

GAHC010079372022



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

Case No. : WP(C)/2809/2022

RAMESH CHANDRA KHAKHLARI
S/O. TABIL CHARAN BARO, VILL. KHANDIKAR, P.O. DHEPARGAON, P.S.
TAMULPUR, DIST. BAKSA, ASSAM, PIN-781354.

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, EDUCATION
(SECONDARY) DEPTT., DISPUR, GUWAHATI-781009.

2:THE DIRECTOR OF SEDONCARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI-781019.

3:THE DIRECTOR OF EDUCATION

BODOLAND TERRITORIAL COUNCIL
KOKRAJHAR
ASSAM
PIN-783370.

4:THE INSPECTOR OF SCHOOLS
BAKSA DISTICT CIRCLE
MUSHALPUR-781372.

5:SCHOOL MANAGEMENT AND DEVELOPMENT COMMITTEE

BARGHULI HIGHER SECONDARY SCHOOL-781354.

6:HEMEN CHANDRA DAS

INCHARGE PRINCIPAL
BARGHULI HIGHER SECONDARY SCHOOL
P.O. BARGHULI
P.S. TAMULPUR
DIST. BAKSA
ASSAM
PIN-781354

Advocate for the Petitioner : MR. R P SARMAH

Advocate for the Respondent : SC, SEC. EDU.

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

For the Petitioner : Shri RP Sarmah, Sr. Advocate;
Shri D Doley, Advocate; and
Ms. A Deka, Advocate.

For the Respondents : Shri U Sarma, SC, Education (Second.),
Department., Assam;
Shri B Choudhury, SC, BTC; and
Shri P Mahanta, Advocate, R/6.

Dates of Hearing : 16.05.2024.

Date of Judgment : 16.05.2024.

JUDGMENT & ORDER

An order dated 08.04.2022 by which the respondent no. 6 has been given the charge of the post of Principal of Barghuli Nehru Higher Secondary School in

the BTC is the subject matter of challenge in this petition instituted under Article 226 of the Constitution of India.

2. The fact projected in the petition is that the petitioner is a Madhyama (Bisharad) which, according to the petitioner, is equivalent to Graduation.

3. Vide an order dated 29.04.1994, the Inspector of Schools had appointed the petitioner as Senior Hindi Teacher in the KB Dewalkuchi HS School for a period of 3 months against a newly sanctioned post. The Head of Account for the related expenditure was also indicated in the said order. The emphasis is given on the scale of pay allotted to the petitioner which was stated to be Rs. 1375-3375/- per month which according to the petitioner, is Graduate Scale of Pay. The contention of the petitioner is that while his appointment was extended from time to time, vide an order dated 23.10.1998, he was adjusted in the present Barghuli Nehru Higher Secondary School where he continued to serve. On 05.03.2019, the petitioner was appointed as Assistant Headmaster. The petitioner has also relied upon a seniority list prepared by the then Headmaster of the School wherein all the details of the petitioner, the respondent no. 6 and another Assistant Teacher were given and in the said list, the name of the petitioner had figured in Sl. No. 1 whereas that of the respondent no. 6 figured in Sl. No. 2. Vide an order dated 28.02.2022, the petitioner was given the charge of the Principal of the School as the earlier Principal had retired. It is clarified that since the School was upgraded to a Higher Secondary School, in the meantime, the post relevant is that of the Principal. While the petitioner was discharging his duties as In-charge Principal, vide the impugned order dated 08.04.2022, the respondent no. 6 was given the charge of the Principal.

4. I have heard Shri RP Sarmah, learned Senior Counsel assisted by Shri D Doley and Ms. A Deka, learned counsel for the petitioner. I have also heard Shri U Sarma, learned Standing Counsel, Education (Secondary) Department, Assam as well as Shri B Choudhury, learned Standing Counsel, BTC. Shri P Mahanta, learned counsel is present for the respondent no. 6. Though the SMDC of the School which is a party respondent had filed an affidavit-in-opposition, there is none to represent the said SMDC.

