

GAHC010100672021



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

Case No. : WP(C)/3242/2021

AJIT SAIKIA
S/O LATE DEHIRAM SAIKIA
RESIDENT OF NAKARI, WARD NO. 1, PO ANDPS NORTH LAKHIMPUR, DIST
LAKHIMPUR, ASSAM, 787001,

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, SECONDARY EDUCATION DEPARTMENT, DISPUR GUWAHATI
06

2:THE DIRECTOR OF SECONDARY EDUCATION

KAHILIPARA
GUWAHATI 19

3:THE STATE SELECTION BOARD FOR PROMOTION TO THE POST OF
HEADMASTER FOR HIGH SCHOOLS
ASSAM
DISPUR
GUWAHATI
06
REPRESENTED BY CHAIRMAN

4:THE DISTRICT SELECTION COMMITTEE FOR PROMOTION TO THE POST
OF HEADMASTER FOR HIGH SCHOOLS
LAKHIMPUR
REPRESENTED BY THE DEPUTY COMMISSIONER CUM CHAIRMAN
LAKHIMPUR
NORTH LAKHIMPUR

5:THE INSPECTOR OF SCHOOLS

LAKHIMPUR DISTRICT CIRCLE
NORTH LAKHIMPUR

6:THE SCHOOL MANAGING COMMITTEE

PAHUMARA HIGH SCHOOL
LAKHIMPUR
REPRESENTED BY ITS PRESIDENT
PO PAHUMARA
DIST LAKHIMPUR
787031
ASSAM

7:SRI NALIN CH. BORA

ASSISTANT TEACHER

PAHUMARA HIGH SCHOOL
LAKHIMPUR
PO PAHUMARA
DIST LAKHIMPUR
ASSAM
78703

Advocate for the Petitioner : MR. J C GOGOI

Advocate for the Respondent : SC. EDU.

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

JUDGMENT & ORDER (ORAL)

Date : 08-01-2024

Heard Mr. B. Islam, learned counsel for the petitioner.

Also heard Ms. D. Mushahary, learned standing counsel, Secondary

Education Department and Mr. G. Pegu, learned junior Government Advocate for the respondent no. 4.

None has appeared for the respondents no. 6 & 7.

3. The petitioner, by way of filing the present writ petition has placed his grievance with regard to an order dated 21.06.2021, issued by the Director, Secondary Education, Assam, by which the respondent no. 7 was promoted as the Regular Headmaster of Pahumara High School.

4. The petitioner as projected in the writ petition had joined on 01.01.1994 as Graduate Teacher in Pahumara High School and has been receiving his pay and allowances in the graduate scale of pay from the date of his initial joining. The petitioner was allowed to hold the charge of the post of Headmaster of Pahumara High School vide an order dated 09.03.2017 along with financial power to draw and disburse the salary of the staffs of the school. It is contended by the petitioner that vide an order dated 12.09.2017; Pahumara L.P. School and Pahumara M.E. School was amalgamated with Pahumara High School. The respondent no. 7 herein, at the time of amalgamation of the school was serving as the Headmaster of Pahumara M.E. School. It is the contention of the petitioner that the respondent no. 7 is junior to him inasmuch as in the amalgamated list of teachers prepared after amalgamation of the schools, the name of the respondent no. 7 is placed below him. The petitioner further contends that the case of the respondent no. 7 for promotion in the post of Headmaster of the school could not have been considered in view of the fact that there is a

complaint of misappropriation of government funds by the respondent no. 7 while he was serving as the Headmaster of Pahumara M.E. School. Basing on the said two grounds, the order dated 21.06.2021, issued by the Director, Secondary Education, Assam, has been put to challenge in the present writ proceeding.

5. The learned counsel for the petitioner by reiterating the facts noted herein above has submitted that the respondent no. 7, admittedly, being junior to him and also there being allegations existing against him with regard to misappropriation of government funds, the respondent no. 7 could not have been considered for promotion to the post of Headmaster of the Pahumara High School.

