

GAHC010116252024



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

Case No. : WP(C)/2546/2024

TAYABUR RAHMAN BARBHUIYA
S/O- LATE MONIR ALI BARBHUIYA
R/O- VILL.- CHIPORSANGON PT-III
PO- CHIPORSANGON
DIST- HAILAKANDI
PIN- 788801

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY
ELEMENTARY EDUCATION DEPARTMENT
DISPUR
GUWAHATI-6

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19

3:THE ADDITIONAL DISTRICT COMMISSIONER (EDN)
HAILAKANDI-CUM-DISTRICT ELEMENTARY EDUCATION OFFICER
HAILAKANDI- 788151

4:THE BLOCK ELEMENTARY EDUCATION OFFICER
HAILAKANDI- 788151

5:SRI MONUJ KUMAR KOIRI
THE BLOCK ELEMENTARY EDUCATION OFFICER
HAILAKANDI- 788151

6:MASUK AHMED
S/O- LT. KAMAL UDDIN
R/O- VILL- BOKRIHAWAR PART-8
PO- KALINAGAR
PS- ALGAPUR
DIST.- HAILAKANDI

PIN- 788801
7:THE SCHOOL MANAGEMENT COMMITTEE
BAKRIHOWAR M.V SCHOOL
HAILAKANDI- 788151

Advocate for : MR. I CHOWDHURY SR ADV
Advocate for : SC
ELEM. EDU appearing for THE STATE OF ASSAM AND 6 ORS

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

ORDER

Date : 21.06.2024

Heard Mr. S. Biswakarma, learned counsel for the petitioner. Also heard Ms. S. Chutia, learned Standing Counsel for the Elementary Education Department representing the respondents no. 1, 2 & 4 and Mr. P. Saikia, learned Government Advocate representing the respondents no. 3 as well as Mr. S. B. Laskar, learned counsel appearing for the respondent no. 7.

None has appeared for the other arrayed respondents.

3. As agreed to by the learned counsel appearing for parties, the present petition is taken up for final consideration and disposal.

4. The petitioner had instituted the present proceedings assailing an order dated 04.05.2024, issued by the District Elementary Education Officer (DEEO), Hailakandi, allowing the respondent no. 6 herein to hold the charge of the post of In-charge Headmaster-cum-SMC Member Secretary of Bakrihowar M.V. School in place of the petitioner herein.

5. The petitioner, in the writ petition has contended that the said order

dated 04.05.2024 was so issued basing on a purported enquiry conducted in the matter by the respondents behind his back. It is contended that the authorities while proceeding to draw conclusions towards issuing the order dated 04.05.2024 had not issued any notice to the petitioner in the matter and he was relieved of the charge of the post of In-charge Headmaster-cum-SMC Member Secretary of Bakrihowar M.V. School and the private respondent no. 6 was allowed to function as the In-charge Headmaster-cum-SMC Member Secretary of the said school.

6. The learned counsel for the petitioner has submitted that the order dated 04.05.2024 is stigmatic in nature and the same could not have been issued without proceeding to issue a notice to the petitioner. The learned counsel for the petitioner has also submitted that the order dated 04.05.2024 has the effect of replacing of an Ad-hoc employee by another Ad-hoc employee, which was contended to be impermissible.

7. Mr. S. B. Laskar, learned counsel appearing for the School Managing Committee by referring to the contentions as made in the Interlocutory application being IA(C)/1835/2024 has submitted that the School Managing Committee (SMC) of the school being so constituted and the members on noticing that the petitioner was not discharging his duties in the manner required, a complaint in the matter came to be preferred by the SMC before the jurisdictional Block Elementary Education Officer (BEEO). The complaint basically pertains to the mismanagement as made by the petitioner with regard to the Mid-Day Meal (MDM) Scheme and also the allegation of he having misappropriated the funds as allotted to the school.

8. It is contended by the learned counsel for the respondent no. 6 that the

jurisdictional BEEO, on receipt of the said complaint, had carried out an investigation in the matter and thereafter, submitted a report to the DEEO, Hailakandi, on 04.05.2024. It is contended that basing on the said enquiry report that the impugned order dated 04.05.2024 came to be issued relieving the petitioner from the charge of In-charge Headmaster-cum-SMC Member Secretary of Bakrihowar M.V. School and allowing the private respondent no. 6 as the In-charge Headmaster-cum-SMC Member Secretary of the said school in the interregnum. It is contended that the enquiry having revealed the misconduct of the petitioner in the matter, this Court would be pleased not to interfere with the impugned order dated 04.05.2024 and would be pleased to allow the arrangements as made vide the impugned order dated 04.05.2024 to hold its field.

