

GAHC010114022022



2024:GAU-AS:13119

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

Case No. : WP(C)/3898/2022

BIKASH DAS
S/O- LATE TARAPADA DAS, R/O- WARD NO. 9, NETAJI NAGAR, PAL PARA,
BONGAIGAON, ASSAM, PIN- 783380, DIST. BONGAIGAON, ASSAM

VERSUS

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

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

3:THE INSPECTOR OF SCHOOLS

BONGAIGAON DISTRICT CIRCLE
BONGAIGAON
DIST. BONGAIGAON

4:ABDUR REZZAQUE
SUBJECT TEACHER OF VIVEKANANDA VIDYAPITH HIGHER SECONDARY
SCHOOL
DIST. BONGAIGAON
ASSAM
PIN- 783381

Advocate for the Petitioner : MR. S K DAS, MR R KARIM,MR. U K NAIR,MR D
BARMAN,MR R KARIM

Advocate for the Respondent : SC, SEC. EDU., MR. A BORUA (r-4),MR. N I KHAN (r-4),MR. S Z

RAHMAN (r-4),MR. T J MAHANTA (r-4)

**BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK**

ORDER

10.09.2024

Heard Mr. S. K. Das, learned counsel appearing for the petitioner and Mr. B. Kaushik, learned Standing Counsel, Department of School (Secondary) Education, Assam for the respondent Nos. 1, 2 & 3. Also heard Mr. T. J. Mahanta, learned Senior Counsel assisted by Mr. N. I. Khan, learned counsel for the respondent No. 4.

2) Being aggrieved by the order No. GB-EST/Appt/FP/31/2022/116 dated 30.05.2022 whereby the Director of Secondary Education, Assam, respondent No. 2, allowed the respondent No. 4, subject teacher of Vivekananda Vidyapith Higher Secondary School, New Bongaigaon, Bongaigaon to hold the charge of Principal of the said school along with financial power to draw and disburse the salary etc. of the staff of the said school, in addition to his normal duties as subject teacher under F.R.49(C), as Sri Bikash Chakraborty, Principal In-charge of the said school is to be retired on 31.05.2022.

3) According to the petitioner, the District Elementary Education Officer, Kokrajhar on 03.06.1992 appointed him as a Science teacher on Ad-hoc basis at Atugaon M.V. School under the then Sidli Chirang Block Education Board.

4) By order dated 15.06.1992, the DEEO, Kokrajhar temporarily attached him in the New Bongaigaon M.E. School enabling him to draw his salary from Atugaon M.V. School and he joined the said New Bongaigaon M.E. School on 17.06.1992. It is stated by him that the then DEEO, Bongaigaon by order dated 21.03.1994 regularised the service of the petitioner, who was appointed on Ad-hoc basis. The DEEO, Bongaigaon by order dated 22.01.1997 reverted back the petitioner to his original place of posting at Atugaon M.V. School, on creation of Bongaigaon district. Petitioner stated that the DEEO, Bongaigaon by order dated 08.03.2001 transferred him from Atugaon M.V. School to Vivekananda Vidyapith M.E. School. But due to objection of local public and a Court case filed by one Ranjit Chakraborty, the petitioner could

not join the said school. Later, the DEEO, Bongaigaon by order dated 20.03.2001 attached him at Kalibari Vidyaniketan M.E. School, Chungapota, New Bongaigaon. By order dated 19.02.2003, the DEEO, Bongaigaon reverted him back to Vivekananda Vidyapith M.E. School, New Bongaigaon, Bongaigaon as its Science Graduate teacher and he joined the said Vivekananda Vidyapith M.E. School on 20.02.2003.

5) It is to be noted herein that the petitioner could not show his transfer order from Atugaon M.V. School to Vivekananda Vidyapith M.E. School when enquired by the Director of Secondary Education, Assam.

6) Pursuant to the Office Memorandum No. ASE.481/2016/17 dated 22.09.2016, a scheme for amalgamation and merger of different schools, namely, Shiksha Khetra was introduced. Said Vivekananda Vidyapith M.E. School and Vivekananda Vidyapith L.P. School of Bongaigaon were merged with Vivekananda Vidyapith Higher Secondary School, New Bongaigaon, Bongaigaon under the Scheme of Shiksha Khetra as both the Vivekananda Vidyapith L.P. and M.E. Schools are in the same campus with that of Vivekananda Vidyapith H.S. School. Pursuant to such amalgamation, the petitioner became a teacher of Vivekananda Vidyapith H.S. School, New Bongaigaon, Bongaigaon since 27.06.2017 and received salary in the pay band of Rs. 5,200 — Rs. 20,200/- with grade pay of Rs. 3,300/-.

