

GAHC010072602022



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

**Case No. : WP(C)/2621/2022**

GOBIN SARMAH,  
S/O LT. PREMAL SARMAH,  
VILL. NC NEPALI, P.O. AND P.S. GOGOMUKH,  
DIST. DHEMAJI, ASSAM,  
ASSISTANT TEACHER CUM IN CHARGE, HEAD MASTER,  
GAGAMUKH GIRLS HIGH SCHOOL.

.....Petitioner

**---VERSUS---**

1. THE STATE OF ASSAM,  
TO BE REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF  
ASSAM, EDUCATION (SECONDARY) DEPTT.,  
DIPUR, GUWAHATI-6

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

3:THE INSPECTOR OF SCHOOLS, DHEMAJI,  
DIST. CIRCLE DIST. DHEMAJI, ASSAM.

4:BHABANI HAZARIKA,  
ASSISTANT TEACHER GOGOMUKH GIRLS HIGH SCHOOL,  
C/O GOGAMUKH GIRLS HIGH SCHOOL,  
VILL. AND P.O. GOGAMUKH DIST. DHEMAJI,  
ASSAM, PIN-787026.

.....Respondents

**- B E F O R E -**

**HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

For the Petitioner : Mr. A.R. Bhuyan, Advocate.

For the Respondents : Ms. D. Mushahary, Standing Counsel, Education  
(Secondary) Department for respondent Nos.1, 2 & 3.  
: Mr. K. Baruah, Advocate for respondent No.4.

Date of Hearing & Order : **29.01.2024**

**JUDGMENT AND ORDER (ORAL)**

Being aggrieved by the order dated 24.03.2022, passed by the Director of Secondary Education, Assam permitting the respondent No.4 herein to hold the charge of the post of Headmistress of Gogamukh Girls' High School, the petitioner has sought to invoke the writ jurisdiction of this Court.

**2.** I have heard Mr. A.R. Bhuyan, learned counsel for the petitioner. Also heard Ms. D. Mushahary, learned Standing Counsel, Education (Secondary) Department appearing for respondent Nos.1 to 3 and Mr. K. Baruah, learned counsel for respondent No.4.

**3.** A brief outline of the pleaded case of the petitioner would be essential to appropriately evaluate the rival submissions of the learned counsel for the parties.

The petitioner, in this writ petition, has claimed that he was initially

appointed as a Graduate Assistant Teacher in Gogamukh Girls' High School on 30.10.1986 and thereafter, he has been continuing in the said capacity till the date. The respondent No.4 herein was appointed as Hindi Teacher in the same school vide an order dated 21.05.1998.

The petitioner submits that on a vacancy arising in the post of Headmaster of the said school on retirement of the incumbent therein on 10.06.2019, the petitioner having been found by the authorities to be eligible, was allowed to hold the charge of the post of Headmaster vide order dated 10.07.2019 along with the financial power to draw and disburse the salary of the staff of the school.

The petitioner, while continuing in such capacity, received the order dated 24.03.2022, by which, in cancellation of the earlier order dated 10.07.2019, the respondent No.4 was allowed to hold the charge of the post of Headmistress of the school in question along with the financial power to draw and disburse the salary of the staff of the school in addition to her normal duties under FR 49(C).

The petitioner, being so aggrieved by the order dated 24.03.2022, has presented the present petition.

**4.** Mr. A.R. Bhuyan, learned counsel for the petitioner, by referring to the order dated 24.03.2022, at the outset, submits that the said order is not sustainable inasmuch as the petitioner having been allowed to hold the charge of the post of Headmaster of the school vide an order dated 10.07.2019, the same being an *ad hoc* arrangement, the petitioner's services could not have been replaced by another *ad hoc* appointee. It was contended that replacement of an *ad hoc* appointee by another *ad hoc* appointee is not permissible.

Further referring to the grounds as assigned by the Director of Education, Assam in the order dated 24.03.2022 that the petitioner is not eligible to hold the charge of the post of Headmaster on account of the fact that the B.Ed. Degree acquired by the petitioner from CMJ University is not valid, he submits that the said Degree is still holding the field and the same has not been cancelled by any authority and accordingly, the petitioner is entitled to draw the benefits flowing to him from the B.Ed. Degree acquired by him from CMJ University. Mr. Bhuyan submits that the petitioner is admittedly senior to the respondent No.4 herein and accordingly, he, being otherwise eligible to hold the post of Headmaster, his case could not have been ignored by the respondent authorities and allowed the respondent No.4 herein to replace him as In-Charge Headmistress of the school in question.

