

GAHC010116142015



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

Case No. : WP(C)/2763/2015

MD ABDUL KARIM CHOUDHURY
S/O LT. PAKHI MIA CHOUDHURY, MAIZDIHI, W/NO.2, KARIMGANJ TOWN,
P.O. SETTLEMENT ROAD-788710, DIST- KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM,
EDUCATION ELE DEPTT., DISPUR, GHY-6

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

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER
KARIMGANJ DISTRICT
P.O. KARIMGANJ
PIN-788710
ASSAM

4:THE DY. INSPECTOR OF SCHOOLS
KARIMGANJ DISTRICT
P.O. KARIMGANJ
PIN-788710
ASSAM

5:LAKSHMI DEY
HINDI LANGUAGE TEACHER
N.N.T.C. M.V. SCHOOL
P.O. KARIMGANJ-788733
DIST- KARIMGANJ ASSA

Advocate for the Petitioner : MR .B MALAKAR

Advocate for the Respondent :

BEFORE

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

11.01.2024

Heard Mr. M. Khan, learned counsel for the petitioner. Also heard Mr. P.K. Bora, learned Standing Counsel, Education Department.

The petitioner has by way of this writ petition presented a challenge to an order dated 25.03.2015 by which the respondent No.5 was promoted to the post of Headmaster/Headmistress of N.N.T.C. M.V. School in Karimganj district. The petitioner had joined his services as Assistant Teacher in N.N.T.C. M.V. School on 01.01.1974 and thereafter, he has been serving in the said school. The respondent No.5 was appointed in the said school on 01.03.1979. It is the projected case of the petitioner that when the promotional exercise for the post of Head teacher in various M.E/M.V. schools in the district of Karimganj was undertaken in the year 2004, the petitioner on account of his illness submitted an application expressing his unwillingness for promotion. Accordingly, another teacher of the said school was promoted as the Headmaster of the said school. After the retirement of the Headmistress Smti. Bijoy Lakshmi Dey, the petitioner was allowed to hold the charge of the post in question. Posed thus, the respondents had also published a gradation list of the Karimganj Sub-Division/District of Karimganj wherein the name of the present petitioner was incorporated at Sl. No.2 while that of the respondent No.5 was incorporated at Sl. No.6. Thereafter, the Director of Elementary Education, Assam vide order dated 25.03.2015 promoted the respondent No.5 ignoring the case of the petitioner, who was placed at Sl. No.2 in the gradation list.

The petitioner on reaching the age of superannuation had retired on 30.09.2015. On the date when the gradation list, available at Annexure-11 to the writ petition, was implemented and the respondent No.5 was promoted i.e. 25.03.2015, the petitioner was very much in service and was eligible for being considered for such promotion, which he had apparently denied. It is contended that if the placement in the gradation list available at Annexure-11 is proper then there is a vested right in the petitioner to be considered for promotion to the post of Headmaster. It is stated that the petitioner as well as the respondent No.5 has both since retired from service.

In view of the above position, this writ petition is disposed of requiring the petitioner to approach the respondent No.2, Director of Elementary Education, Assam by way of a representation claiming his promotion by stating the facts as available in the writ petition, including the position of his placement and that of the respondent No.5 in the gradation list. The respondent No.2 on receipt of such representation along with a certified copy of this order shall consider the claim of the petitioner and if the facts as narrated by the petitioner and also the facts as recorded hereinabove in this order are found to be correct, the petitioner shall be favoured with an order of promotion with retrospective effect from the date the respondent No.5 was so promoted. The promotion in case of the petitioner, if found eligible, would be effected notionally from 25.03.2015 and the same would have a benefit in an increase in his pension and pensionary benefits. The pension and pensionary benefits be computed and the arrears thereof shall be released to the petitioner within a period of **3 (three) months** from the date of such determination made by the respondent No.2, Director of Elementary Education, Assam.

It is made clear that while considering the case of the petitioner for promotion on notional basis w.e.f 25.03.2015, the promotion effected in case of

the respondent No.5 vide order dated 25.03.2015, available at Annexure-12 to the writ petition, shall not be disturbed.

With the above observation and direction, this writ petition is disposed of.

JUDGE

Comparing Assistant