

GAHC010268722022



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

**Case No. : WP(C)/475/2023**

ALTAF HUSSAIN  
S/O- LT. HAMID ALI SK, R/O- BIDYAPARA, PART-II, KHALILPUR, DHUBRI,  
ASSAM, PIN- 783301

VERSUS

THE STATE OF ASSAM AND 3 ORS  
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, EDUCATION  
(SECONDARY) DEPTT., DISPUR, GHY-06

2:THE DIRECTOR  
EDUCATION (SECONDARY) DEPTT.  
GOVT. OF ASSAM  
KAHILIPARA  
GHY-22

3:THE INSPECTOR OF SCHOOLS  
DHUBRI DISTRICT CIRCLE  
DHUBRI

4:MAINUL HOQUE  
S/O- LT. ABDUL WAHED  
R/O- VILL- SOULMARI  
PART-II  
P.O. KACHARIHAT  
DIST.- DHUBRI  
ASSAM  
PIN- 78333

**Advocate for the Petitioner : MR. K N CHOUDHURY**

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

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

**ORDER**

**01.02.2023**

Heard Mr. R M Deka, learned counsel for the petitioner and Mr. R Mazumdar, learned Standing counsel, Department of School (Secondary) Education, Assam for the respondent Nos. 1 to 3. Also heard Mr. D Das, learned Senior counsel assisted by Mr. A K Ahmed, learned counsel for the respondent No. 4/caveator.

Matter pertains to dispute between the petitioner and the respondent No. 4 to as to who is eligible to hold the charge of Principal of Hadurhat Dharamasala Higher Secondary School, District-Dhubri (hereinafter referred to as the said HS School), a provincialised secondary school of the State.

Petitioner is an Assistant Teacher of Hindi in said HS School. Since 27.09.1994 he is receiving Graduate Scale of Pay. Petitioner obtained Master Degree in Political Science in the year 2007 from IDOL, Gauhati University in distance mode and also obtained his 2<sup>nd</sup> Master Degree in English in the year 2014 from IGNOU. Furthermore, he obtained B.Ed. degree in the year 2021 on being sent on deputation.

The respondent No.4 is a Master Degree holder in English and also obtained B.Ed. Degree. On being appointed, he on 06.04.1999 joined as a Post Graduate Teacher in Tipkai Higher Secondary School, another provincialised secondary school of the State and since then he is receiving Post Graduate Scale of Pay. The Director of Secondary Education (DSE, in short), Assam by order dated 22.01.2001 transferred the respondent No. 4 from Tipkai HS School and posted him at said HS School, pursuant to which he joined the said HS School on 25.01.2001 and since then he is serving as Post Graduate Teacher of English in said Hadurhat Dharamasala H S School.

By Order No. GB-EST/Apptt/FP/52/2018/212 dated 28.06.2022 the DSE, Assam allowed the respondent No. 4 to hold the charge of Principal of said HS 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 Abu Anis Aftab Ul Momin, the existing Principal of the said HS School retired from service on 30.06.2022 on attaining the age of superannuation, clarifying that the said order was purely temporary and shall come into force w.e.f. 01.07.2022.

Being aggrieved with the said order of DSE, Assam dated 28.06.2022 allowing the present respondent No.4 to hold the charge of Principal of said HS School, the petitioner preferred a writ petition being WP(C) No. 5327/2022, stating that disregarding his educational qualifications as well as his seniority in said HS School, the DSE, Assam issued the said order dated 28.06.2022, which is bad in law.

After hearing the parties a co-ordinate Bench of this Court by order dated 14.09.2022 disposed of said WP(C) No. 5327/2022 that was preferred by the petitioner, with the following observations –

*“Accordingly, the matter is remanded back to the Director, Secondary Education, Assam to consider the matter afresh by taking into account both the “Statements showing the seniority list of teacher for the post of in-charge of Hadurhat Dharmasala Higher Secondary School” (Annexure-10 to the writ petition) and also the “Statement showing the particulars for seniority of teaching staff of Hadurhat Dharmasala High School”, which is furnished by the learned standing counsel, Secondary Education Department. The permissibility of obtaining 3 (three) Post-Graduate Degrees by the petitioner without the permission of the competent authority and also by distance mode shall also be considered. The respondent No. 3 while considering the matter shall also give a personal hearing to the petitioner as well as the respondent No. 5 and thereafter pass a reasoned order in accordance with law within a period of three weeks from the date of receipt of a copy of the order of this Court.*

*The order dated 28.06.2022 allowing the respondent No. 5 to hold the charge of Principal of Hadurhat Dharmasala Higher Secondary School is not interfered with at this stage. However, if the respondent No. 3 fails to pass the reasoned order within the aforesaid period of time stipulated by this court hereinabove, the order dated 28.06.2022 shall automatically stand stayed.”*

In compliance of said order of the Court dated 14.09.2022 passed in said WP(C) No. 5327/2022, the DSE, Assam passed the impugned Order No. GB-EST/DSE/CC/175/2022/17 dated 17.11.2022 determining that the respondent No. 4 is

eligible to hold the post of Principal of said HS School being a Post-Graduate Teacher having B.Ed. Degree, whereas the Master Degrees obtained by the petitioner is without any prior approval/permission from the authorities concerned as he acquired such degrees in violation of Rule 13 of the Assam Civil Service (Conduct) Rules, 1965.