5. The learned Senior Counsel for the petitioner by referring to the Assam Secondary Education (Provincialised Schools) Rules 2018 (hereinafter called as Rules) has drawn the attention of this Court to Rule 14 and the proviso thereto. It is submitted that the seniority of the Graduate Teacher would be determined from the date of receiving Graduate Scale of Pay by the respective Assistant Teacher. It is contended that irrespective of the appointment of the petitioner as Senior Hindi Teacher in the School vide order dated 29.04.1994, the fact of grant of Graduate Scale of Pay would determine his seniority. Reference has also been made to Rule 3 thereof which is of Classes and Cadres wherein under Class-III of sub-Rule (1) (b), the post of Graduate Teacher and Hindi Teacher having Bachelor Degree from recognized University are included. He submits that though the initial appointment of the petitioner was for a particular tenure, apart from extension of his services, the same was regularized by orders of the authority. It is submitted that taking all the relevant factors into consideration, the charge of the post of the Principal of the School was rightly and lawfully given to the petitioner till filling up of the said post by direct recruitment which is envisaged by Rule 12 of the said Rules

6. By referring to the affidavit-in-opposition filed by the respondent no. 6, Shri Sarmah, learned counsel for the petitioner submits that the respondent no. 6 was appointed as Assistant Teacher in graduate scale on 02.05.1996 while in the seniority list subsequently prepared, the year of receipt of such graduate scale so far as the petitioner is concerned has been stated to be 1998. It is submitted that apart from the fact that there was no challenge by the respondent no. 6 to the order of allowing the petitioner to serve as the Assistant Headmaster, the said respondent no. 6 had never claimed such post. It is submitted that a wrong date has been taken into account regarding the grant of Graduate Scale of Pay which is guided by passing of the impugned order dated 08.04.2022. It is further submitted that a similar stand is taken by the respondent no. 5-SMDC in the affidavit-in-opposition. It is submitted that reply-affidavits are filed by the petitioner to both the affidavits-in-opposition.

7. By referring to the affidavit-in-reply filed by the petitioner on 17.11.022 to the affidavit-in-opposition of the respondent no. 5, the learned Senior Counsel for the petitioner has brought on record two important communications both issued by the Director, BTC. By the first communication dated 23.03.2022 while giving the details of the service of the petitioner, a memo number and date regarding the initial appointment of the petitioner was wrongly stated by referring to the memo number and date when he was adjusted in the present School. However, the said error was corrected vide the corrigendum issued on 19.04.2022 wherein the correct memo number and date of initial appointment of the petitioner was stated. For ready reference, the corrigendum dated 19.04.2022 is extracted hereinbelow:

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GOVT. OF ASSAM
OFFICE of The director of education, B.t.c., Kokrajhar

-: CORRIGENDUM :-

Dated Kokrajhar the 19th April/2022.

No.DE/BTC/Apptt-257/Pt-I/2017/815: Please Read as "Memo No. E-I/355/94/6350-55, dated. 29-04-1994" instead of DSE's Order No. GIS/HE/38/98/44, dated 23-10-1998 which was appeared in the Office Order Memo No.DE/HSS/Apptt-Pt-III/2005/195-A, dated. 08-02-2007.

Sd/- J.P. Brahma, AES,
Director of Education
Bodoland Territorial Council,
Kokrajhar”

8. The learned Senior Counsel has submitted that though the post of Principal of Higher Secondary School is to be filled up by direct recruitment as per Rule 12 of the Rules, in the interregnum, till such recruitment is made, seniority of the incumbents would indicate that the petitioner being senior to the respondent no. 6 was rightly given the charge on 28.02.2022 which should not have been upset by the impugned order dated 08.04.2022. It is reiterated that the petitioner, otherwise fulfills all the eligibility criteria laid down in Rule 12(3). The aspect of replacement of one *ad hoc* employee by another *ad hoc* employee has also been highlighted by the learned Senior Counsel.

9. Shri Choudhury, learned Standing Counsel, BTC has, however, submitted

that no fault can be attributed to the impugned order dated 08.04.2022 as the same was passed on the basis of the existing materials. It is submitted that the said order appears to have been passed on the basis of the communication dated 23.03.2022 issued by the Director, BTC as per which, the appointment of the petitioner appears to be from a date after appointment of the respondent no. 6. He has also highlighted that the corrigendum is of a subsequent date i.e. 19.04.2022 and therefore, the same could not have come into consideration before passing of the impugned order dated 08.04.2022.