**5.** Mr. Bhuyan, in the premises aforesaid, has required the Court to interfere with the order dated 24.03.2022 and to allow the petitioner to continue to hold the charge of the post of Headmaster of the said school till the said post is filled up on regular basis.

**6.** Ms. D. Mushahary, learned Standing Counsel, Education (Secondary) Department, appearing for the State respondents has submitted that the B.Ed. Degree as obtained by the petitioner from the CMJ University is invalid and vide order dated 28.04.2020, the Government had declared that the B.Ed. Degree obtained from the CMJ University cannot be recognized to be valid for the purpose of employment and promotion. It was further contended that the petitioner, in view of the fact that his B.Ed. degree is held to be invalid, does not possess the requisite eligibility criteria for being considered for promotion to the

post of Headmaster of the said school and as such, he could not be permitted to hold the charge of the post of Headmaster of the school in question.

**7.** Ms. Mushary submits that, on the other hand, the B.Ed. degree obtained by the respondent No.4 being so obtained after being deputed for the purpose by the Government authorities and the same being obtained from the Dibrugarh University, the said degree being valid and the respondent No.4 having no other ineligibility, she was accordingly allowed to hold the charge of the post of Headmistress vide impugned order dated 24.03.2022.

**8.** It is further submitted that in the presence of eligible candidate having all the requisite eligibility criteria as prescribed under Rule 14 of the Assam Secondary Education (Provincialised Schools) Rules, 2018, an otherwise ineligible person like the petitioner could not have been permitted to continue as the in-charge Headmaster of the school and accordingly, the respondent No.4 was preferred over the ineligible candidate, i.e. the petitioner for the purpose of holding the charge of Headmaster of the said school.

**9.** Mr. K. Baruah, learned counsel appearing for the respondent No.4 has adopted the submissions advanced by Ms. D. Mushahary, learned Standing Counsel, Education (Secondary) Department. It was contended that the respondent No.4, being eligible in all respects to hold the charge of the post of Headmaster on regular basis, there is no illegality committed in the matter by the respondent No.2 in issuing the order dated 24.03.2022 allowing the respondent No.4 to hold the charge of the post of Headmaster of the school in question.

**10.** I have considered the submissions advanced by the learned counsel for the parties to this proceeding and also considered the materials available on

record.

**11.** At the outset, it is to be examined as to whether the petitioner fulfills the eligibility criteria as mandated for being considered for promotion to the post of Headmaster of a provincialised high school in the State.

**12.** The promotion to the post of Headmaster in a provincialised high school is governed by the provisions of Rule 14 of the Assam Secondary Education (Provincialised Schools) Rules, 2018 (in short, the Rules of 2018). In terms of the provisions of Rule 14(2) of the said Rules of 2018, a candidate to be eligible for being considered for promotion to the post of Headmaster must be a Graduate with B.T./B.Ed. Degree from any recognized University in addition to fulfilling the other required eligibility criteria. The petitioner has admittedly obtained his B.Ed. degree from CMJ University and it is to be examined as to whether such degree is valid one in terms of the provisions of Rule 14 of the said Rules of 2018.

The said issue is no longer *res integra* and has been examined by this Court in the case of *Mukta Ram Deka & Ors. Vs. State of Assam & Ors.*, reported in *2013(4) GLT 528* and it was held by this Court that the B.Ed. Degree obtained from the CMJ University was not valid inasmuch as the same did not have the approval by the NCTE. This Hon'ble Court had further required the State authorities to ensure that no benefit is enjoyed by anyone on the strength of an invalid B.Ed. Degree secured from the institutes which are not approved by the NCTE. The conclusions as reached by this Court in the case of *Mukta Ram Deka* (Supra), relevant to the purpose, are extracted hereinbelow:

*“(13) On consideration of all the above and particularly the decision of the Apex Court in National Council for Teacher Education (supra) and the O.M. dated*

