

GAHC010139132021



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

Case No. : WP(C)/4428/2021

MANTU MEDHI
S/O SRI ASWINI MEDHI, RESIDENT OF KALAPAHAR LUTUMA, HOUSE NO.
52, PO BINOVA NAGAR, PS FATASHIL AMBARI, DIST KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT
OF ASSAM, EDUCATION (HIGHER) DEPT. DISPUR GUWAHATI 781006

2:THE DIRECTOR HIGHER EDUCATION ASSAM
KAHILIPARA GUWAHATI 781019

3:THE DEPARTMENTAL PROMOTION COMMITTEE
REPRESENTED BY ITS CHAIRMAN
OFFICE OF THE PRINCIPAL
KAMAKHYA RAM BARUAH GIRLS COLLEGE
FATASHIL AMBARI
PO BHARALUMUKH
PS FATASHIL AMBARI
DIST KAMRUP (M) 781009
ASSAM

4:THE GOVERNING BODY OF KAMAKHYA RAM BARUAH GIRLS COLLEGE
REPRESENTED BY ITS PRESIDENT
OFFICE OF THE PRINCIPAL
KAMAKHYA RAM BARUAH GIRLS COLLEGE
FATASHIL AMBARI
PO BHARALUMUKH
PS FATASHIL AMBARI
DIST KAMRUP (M) 781009
ASSAM

5:THE PRINCIPAL
KAMAKHYA RAM BARUAH GIRLS COLLEGE
FATASHIL AMBARI
PO BHARALUMUKH
PS FATASHIL AMBARI
DIST KAMRUP (M) 781009
ASSAM

6:MRS. RITA BEYPI
SENIOR ASSISTANT
KAMAKHYA RAM BARUAH GIRLS COLLEGE
FATASHIL AMBARI
PO BHARALUMUKH
PS FATASHIL AMBARI
DIST KAMRUP (M) 781009
ASSA

Advocate for the Petitioner : MR. K N CHOUDHURY

Advocate for the Respondent : SC. EDU.

:::BEFORE:::

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date of hearing : 21.03.2024
Date of Judgment & order: 21.03.2024

JUDGMENT & ORDER (ORAL)

Heard Mr. R. M. Deka, learned counsel, appearing on behalf of the petitioner. Also heard Mr. S. Das, learned standing counsel, Higher Education Department, appearing on behalf of Respondents No. 1 & 2; Mr. M. Sarma, learned counsel ,appearing on behalf of Respondents No. 3, 4 & 5; and Mr. N. Baruah, learned counsel, appearing on behalf of Respondent No. 6.

2. The petitioner by way of instituting the present proceedings, has presented a challenge to the decision of the Departmental Promotion Committee(DPC) of Kamakhya Ram Baruah Girls College, Bharalumukh, in recommending the name of the Respondent No. 6, herein, for promotion to the

post of Head Assistant of the said college. The petitioner has also assailed the resolution adopted by the Governing Body of the said college in its meeting held on 24.08.2021, accepting the recommendation as made by the Departmental Promotion Committee(DPC), dated 24.08.2021, and in resolving to promote the Respondent No. 6 to the post of Head Assistant of the said college.

3. The petitioner, herein, was recruited as a direct recruit Junior Assistant in Kamakhya Ram Baruah Girls College on 14.03.2012. The petitioner joined his services as a Junior Assistant in the said college on 16.03.2012. The Respondent No. 6, herein, was initially appointed as a Library Bearer on 01.02.2001 and thereafter, her services was confirmed on 13.11.2003, as a non-teaching staff of the said college. Thereafter, the Respondent No. 6 was promoted as a Library Assistant vide an order, dated 28.02.2011. In the year 2014; a vacancy had arisen in the post of Senior Assistant on the promotion of the incumbent therein, to the next higher post of Head Assistant and accordingly, a process was initiated for promotion to the said vacant post of Senior Assistant by considering the cases of the incumbents in the feeder post, including the petitioner herein and the Respondent No. 6. At that stage; the Respondent No. 6 submitted an application, dated 14.06.2014, relinquishing her right for consideration against the vacant post of Senior Assistant as was available at the relevant point of time on account of some personal inconvenience existing. Accordingly, the Governing Body of Kamakhya Ram Baruah Girls College, on consideration of the matter, resolved in its meeting held on 19.11.2014, to promote the petitioner, herein, to the post of Senior Assistant and required the matter to be placed before the Director, Higher Education Department, for necessary approval and issuance of order of appointment. The Director, Higher

Education Department, on receipt of the said resolution of the Governing Body of the college and on consideration of the same, proceeded vide order, dated 21.05.2015, to promote the petitioner, herein, to the post of Senior Assistant in the said college. Accordingly, the petitioner joined his services as a Senior Assistant on 22.05.2015.