10. Shri Mahanta, learned counsel for the respondent no. 6 has emphasized that the initial appointment of the petitioner was not a regular appointment and was on *ad hoc* basis. The regularization of the petitioner was only upon his adjustment in the present School and therefore, the period from 29.04.1994 till 23.10.1998 of service of the petitioner would not have a bearing in assessing his seniority. He has also clarified that the petitioner having joined the present School on 23.10.1998, the regular service can be reckoned only from that date in which case, the respondent no. 6 will steal a march over the petitioner as his initial appointment as an Assistant Teacher was on 02.05.1996. The learned counsel for the respondent no. 6 has also submitted that the corrigendum, as such would not have a bearing in assessing the seniority. The seniority list in which the petitioner has been placed against Sl. No. 1 not being countersigned by the Inspector of School whereas the other seniority list in which his client has been placed against Sl. No. 1 and countersigned by the Inspector of School is also highlighted by the learned counsel. Shri Mahanta, learned counsel has also tried to contend that the qualification by Bisharad cannot be equated with a normal graduation and therefore, for all practical purposes, the petitioner cannot

be held to be eligible. The learned counsel has relied upon the case of ***Siraj Ahmad Vs. State of Uttar Pradesh & Anr.***, reported in **(2020) 19 SCC 480** on the aspect that the services rendered as *ad hoc* can, at best be taken into consideration for the purpose of pension and not for the purpose of any seniority.

11. The rival contentions of the learned counsel for the parties have been duly considered and the materials available on records have also been carefully examined.

12. The initial appointment of the petitioner as Senior Hindi Teacher dated 29.04.1994 was for a particular period. It is not disputed that the petitioner had joined on 30.04.1994 and his services were extended from time to time. What is of paramount importance to be noted is that the scale of pay mentioned in the said appointment order is stated to be Rs. 1375-3375/-. There is no dispute in the Bar that the aforesaid scale is a Graduate Scale of Pay and in this connection, the proviso to Rule 14 would have a bearing which lays down that seniority of Assistant Teacher is to be taken into consideration from the date of receiving graduate scale. It is also not disputed that the petitioner was appointed as an Assistant Headmaster on 05.03.2019 and in the meantime, the School in question was upgraded to a Higher Secondary School. The charge of the post of Principal was given to the petitioner on 28.02.2022. However, it appears that on 23.03.2022, a communication was issued by the Director of Education, BTC as per which, an impression can be gathered that the seniority of the petitioner is to be reckoned only from 23.10.1998. It appears that the impugned order dated 08.04.2022 has been passed only on the basis of the

aforesaid communication by the Director of Education, BTC.

13. The corrigendum on the said communication dated 23.03.2022 was issued only on 19.04.2022 which is post the impugned order dated 08.04.2022. Under that circumstances, this Court finds force in the submission of the learned Standing Counsel of the BTC that no fault as such, can be attributed to the impugned order dated 08.04.2022. However, the position being explained by the corrigendum issued on 19.04.2022, there was a consequential requirement of correcting the order dated 08.04.2022 and the charge was liable to be handed over back to the petitioner for the post of In-charge Principal which has not been done.

14. Having observed as above, this Court cannot overlook the aspect of the procedure laid down in the Rules, more specifically, Rule 12 which requires the post of Principal of a Higher Secondary School to be filled up by direct recruitment and there is no provision for filling up such post by promotion. The eligibility criteria are also laid down in Rule 12 and the process of recruitment has also been given in Rule 12(4). Both the order dated 28.02.2022 by which initially the petitioner was given charge of the post of Principal and the subsequent impugned order dated 08.04.2022 by which the respondent no. 2 has been given the charge are more than 2 years old. Both the orders would clearly reflect that the said arrangement was of temporary nature till a regular Principal is posted. A situation of *ad hocism* is not desirable or mandated by law and there is a requirement to fill up the post on regular basis expeditiously.

15. Accordingly, this Court is of the opinion that the impugned order dated

08.04.2022 is not based on the materials on record which is subsequently being clarified by the corrigendum dated 19.04.2022 issued by the Director, BTC and accordingly, the impugned order dated 08.04.2022 is set aside. Consequently, the respondent authorities are directed to hand over the charge of the post of Principal of the School in question on In-charge basis to the petitioner. However, the said post is to be filled up on regular basis as expeditiously as possible and in any case, within a period of 3 months from the date of receipt of a certified copy of this order, in which, the candidature of both the petitioner and the respondent no. 6, if offered, are to be duly considered along with other eligible candidates as per law.

16. The writ petition is accordingly allowed.

JUDGE

Comparing Assistant