

GAHC010282292018



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

Case No. : WP(C)/8884/2018

ROSHESWAR SONOWAL
S/O LATE MANIRAM SONOWAL
R/O VILL- 2 NO. MARICHAPATHAR, P.O. 2 NO. MARICHAPATHAR, P.S.
BIHPURIA, DIST.LAKHIMPUR, ASSAM, PIN - 784164.

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
EDUCATION (SECONDARY) DEPARTMENT,
DISPUR, GUWAHATI-6.

2:THE DIRECTOR OF SECONDARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI -19
DIST. KAMRUP (M)
ASSAM

3:THE INSPECTOR OF SCHOOLS

LAKHIMPUR DISTRICT CIRCLE

DIST. LAKHIMPUR
ASSAM

4:THE PRINCIPAL

HARMOTI HIGHER SECONDARY SCHOOL

MERBIL

P.S. LALUK
DIST. LAKHIMPUR
ASSAM
PIN - 78416

Advocate for the Petitioner : MR. N BORAH

Advocate for the Respondent : SC, SEC. EDU.

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 11-04-2023

Heard Mr. N. Bora, learned counsel for the petitioner as well as Mr. U. Sarma, learned standing counsel for the Secondary Education Department appearing for respondent nos.1, 2 and 3 and Mr. R. Sarma, learned counsel for the respondent no.4.

2. The case of the petitioner is that he was appointed as Grade-IV employee Harmoti Higher Secondary School, Lakhimpur by the then Managing Committee of the school on 01.01.1992 and it is projected that for last 31 years, the petitioner has been serving in the school without any break.

3. By referring to the vacancy position in the said school, it is submitted that two Grade-IV posts in the said school are lying vacant for quite a long time. However, it is submitted that as per his instructions, since the year 2009 no effort has been made by the respondents to make regular appointment in the said two Grade-IV posts. The learned counsel for the petitioner has fairly submitted that in view of the settled law in the issue of regularization of an employee, it is submitted that the alternative prayer of the petitioner is that the

petitioner may be given an opportunity to participate in the selection process and till then his service will not be disturbed.

4. The learned standing counsel for the Secondary Education Department has submitted that it is a settled law that the employees who were appointed by the School Managing Committees without any prior approval or sanction from the appropriate authority, such an employee will have no vested right for his service being regularized and in this regard he has placed reliance on the case of *Abdul Bari (Md) Vs. State of Assam and others, 1999 (3) GLT 31*, followed in the order dated 17.06.2003 passed by the Division Bench of this Court in WA 528/2003, which was also followed in the case of *Jahangir Alam Vs. State of Assam and others, 2003 (3) GLT 544*.

5. The Court takes notice of the fair submission made by the learned counsel for the petitioner that the petitioner is ready and willing to offer his candidature. Accordingly, the learned counsel for the petitioner who is abreast with the law in this regard has not pressed the prayer for a direction to the respondent authorities to regularize the service of the petitioner. Hence, the cases cited at the Bar by the learned standing counsel for the Secondary Education department is not required to be dealt with.

6. In this case the respondent authorities have not denied that there exist two vacant post of Grade-IV in Harmoti Higher Secondary School, Lakhimpur. The specific submission of the learned counsel for the petitioner is that since the year 2009, the authorities have not made any effort to fill up the post of the said two Grade-IV post.

7. The learned counsel for the respondent no.4 has submitted that in the absence of regular appointment to Grade-IV post, it is difficult for the college administration to manage the affairs of the Higher Secondary School. It is submitted in the Higher Secondary School there are 275 students as on 06.08.1992.

8. Accordingly, the Court is of the considered opinion that as the petitioner has rendered 31 years of service and therefore, in the event the vacancies are advertised for filling up of post Grade II and Grade-IV posts in Harmoti Higher Secondary School, Lakhimpur, it will be appropriate to provide that in the event the petitioner seeks to apply for appointment in such post, the petitioner will have the liberty to move the appropriate authority in the Secondary Education Department i.e. the Director of Secondary Education, Assam for condoning his over-age, and it is provided that along with such application being made for condonation of age, the petitioner shall produce a certified copy of this order so as to enable the competent authority to consider the claim of the petitioner.

9. The learned standing counsel for the Secondary Education Department has submitted that the application for condonation of age is required to be made before the Director of Secondary Education Assam and as per the office memorandum of 1951, the Director of Secondary Education Assam will have to forward the same to the Personal Department of Govt. of Assam for an appropriate order for condonation of age. Accordingly, it is provided that in the event the petitioner makes an application for condonation of his age before the

Office of the Director Secondary Education Assam, the said authority shall do the needful to forward the application of the petitioner to the competent authority.

10. The Court hopes and trusts that the application of the petitioner, if any filed for condonation of age, shall be processed by the authorities in the Office of the Director Secondary Education Assam as well as in the office of the concerned Personal Department in the Govt. of Assam within the prescribed time of closure of the application and the authorities shall not reject the candidature of the petitioner even if the application is not accompanied with the order of condonation of age but await its communication by the competent authorities to the Secondary Education Department.

11. Accordingly, this writ petition stands closed with the observation and liberty as indicated above.

12. Till regular appointment is made, the respondent authorities shall not disturb the service of the petitioner.

JUDGE

Comparing Assistant