Thereafter, on a further vacancy arising in the post of Senior Assistant, on resignation of the incumbent therein; the Respondent No. 6 had submitted her application praying for her promotion against the said post of Senior Assistant and the Governing Body on consideration of the matter in its meeting held on 02.05.2015, proceeded to recommend the name of the Respondent No. 6 herein, for promotion to the post of Senior Assistant and directed that the matter be placed before the Director, Higher Education Department, for necessary approval and issuance of appointment order. Accordingly, the Director, Higher Education Department, on consideration of the said resolution of the Governing Body, dated 02.05.2015; proceeded to issue the order, dated 10.06.2015, towards promoting the Respondent No. 6, herein, to the post of Senior Assistant. Thereafter, the college authorities proceeded to issue a seniority list in terms of the provisions of the Assam College Employees(Provincialization) Rules, 2010, and therein, the petitioner, on account of the fact that he was promoted at an earlier point of time to the post of Senior Assistant, was placed above the name of the Respondent No. 6, herein, who was so promoted in terms of a subsequent process initiated in this connection.

4. It is contended by the petitioner in the writ petition that the post of Head

Assistant in Kamakhya Ram Baruah Girls College, fell vacant on 31.01.2021 and accordingly, a process was to be initiated for considering the cases of the incumbents in the feeder cadre i.e. the petitioner and the Respondent No. 6, herein, for promotion to the said post. However, it is contended by the petitioner, herein, that the Governing Body of the said college in its meeting held on 24.08.2021, proceeded to recommend the name of the Respondent No. 6 for promotion to the post of Head Assistant.

5. It is also projected by the petitioner in the writ petition that prior to adoption of the said resolution by the Governing Body in its meeting held on 24.08.2021, the Departmental Promotion Committee(DPC) of the college, in question, had recommended the name of the Respondent No. 6 for promotion to the post of Head Assistant which was subsequently accepted by the Governing Body in its meeting held on 24.08.2021. It is at that stage that the instant writ petition was so instituted and this Court vide order, dated 06.09.2021, on consideration of the issues arising in the present proceedings, was pleased to direct as an interim measure that until further orders; the recommendation made in favour of the Respondent No. 6 to the post of Head Assistant, shall not be given effect to.

6. At this stage; it is to be noticed that pursuant to passing of the said order, dated 06.09.2021, by this Court in the present proceedings; the Respondent No. 6, as petitioner, had approached this Court on 31.03.2022, by way of instituting WP(c)2472/2022, assailing the promotion as effected in the case of the petitioner, herein, to the post of Senior Assistant vide order, dated, 21.05.2015.

The said writ petition being WP(c)2472/2022 was heard finally by this Court and vide order, dated 21.03.2024, had dismissed the said writ petition upholding the promotion as effected in the case of the petitioner, herein, vide order, dated 21.05.2015. Further, this Court had also upheld the seniority list as prepared in the matter on 27.07.2021.

7. In view of the decision of this Court as rendered in WP(c)2472/2022; the petitioner, herein, is entitled to reckon his promotion to the cadre of Senior Assistant w.e.f. 21.05.2015 and the seniority list for the post of Senior Assistant in the said college not having been interfered with by this Court; the petitioner, herein, would rank senior to the Respondent No. 6, herein.

8. The college authorities by way of filing an affidavit-in-opposition, have brought on record, the resolution as adopted upon consideration of the case of the Respondent No. 6, herein, for promotion to the rank of Head Assistant. It is seen from the materials as brought on record vide the said affidavit-in-opposition filed on behalf of the college authorities that the Respondent No. 6, herein, had on 07.07.2021, submitted an application before the President of the Governing Body of Kamakhya Ram Baruah Girls College claiming that she being senior, reckoning her service length in the college; she was required to be considered for promotion to the post of Head Assistant. Basing on the said representation, the case of the petitioner was placed before the Departmental Promotion Committee(DPC) on 24.08.2021 and the Departmental Promotion Committee(DPC), on consideration of the case of the petitioner, proceeded to recommend her name for promotion to the post of Head Assistant as lying

vacant in the said college.

