

GAHC010124682017



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

Case No. : WA/78/2017

MAHESH TANTI
S/O SRI HIRALAL TANTI, R/O VILL. HAHARIJAN, P.S. BIHALI, P.O.
LAHORIJAN, DIST. SONITPUR, ASSAM.

VERSUS

THE STATE OF ASSAM and 5 ORS
THROUGH THE SECY. TO THE GOVT. OF ASSAM, EDUCATION DEPTT.,
DISPUR, GHY-6

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

3:THE DIST. ELEMENTARY EDUCATION OFFICER
SONITPUR
TEZPUR
DIST.- SONITPUR
ASSAM.

4:THE DY. INSPECTOR OF SCHOOLS
TEZPUR
DIST.- SONITPUR
ASSAM.

5:SARBESWAR BORAH
HEADMASTER
13 NO. BIHAPUKHURI L.P. SCHOOL
P.O.- KAHARIJAN
DIST.- SONITPUR
ASSAM.

6:PURNIMA SAIKIA BORAH
W/O- LOCHAN BORAH
R/O VILL. and P.O.- ROTUA
DIST.- SONITPUR
ASSAM

Advocate for the Petitioner : MR.A S BHATTACHARJEE

Advocate for the Respondent : SC, ELEMENTARY EDUCATION

**BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

04.06.2024

(Vijay Bishnoi, CJ)

This Writ Appeal is filed by the appellant being aggrieved with the order dated 08.12.2015 passed by the learned Single Judge in WP(C) No.2595/2013 whereby the writ petition filed by the appellant challenging the provincialisation of service of respondent No.6 has been dismissed.

2. The case of the appellant in the writ petition was that he was appointed as 1st Assistant Teacher of No.13 Behupukhuri L. P. School on 06.01.2005. It is contended by the appellant that his name appeared as 1st Assistant Teacher in District Information System for Education (DISE) for academic year 2009-10, 2010-11 and 2011-12 and the name of the respondent No.6 appeared 2nd Assistant Teacher showing her date of joining as 2007 instead of 2011 when she actually joined. The appellant has contended before the learned Single Judge the appointment of the appellant as Assistant Teacher was prior to the respondent No.6 but the respondents have illegally provincialised her services in

place of the appellant.

3. The learned Single Judge after taking into consideration the documents placed on record along with the writ petition by the appellant has recorded a finding in paragraph 13. The paragraph 13 of the impugned order reads as under :-

“13. In the writ petition as was filed, in support of the contention that the writ petitioner was appointed, the petitioner had annexed a certificate of one Yudhisthir Nahak with the seal of President/Secretary of School Managing Committee of the school in question. In view of the stand taken in the affidavit-in-opposition that School Managing Committee had never appointed the petitioner and that Yudhisthir Nahak was also not the President of the School Managing Committee, in the affidavit-in-reply, the petitioner had taken a stand that he had never stated Yudhisthir Nahak was the President of the School Managing Committee. That apart, in the affidavit-in-reply, an appointment letter dated 06.01.2005 was annexed as Anenxure-8. The said document is signed by one Yudhisthir Pan, followed by the seal of President/Secretary of the School Managing Committee. Yudhisthir Pan and Yudhisthir Nahak are evidently two different persons. Annexure-1 of the writ petition is undated. The writ petitioner has not brought on record any document to show that Yudhisthir Pan was either the President or the Secretary of the School Managing Committee on 06.01.2005. It was necessary for the writ petitioner to explain the same in view of the categorical stand taken by the Respondent No.6 that he was never appointed in the year 2005. The writ petitioner has failed to produce any acceptable material on record to show that he was appointed in the year 2005. That apart, it is the admitted position that in the year 20 05, the writ petitioner did not pass HSLC examination and it is not disputed by Mr. Phukan that qualification prescribed for appointment as a teacher in Venture School is minimum HSLC pass. What is sought to be contended by Mr. Phukan is that having regard to the remoteness of the school, the qualification was waived for

the petitioner. There are no corroborating materials to support the plea. That apart, essential qualification cannot be waived.”

4. The learned Single Judge has concluded that the appellant has failed to substantiate his claim that he was appointed as 1st Assistant Teacher on 06.01.2005. The learned Single Judge has also observed that in the year 2005 the appellant was not having the qualification for appointment as a teacher in the venture school and it is the admitted case of the appellant that he has not passed HSLC examination which is the requisite qualification for appointment in the post of Assistant Teacher. The learned Single Judge has concluded that the appellant became eligible to be appointed as Assistant Teacher only in 2007 and therefore, the claim of him for giving precedence over the claim of the respondent No.6 is not tenable.

5. Having heard the learned counsel for the parties and after carefully scrutinizing the materials available on record, we do not find any illegality in the impugned order passed by the learned Single Judge. Hence, no case for interference is made out.

The Writ Appeal is dismissed.

It would be open for the appellant to claim provincialisation of his service in accordance with law holding the field treating the appointment of the appellant as Assistant Teacher in the year 2007.

JUDGE

CHIEF JUSTICE