10 Nos. of teaching and non-teaching staff were provincialised w.e.f. 01.01.2013 under the provisions of the Assam Venture Educational Institutions (Provincialisation of Services) Act 2011, as amended in 2012.

Pursuant to said order of provincialisation dated 22.09.2014, the services of the petitioner as Second Graduate Arts Teacher and that of the respondent No. 5 as Hindi Teacher were provincialised w.e.f. 01.01.2013 considering the dates of joining of the petitioner as 01.11.1996 and that of the respondent No. 5 as 23.12.1991.

After provincialisation of service of the petitioner, he obtained Master Degree in Arts from Krishna Kanta Handique State Open University in the year, 2015 and also obtained two years B.Ed. degree as a regular candidate from Banikanta College of Teacher Education in the year, 2017.

Further, the respondent No.5 after provincialisation of his service under the said 2011 Act, noted above, obtained 'Parangat' Hindi.

The Headmaster-in-charge, namely, Ranjit Basumatary of said Panbari High School, District-Kamrup (Metro) retired from service on 31.12.2022 on attaining the age of superannuation at 60 years.

The petitioner contended that he being the only teacher in said Panbari High School having the requisite eligibility criteria for the post of Headmaster of any provincialised Secondary School of the State under the Assam Secondary Education (Provincialised Schools) Service Rules, 2018, the respondent authorities in the Secondary Education Department should allow him to serve as an In-charge Headmaster of said Panbari High School, District-Kamrup (Metro).

As the petitioner fulfills the requisite eligibility criteria to hold the charge of In-charge Headmaster of said Panbari High School, District-Kamrup (Metro), he on 18.11.2022 submitted a representation before the Inspector of Schools, Kamrup District Circle, Kamrup to allow him to hold the charge of In-charge Headmaster of said Panbari High School considering his educational qualification and said representation of the petitioner is still pending for disposal.

As in the meanwhile, the Headmaster of said High school retired from service on 31.12.2022 on attaining the age of superannuation at 60 years and the respondent authorities in the Secondary Education Department are yet to allow the incumbent concerned of said Panbari High School to hold the charge of Headmaster of said High School, the petitioner has filed this writ petition on 19.12.2022, praying amongst others to allow him to hold the charge of headmaster in-charge of said High School and for direction to the respondent authorities to dispose of his representation dated 18.11.2022 that is pending before the Inspector of Schools, Kamrup District Circle, Kamrup (Metro).

Further, the petitioner has also prayed for direction to the respondent authorities in the

Secondary Education Department to do the needful for the purpose of preparation of the gradation list of the Graduate Teachers working in various provincialised High/Higher Secondary Schools of the State and to make necessary arrangement for appointment of regular Headmasters in the provincialised High Schools under the jurisdiction of the Inspector of Schools, Kamrup District Circle, Kamrup (Metro).

The State Government in the Secondary Education Department w.e.f. 10.10.2019 brought into force the Assam Secondary Education (Provincialised Schools) Service Rules, 2018, a statutory Rule under Article 309 of the Constitution of India regulating the recruitment and the conditions of services of teaching and non-teaching employees appointed to the Assam Secondary Education (Provincialised Schools) Service.

Rule 14 (1) of said 2018 Rules, relates to "recruitment to the post of Head Master/Superintendent and procedure thereof" which reads as follows:-

"the post of Headmaster of a High School and Superintendent of a High Madrassa shall be filled up by promotion from the candidates amongst the Graduate Teachers as per District-wise seniority list on the recommendation of the District Selection Committee constituted under Rule 16 (2). The selection of Headmaster and Superintendent shall be based upon seniority and satisfactory Annual Confidential Report for last 3 consecutive years as per procedure provided under sub-rule (3):

Provided that the seniority of the Graduate Teacher shall be determined from the date of receiving Graduate scale of pay by the respective Assistant Teacher."

Sub-Rule 2 of Rule 14 of said 2018 Rules relates to "eligibility for the post of Headmaster/Superintendent in provincialised High School/High Madrassa."

Rule 14(2)(a) of said 2018 Rules provides that "He must be B.A./B.Sc/B.Com with B.T./B.Ed degree from any recognized University. In respect of Hindi Teacher having degree qualification, the Hindi 'Parangat' and 'Nishanar' shall be considered instead of B.T/B.Ed."

Further, Rule 14(2)(b) of said 2018 Rules provides that "He must have at least 10 years of teaching experience as Graduate Teacher.

Provided that the Graduate teacher shall include the cadre of Assistant Headmaster for the purpose of selection to the post of Headmaster and the seniority of the Assistant Headmaster shall be counted from the date of joining as Graduate Teacher with graduate scale of pay:

Provided further that in case of amalgamated High School where ME/MV school has been amalgamated,

the Assistant Headmaster is eligible for selection as Headmaster subject to the condition that the incumbent should have at least 15 years of teaching experience as graduate teacher including the period of service in the erstwhile ME/MV School."

In the case in hand, both the petitioner as well as the respondent No.5, completed 10 years of their services as Graduate Teachers on 31.12.2022 as their services were provincialised on 22.09.2014 w.e.f. 01.01.2013 under the provisions of said 2011 Act, during its force.

It is well settled that even for the post of an In-charge Headmaster, the candidate concerned must have the requisite eligibility that is required for the regular Headmaster.

Mr. Chistie, learned Standing counsel, Department of School (Secondary) Education, Assam submits that on retirement of the former Headmaster-in-charge of said Panbari High School, District-Kamrup (Metro) on 31.12.2022 on his attaining the age of superannuation at 60 years, the Director of Secondary Education, Assam by order under Memo No. GB-EST/Apptt/FP/49/2022/23 dated 17.01.2023 allowed the Inspector of Schools, Kamrup District Circle, Panbazar, Guwahati to hold the charge of Headmaster of said Panbari High School, District-Kamrup (Metro) along with financial power to draw and disburse the salary etc. of the staff of the school under F.R.49(C) clarifying the same is purely temporary arrangement.

Considering the entire aspect of the matter, this Court is of the view that in the event of any decision to be taken by the respondent authorities in the Directorate of Secondary Education, Assam allowing any senior teacher of said Panbari High School to be its In-charge Headmaster till regularly selected Headmaster is appointed in the said High school, the authorities concerned, only after assessing the seniority as well as having the requisite eligibility to hold the post of Headmaster of provincialised High school from amongst the teachers of said Panbari High School, District-Kamrup (Metro) following the relevant provisions of the Assam Secondary Education (Provincialised Schools) Service Rules, 2018, shall allow to be the In-charge Headmaster of said High school.

Further, the respondent authorities in the Secondary Education Department of the State shall proceed with the process of selection and appointment of regular Headmaster of provincialised Secondary Schools of the State under the provisions of said 2018 Rules, if there is no other impediment in complying with the same.

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

Copy of the order dated 17.01.2023 issued by the Director of Secondary Education, Assam placed before the Court today by Mr. Chistie, learned Standing counsel, Department of School

(Secondary) Education, Assam, be kept as a part of the record.

JUDGE

Comparing Assistant