9. I have heard the learned counsels appearing for the parties and also perused the materials available on record.

10. It is seen that after the present SMC was so constituted, the members thereof had noticed the petitioner to have been not implementing the MDM Scheme for the students of the school in the manner required and accordingly, a complaint in the matter came to be preferred before the jurisdictional BEEO. The jurisdictional BEEO, on receipt of the said enquiry, proceeded to visit the school on 13.03.2024 and carried out an enquiry in the matter. Thereafter, on 04.05.2024, the jurisdictional BEEO submitted a report in the matter before the DEEO, Hailakandi.

11. A copy of the said report has been brought on record by the learned Standing Counsel for the Elementary Education, Assam, and also is a part of the said Interlocutory application being IA(C)/1835/2024.

12. On perusal of the said report, it is seen that the jurisdictional BEEO had concluded that after the new SMC was constituted; the MDM Scheme under the PM-POSHAN was running as per the Menu prescribed, however, it was recorded that the petitioner earlier was not serving the Mid-Day Meal Scheme as per the Menu. In the said enquiry report, it was also brought on record that the relationship between the staff in the school were not cordial and the staff of the school had also submitted a written statement in the enquiry for removal of the petitioner as the In-charge Headmaster-cum-SMC Member Secretary of Bakrihowar M.V. School and for assigning the said responsibility upon the respondent no. 6 herein.

13. In view of the said conclusions, the jurisdictional BEEO, in his report dated 04.05.2024, recommended that the petitioner herein be replaced with the respondent no. 6 as the In-charge Headmaster-cum-SMC Member Secretary of Bakrihowar M.V. School. On receipt of the said enquiry report, the DEEO, Hailakandi, proceeded to issue the impugned order dated 04.05.2024, replacing the petitioner with the respondent no. 6 as the In-charge Headmaster-cum-SMC Member Secretary of Bakrihowar M.V. School.

14. A perusal of the materials available on record would reveal that the enquiry officer in his report had concluded that the MDM Scheme i.e. the Scheme operated under the PM-POSHAN was being implemented in the school in the manner required after the constitution of the present SMC of the school. It is seen from the enquiry report that while the contentions of various constituents of the school were so received, the said enquiry report was prepared without affording an opportunity to the petitioner herein to have his say in the matter.

15. Even after the submission of the enquiry report and the replacement of the petitioner with the respondent no. 6 as the In-charge Headmaster-cum-SMC Member Secretary of Bakrihowar M.V. School vide the order dated 04.05.2024, it is seen that no further proceedings were initiated in the matter against the petitioner for the action on his part in implementation of the MDM Scheme in the school prior to the period before constitution of the present SMC of the school in question.

16. It being a settled position of law that an Ad-hoc appointee cannot be replaced by a another Ad-hoc appointee and coupled with the fact that in the present case, although the replacement of the petitioner was so made basing on the enquiry report dated 04.05.2024 submitted by the jurisdictional BEEO in the matter, no further proceeding was initiated against the petitioner, this Court is of the considered view that the order dated 04.05.2024 being so based on a unilateral enquiry made in the matter and the petitioner not being involved therein, and also noticing the fact that the PM-POSHAN Scheme was concluded in the enquiry to being implemented in the school in the manner required after the constitution of new SMC, the said order cannot be sustained and the same stands set aside.

17. Having interfered with the order dated 04.05.2024 and the consequence thereof, being that the petitioner would now be permitted to function as the In-charge Headmaster-cum-SMC Member Secretary of Bakrihowar M.V. School, this Court provides that the DEEO, Hailakandi, in the event is of the view that there exist materials against the petitioner demonstrating commission by him of a misconduct in discharge of his duties, the DEEO, Hailakandi, would be at liberty to proceed against the petitioner in

the matter, strictly in accordance with the provisions of the Assam Services (Discipline and Appeal) Rules, 1964.

18. In view of the above conclusions, the petitioner be permitted to continue as the In-charge Headmaster-cum-SMC Member Secretary of Bakrihowar M.V. School, subject to the liberty granted to the DEEO, Hailakandi, to initiate appropriate proceedings, if so mandated in the matter against the petitioner herein for any misconduct he might have committed in discharge of his duties in the capacity of In-charge Headmaster-cum-SMC Member Secretary of Bakrihowar M.V. School.

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

JUDGE

Comparing Assistant