*9.7.2012 of the Government of Assam and having noted that for imparting B.Ed. degree by the Bharatiya Siksha Parishad, U.P., C.M.J. University, Meghalaya, Naba Bharat Shiksha Parishad, Orissa, prior approval was not accorded by the NCTE to impart teachers education, I am of the view that the B.Ed. Degree awarded by these institutions are not legally valid. Therefore, the B.Ed Degree holders from such unapproved institutions can't claim appointment, promotion or higher pay. It is declared accordingly....*

*(14) Consequently having declared that the B.Ed Degree obtained from Bharatiya Siksha Parishad, U.P., C.M.J. University, Meghalaya, Naba Bharat Shiksha Parishad, Orissa etc. which are unapproved by NCTE to be invalid in the eye of law, the State is directed to take appropriate steps for ensuring that no benefit is enjoyed by anyone on the strength of the invalid B.Ed. Degree secured from Institutions which are not approved by the NCTE. Interim orders in these cases will be abide by the declaration made in this order."*

**13.** The decision of this Court in the case of *Mukta Ram Deka* (supra) squarely applies to the issues arising in the present proceedings and it is to be held that the B.Ed. Degree as obtained by the petitioner from CMJ University is an invalid one and basing thereon no benefit can accrue to the petitioner.

**14.** At this stage, it is relevant to take note of another decision of this Court in the case of *Jagannath Pegu Vs. State of Assam & Ors.,* reported in 2007(3) GLT 389, wherein this Court had held that a candidate eligible in terms of the relevant rules for promotion to a post on regular basis cannot be overlooked for the purpose of any temporary arrangement concerning the post.

In other words, for being eligible to be considered for *ad hoc* interim arrangement against a post, pending regular selection to the said post, it is only a person who satisfies the eligibility criteria mandated for being considered for

promotion to the said post on regular basis can only be considered for holding such posts on in-charge basis. Any person, not otherwise, eligible for being considered for promotion to the such post on regular basis cannot be also considered for the purpose of holding the charge of the post pending a regular selection.

**15.** In view of the said conclusions, as reached by this Court in the case of *Mukta Ram Deka* (supra) and also in the case of *Jagannath Pegu* (supra), I am of the view that the petitioner, not being eligible in view of his invalid B.Ed. degree, for being considered for promotion to the post of Headmaster of the said school in question on regular basis, the petitioner could not have been allowed to hold the charge of the post of Headmaster pending regular selection. The respondent No.4, being otherwise, eligible in all respects for being considered for promotion to the post of Headmistress of the school in question, the petitioner who is otherwise ineligible, could not have been preferred above the respondent No.4 in the matter of interim arrangement made for holding the charge of the post of Headmaster of the school in question.

**16.** The petitioner having been held to be not eligible to hold the post of the Headmaster of the school in question, even on In-charge basis, in view of the fact that he does not meet the eligibility criteria as mandated for recruitment against the post of Headmaster in the school in question, the contentions of the petitioner that the order dated 24.03.2022 has the effect of replacing one *ad hoc* by another *ad hoc*, cannot be accepted inasmuch as the replacement in the case of the petitioner's *ad hoc* appointment as the Headmaster of the school in question was necessitated on account of the fact that he did not possess the requisite eligibility criteria as mandated for the post in question and the B.Ed. Degree as possessed by him from CMJ University was held to be invalid.

In the said view of the matter, the challenge of the petitioner to the order dated 24.03.2022 that it has the effect of replacing an *ad hoc* by another ad hoc appointee, cannot be accepted in the facts and circumstances of the present matter and accordingly, the same stands rejected.

**17.** In view of the said conclusions, I do not find any error in the passing of the order dated 24.03.2022 by the respondents allowing the respondent No.4 to hold the charge of the post of Headmistress of the school in question in place of the petitioner by cancellation of the order dated 10.07.2019. The said order dated 24.03.2022 is in tune with the provisions of Rules of 2018 as well as the judgments of this Court in the cases of *Mukta Ram Deka* (supra) and *Jagannath Pegu* (supra) and calls for no interference.

**18.** In that view of the matter, the contentions raised by the petitioner in the present proceedings towards assailing the order dated 24.03.2022 do not merit acceptance and are accordingly rejected.

**19.** The writ petition, being without any merit, the same stands dismissed. However, there will be no order as to costs.

**JUDGE**

**Comparing Assistant**