9. A perusal of the said Minutes of the Departmental Promotion Committee(DPC) in its meeting held on 24.08.2021, reveals that the said Departmental Promotion Committee(DPC) had only considered the case of the Respondent No. 6 herein, and the case of the petitioner although being senior in the feeder cadre of Senior Assistant, was not so considered. The recommendations made in favour of the Respondent No. 6 herein, for promotion to the post of Head Assistant by the said Departmental Promotion Committee(DPC) was so made, by making a consideration solely limited to the case of the Respondent No. 6, herein.

10. The Governing Body, thereafter, had approved such recommendation of the Departmental Promotion Committee (DPC), dated, 24.08.2021, in its meeting held on 24.08.2021, and resolved to promote the Respondent No. 6, herein, to the post of Head Assistant. It is to be noted that the Respondent No. 6, herein, having forgone the promotion as was available to her against the vacant post available in the college in the year 2014 and the case of the petitioner, herein, being so considered for promotion and being promoted vide an order, dated 21.05.2015, and such promotion being at an earlier point of time than the promotion effected to the post of Senior Assistant in the case of the Respondent No. 6, vide the order, dated 12.06.2015; it is the petitioner, herein, who would rank senior to the Respondent No. 6, herein, in the feeder cadre of Senior Assistant and accordingly, the consideration as made in the present case for promotion to the cadre of Head Assistant by the college

authorities limiting such consideration to the case of the Respondent No. 6, only; does not merit acceptance and has to be held to be in violation of the provisions of the said Assam College Employees (Provincialization) Rules, 2010.

11. The provisions of Rule 5(3) of the said Assam College Employees(Provincialization) Rules, 2010, mandates that the promotion to the post of Head Assistant, shall be made from the cadre of Upper Head Assistant(now Senior Assistant) on the basis of seniority-cum-merit.

12. In view of the criteria as applicable for promotion from the cadre of Senior Assistant to that of the Head Assistant; the case of the petitioner could not have been ignored by the respondent authorities and he admittedly being senior to the Respondent No. 6, herein, in the cadre of Senior Assistant; the Respondent No. 6, herein, could not have been preferred for such promotion ahead of the petitioner, herein, more particularly, when nothing adverse has been brought on record, to be existing with regard to the services rendered by the petitioner in Kamakhya Ram Baruah Girls College.

13. In view of the said position as well as the decision of this Court rendered in WP(c)1472/2022, vide order, dated 21.03.2024; the Minutes of the meeting of the Departmental Promotion Committee(DPC), dated 24.08.2021, as well as the decision as taken by the Governing Body of Kamakhya Ram Baruah Girls College vide Resolution No. 2 in its meeting held on 24.08.2021, cannot be sustained and accordingly; the same are hereby set aside.

14. In view of the interference made by this Court with the said Minutes of the meeting of the Departmental Promotion Committee (DPC), dated 24.08.2021, and the Resolution No. 2 adopted by the Governing Body of Kamakhya Ram Baruah Girls College in its meeting held on 24.08.2021, the following directions are hereby issued in the matter:

(i). The Governing Body of Kamakhya Ram Baruah Girls College, is required to consider the cases of the incumbents in the feeder cadre of Senior Assistant for promotion to the vacant post of Head Assistant available in the said college strictly in accordance with the provisions of Rule 5(3) of the Assam College Employees(Provincialization) Rules, 2010.

(ii). The college authorities shall strictly adhere to the seniority position as determined with regard to the incumbents in the cadre of Senior Assistant vide the seniority list, dated 27.07.2021, and make recommendations for promotion to the cadre of Head Assistant basing on the seniority positions as reflected in the said seniority list, dated 27.07.2021.

(iii). On conclusion of the process of selection, the proposal recommending the name of the person so selected for promotion to the post of Head Assistant be placed before the Director, Higher Education Department, Assam, for approval and issuance of consequential order of appointment.

The above directions shall now be initiated and complied by the college authorities as well as by the Director, Higher Education Department, Assam, within a period of 2(two) months from the date of receipt of a certified copy of this order.

15. The petitioner is required to submit a certified copy of this order before the Principal, Kamakhya Ram Baruah Girls College, Bharalumukh, for taking the matter forward.

16. With the above directions, this writ petition stands disposed of.

JUDGE

Comparing Assistant