Being aggrieved with said finding of the DSE, Assam dated 17.11.2022, noted above; the petitioner has preferred this writ petition, stating that said order dated 17.11.2022 allowing the respondent No. 4 to hold the charge of Principal of said HS School is bad in law, as the authority concerned found him senior above the respondent No.4.

On perusal of the impugned order dated 17.11.2022 passed by the DSE, Assam it is seen that it is the Deputy Director of Secondary Education, Assam who on 28.10.2022 heard the petitioner as well as the present respondent No. 4 and thereafter, the said authority on 03.11.2022 submitted its report before the DSE, Assam and on the basis of the said report, the DSE, Assam on 17.11.2022 passed the impugned order.

It is to be noted herein that the Court by order dated 14.09.2022 passed in said WP(C) No. 5327/2022 specifically provided that — while considering the matter the respondent No. 3 (Director of Secondary Education, Assam) shall also give a personal hearing to the petitioner as well as the respondent No. 5 (present respondent No. 4) and thereafter shall pass a reasoned order in accordance with law within the time specified therein.

Constitution Bench of the Hon'ble Supreme Court (Five Judges Bench) in the case of *Gullapalli Nageswara Rao and Others -Vs- Andhra Pradesh State Road Transport Corporation and Another*, reported in *AIR 1959 SC 308* have held that — *if one person hears and another decides, then the personal hearing becomes an empty formality.*

As the DSE, Assam did not give any personal hearing to the petitioner as well as the respondent No. 4 herein (respondent No. 5 in said WP(C) No. 5327/2022) as directed by the Court on 14.09.2022 in WP(C) No. 5327/2022 and instead passed the

impugned Order dated 17.11.2022, on the basis of the report submitted by the Deputy DSE, Assam, who in fact heard the petitioner and the respondent No. 4 and thereafter, submitted the said report before the DSE, Assam; therefore, the Court is of the opinion that the impugned Order dated 17.11.2022 passed by the Director of Secondary Education, Assam is not only sustainable in law, but also is in violation of the direction of the Court dated 14.09.2022 passed in WP(C) No. 5327/2022.

As such the impugned Order No. GB-EST/DSE/CC/175/2022/17 dated 17.11.2022 passed by the Director of Secondary Education, Assam being illegal, is hereby set aside and quashed.

Accordingly, the matter is remanded back to the Director of Secondary Education, Assam, who shall after hearing the petitioner and the respondent No.4 dispose of the same as directed by the Court on 14.09.2022 in WP(C) No. 5327/2022, by passing a reasoned order on or before 17.03.2022, intimating the petitioner as well as the respondent No. 4 herein about the outcome of the same.

The petitioner as well as the respondent No. 4 shall submit a certified copy of this order before the Director of Secondary Education, Assam on or before 17.02.2023, obtaining necessary acknowledgment from the said authority in that regard.

Considering the fact that the Court by order dated 14.09.2022 passed in WP(C) No. 5327/2022 allowed the respondent No. 5 therein i.e., the present respondent No. 4, to be the Principal in-charge of said Hadurhat Dharmasala Higher Secondary School, District-Dhubri in terms of the order of the Director of Secondary Education, Assam dated 28.06.2022; therefore, the Court allows the present respondent No. 4, to continue as the Principal in-charge of said Hadurhat Dharmasala Higher Secondary School, District-Dhubri till such time, specified above, i.e., by 17.03.2023, within which the Director of Secondary Education, Assam shall dispose of the matter in terms of the order dated 14.09.2022 passed in WP(C) No. 5327/2022, after giving an opportunity of hearing to the petitioner as well as the respondent No. 4 herein.

However, it is made clear that if the Director of Secondary Education, Assam fails to pass the reasoned order as directed above within such time, i.e., by

17.03.2023; the order of the Director of Secondary Education, Assam under Memo No. GB-EST/Apptt/FP/52/2018/212 dated 28.06.2022 allowing the present respondent No. 4 to be the Principal in-charge of said Hadurhat Dharmasala Higher Secondary School, District-Dhubri, shall automatically stand vacated.

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

**JUDGE**

**Comparing Assistant**