6. The respondent no. 7 by way of filing an affidavit has contended that he was appointed as a Graduate Teacher in the Kalakhowa M.E. School on 01.01.1992 and thereafter transferred to Pahumara M.E. School, where he joined on 01.01.2015. The respondent no. 7 has also contended in his affidavit that he had drawn his graduate scale of pay with effect from 01.01.1992 and as such he is senior to the petitioner herein. With regard to the allegation of misappropriation of the government funds, it was the stand of the respondent no. 7 that the said allegation came to be leveled against him only on account of the fact that one Utilization Certificate issued by the Member Secretary School Management Committee (SMC) and the report of the Junior Engineer involved in the work were not brought on record. However, the Utilization Certificate was thereafter issued and therein the total amount received has been certified to have been utilized in the work in

question. As such, he contends that the allegation leveled by the petitioner is without any basis.

7. The respondent no. 7 had further contended in his affidavit that no proceeding was initiated at any point of time against him with regard to the allegation leveled by the petitioner in the writ petition.

8. I have heard the learned counsel appearing for the parties and perused the materials available on record.

9. The challenge of the petitioner to the order dated 21.06.2021, is twofold. Firstly, the challenge is presented on the ground that the respondent no. 7 is junior to him in the cadre of Graduate Teacher in Pahumara High School and the Second ground is that the respondent no. 7 could not have been considered for the said promotion on account of allegations of misappropriation of Government funds.

10. The first ground of challenge is taken up for consideration. The petitioner, admittedly, was appointed as a Graduate Teacher in Pahumara High School on 01.01.1994. On the other hand, the respondent no. 7 was appointed as a Graduate Teacher in Kalakhowa M.E. School on 01.01.1992 and thereafter transferred to Pahumara M.E. School, where he joined on 01.01.2015. There is no material available on record to conclude that the said transfer of the respondent no. 7 was so affected basing on his own request. The materials available on record reveal that the respondent no. 7 was, admittedly, a Graduate Teacher in the M.E. School. On amalgamation of

the said M. E. Schools at Pahumara High School, Lakhimpur, respondent no. 7 being a Graduate Teacher, in terms of the rules holding the field is permitted to carry his seniority as a Graduate Teacher to the High School and therein his seniority as a Graduate Teacher would be so fixed by reckoning the service rendered by him in such capacity in the M.E. School. The respondent no. 7, admittedly, having been appointed as a Graduate Teacher on 01.01.1992, his seniority in the High School in the Graduate cadre has to be reckoned from 01.01.1992.

11. In the said view of the matter, the respondent no. 7 is, admittedly, senior to the petitioner herein. Accordingly, the first ground of challenge of the petitioner is decided against the petitioner.

12. Now, the second ground of challenge, raised by the petitioner is to be considered. The petitioner has contended that the case of the respondent no. 7 could not have been taken up for promotion as Headmaster of the School inasmuch as there were allegations pending against him for misappropriation of Government funds during his service as Headmaster of Pahumara M.E. School. The said allegations were countered by the respondent no. 7 in his affidavit and stated that on account of delay in submitting the Utilization Certificate by the concerned authorities, the said allegations may have been raised, but, the authorities have since submitted the Utilization Certificate and therein certified that the total amount received by the school has been utilized for the work in question. It is settled law that the employee can be denied his promotion only when a departmental proceeding is instituted against such employee before consideration of his

case for such promotion. The said clarification with regard to utilization of funds coupled with the fact that no departmental proceeding was instituted against the petitioner, prior to the passing of the order dated 26.06.2021, the allegations leveled by the petitioner cannot be sustained.

13. Having recorded conclusions with the two grounds raised by the petitioner with regard to his challenge to the order dated 21.06.2021, another factor, which requires to be noticed is that the provisions of the Rules holding the field i.e., the Assam Secondary Education (Provincialised Schools) Service Rules 2018, more particularly, Rule 14 thereof, requires that a person to be eligible for promotion for the post of Headmaster must be a graduate with B.T/B.Ed degree from any recognized university. The petitioner had acquired his B.Ed degree from CMJ University (in campus). The said degree had already been held by the respondent authorities to be not a valid degree.

14. In view of the fact that the B.Ed degree of the petitioner is not valid, the same cannot be reckoned for the purpose of considering his case for promotion to the post of Headmaster. Accordingly, it is held to be held that the petitioner in terms of the provisions of the Rules of 2018 is ineligible for being considered for promotion as Headmaster of the school.

15. In view of the conclusions reached hereinabove, with regard to the issues involved, the contention raised by the writ petitioner is not acceptable and requires to be rejected.

16. The writ petition, accordingly, is without any merit and stands dismissed. However, there being no order as to costs.

JUDGE

Comparing Assistant