7) Just before such amalgamation, on retirement of the Headmaster of said Vivekananda Vidyapith M.E. School, the In-charge DEEO, Bongaigaon by order dated 14.07.2017 allowed the petitioner, Assistant Teacher of the said M.E. School to act as its In-charge Headmaster till joining of the permanent Headmaster in the said school, enabling him to draw and disburse salary of teaching and non-teaching staff as well as for implementation of mid-day meal schemes w.e.f. 01.06.2017 to 31.08.2017.

8) The respondent No. 4 joined the said Vivekananda Vidyapith Higher Secondary School, Bongaigaon on 29.03.1996 as its subject teacher and since then, he received the Post-graduate scale of pay. The respondent No. 4 obtained Master Degree in History from Gauhati University in the year 1992. With due approval of the authority concerned, the respondent No. 4 obtained his B.Ed Degree from Government Banikanta College of Teacher Education in the year 2020 on being sent on deputation by the Director of Secondary Education, Assam.

9) According to the Director of Secondary Education, Assam, the petitioner obtained his Master Degree in Education from Krishna Kanta Handique State Open University in the year 2021, but without obtaining any due/prior permission from the concerned authority. Similarly, the petitioner obtained his B.Ed Degree without any due permission while being in service, as required under the law.

10) The claim of the petitioner is that considering the Scheme of Siksha Khetra pursuant to the Office Memorandum dated 22.09.2016 of the Secondary Education Department, he is senior to the respondent No. 4 by 4 years and 3 months considering his substantive appointment on 17.06.1992 as he carried past seniority as per Rule 24(5) of the Assam Secondary Education (Provincialised Schools) Service Rules, 2018 wherein it is stipulated that in case of amalgamation of M.E/M.V/L.P School with other Higher Secondary School/High School under the Scheme of Siksha Khetra, the employees of the amalgamated schools shall be given seniority with effect from the date of joining on substantive appointment or regularization.

11) As per Rule 12(3)(iv) of the Assam Secondary Education (Provincialised Schools) Service Rules, 2018 the qualification for appointment to the post of Principal in a provincialised Higher Secondary School of the State is that a candidate must have 17 years of teaching experience as a Graduate teacher in any Higher Secondary School. In the case in hand, the Ad-hoc service of the petitioner was regularised by order dated 21.03.1994. Further, the petitioner joined the Vivekananda Vidyapith M.E. School on 20.02.2003 that was amalgamated w.e.f. 27.06.2017.

12) After hearing learned counsel for the parties and considering their pleadings, this writ petition is disposed of directing both the petitioner and the respondent No. 4 to place their respective testimonials before the Director of Secondary Education, Assam respondent No. 2 along with necessary/due permission from the authority concerned for obtaining B.Ed. and/or Master Degree, as applicable and as the case may be, which the petitioner and the respondent No. 4 obtained while they continued in Government service.

13) After due verification of such testimonials and necessary permissions granted to them by the authority concerned, the Director of Secondary Education, Assam shall determine the

seniority of the petitioner vis-a-viz the respondent No. 4 in said Vivekananda Vidyapith H.S. School, New Bongaigaon, Bongaigaon giving an opportunity of hearing to both the petitioner and the respondent No. 4. Thereafter, the DSE, Assam, respondent No. 2 shall pass the relevant order of Principal In-Charge of said Vivekananda Vidyapith H.S. School, New Bongaigaon, Bongaigaon at the earliest.

14) Both the petitioner and the respondent No. 4 shall submit their respective testimonials and permissions obtained by them from the authority concerned for their M.A. and B.Ed. Degree, as applicable before the Director of Secondary Education, Assam within a period of 4 (four) weeks of this order.

15) Till such decision of the DSE, Assam the respondent No. 4 shall continue to be the Principal In-Charge of Vivekananda Vidyapith H.S. School, New Bongaigaon, Bongaigaon, considering the fact that since the date of issuance of notice in the case on 13.06.2022, the respondent No. 4 continued to be the Principal In-charge of the said school in question.

16) Needless to say that pendency of the decision of the Director of Secondary Education, Assam pertaining to the Principal In-Charge of Vivekananda Vidyapith H.S. School, New Bongaigaon, Bongaigaon, there shall not be any bar for the respondent in the Secondary Education Department of the State for filling up the post of the Principal In-Charge of Vivekananda Vidyapith H.S. School, New Bongaigaon, Bongaigaon as per the relevant Rules in force.

17) With the above observations and directions, this writ petition stands disposed of.

JUDGE

Comparing Assistant