

GAHC010141732020



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

Case No. : WP(C)/4188/2020

AMUSANA MIA
S/O AMUTHOY MIA, RESIDENT OF VILLAGE MUNSHIGRAM PO
DOLUGRAM, DIST CACHAR ASSAM 788101

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, EDUCATION (SECONDARY) DEPARTMENT, DISPUR GUWAHATI

2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM KAHILIPARA GUWAHATI 19

3:THE STATE SELECTION BOARD
REPRESENTED BY ITS CHAIRMAN
THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF ASSAM
EDUCATION (SECONDARY) DEPARTMENT
DISPUR GUWAHATI 781006

4:THE INSPECTOR OF SCHOOLS
CDC SILCHAR
CACHAR
ASSAM 788001

5:SELIM UDDIN LASKAR
ASSISTANT TEACHER OF UJAN TARAPUR HIGH SCHOOL
PO UJAN TARAPUR
DIST CACHAR
ASSAM 78809

Advocate for the Petitioner : MR A R BHUYAN

Advocate for the Respondent : SC, SEC. EDU.

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

ORDER

Date : 18.03.2024

Heard Mr. A.R. Bhuyan, learned counsel for the petitioner. Also heard Mr. B. Kaushik, learned standing counsel for the Secondary Education Department, appearing for the respondents No. 1 to 4, and Mr. B. Purkayastha, learned counsel appearing for the respondent No.5.

2. The grievance raised by the petitioner in the present proceeding is with regard to the selection and appointment of the respondent No.5 as the Headmaster of Ujan Tarapur High School, in the District of Cachar, vide order dated 11.09.2020. The petitioner and the respondent No.5 were both appointed by the Managing Committee of Ujan Tarapur High School during the period when the said school was in the venture stage. The services of the petitioner, the respondent No.5 and other eligible serving teachers of the school were provincialised w.e.f. 01.01.2013 under the provisions of the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011.

3. The respondent authorities initiated a process for filling up of the vacant post of Headmaster in various provincialised schools of the State, including the school wherein the petitioner and the respondent No.5 were serving under the provisions of the Assam Secondary Education (Provincialisied) Service Rules, 2003 (for short, Rules of 2003). On conclusion of the selection process as mandated, the respondent No.5 came to be appointed as Headmaster of Ujan Tarapur High School by the Director of Secondary Education, Assam vide order dated 11.09.2020. Being aggrieved by the issue of the order dated 11.09.2020, the petitioner has instituted the present proceedings.

4. It is the contention of the learned counsel for the petitioner that the respondent No.5 has not completed the mandatory 10 years of service as graduate teacher for being eligible for promotion to the post of Headmaster and, therefore, his case for promotion as Headmaster of the said school on regular basis could not have been considered. Accordingly, he prays that this Court may be pleased to interfere with the said order of appointment of the respondent No.5 as Headmaster of the said school with further direction to the respondent authority to carry out the process of recruitment to the post of Headmaster of the said school afresh.

5. Per-contra, Mr. B. Purkayastha, learned counsel for the respondent No.5, by drawing the attention of this Court to the order dated 30.09.2019, passed in I.A.(Civil) 3215/2019 (In WP(C) 7717/2018), has contended that the present recruitment process is the one which was undertaken under the provisions of the said Rules of 2003. It is submitted that the selection committee, in its meeting held on 22.11.2018, on considering the fact that none of the schools provincialised under the Act of 2011 had persons eligible to hold the post of Headmaster on regular basis inasmuch as no person working in any of the schools had completed the mandatory requirement of 10 years of service as a graduate teacher, proceeded to relax the said condition of having minimum service of 10 years by reckoning the period of service rendered by them in the venture school and made recommendations accordingly. It is on the basis of the said recommendations that the order dated 11.09.2020 came to be issued promoting the respondent No.5 as the Headmaster of Ujan Tarapur High School.
6. The services of the petitioner and the respondent No.5 were provincialised under the provisions of the said Act of 2011. Upon such provincialisation of services being effected, the said Act of 2011 would have no further application with regard to the services rendered by the provincialised employees. The service conditions of serving teachers of venture school on provincialisation of their services, would be governed by the provisions of the Assam Secondary Education (Provincialised) Rules, 2003. Accordingly, the vacant post of Headmaster would be required to be filled up following the provisions of the Rules of 2003.
7. The Rules of 2003, more particularly Rule 14(4)(ii) thereof, mandates that to be eligible for promotion as Headmaster, the teacher is to have 10 years of teaching experience as a Graduate Teacher. The term "Graduate Teacher" has been defined under the provisions of Rule 2(n) of the Rules of 2003 to mean the category of Assistant Teacher in High/Higher Secondary school for whose appointment the minimum qualification prescribed is a Graduate Degree in Arts, Science or Commerce.
8. Applying the provisions of Rule 14 of the Rules of 2003, more particularly the eligibility criteria as mentioned there under for being eligible for promotion as Headmaster, it is seen that the services of both the petitioner and the respondent No.5 having been provincialised only w.e.f. 01.01.2013, they did not fulfill the requirement of having 10 years of teaching experience as Graduate Teacher on the date when the process for filling up of the post of Headmaster of the School was initiated. As such, both the petitioner and the respondent No.5 were not eligible for being considered for promotion as Headmaster of the school.
9. However, it is to be noted that the State Selection Committee in its meeting held on 22.11.2018

noticed the fact that the post of Headmaster as lying vacant in schools provincialised under the Act of 2011 on account of the teachers serving therein not having the required teaching experience of 10 years as a Graduate Teacher proceeded to relax the said requirement and carried forward the process of recruitment against the post of Headmaster in schools provincialised under the Act of 2011 by reckoning the services rendered by such teachers in the school during its venture stage. Accordingly, on the above premises the selection process was taken forward and persons so selected, including the respondent No.5 herein came to be appointed as Headmaster/Headmistress in their respective schools.

10. The decision as arrived at by the State Selection Committee in its meeting held on 22.11.2018 was noticed by this Court in the proceedings of WP(C) 7717/2018 and this Court vide order dated 30.09.2019 passed in I.A.(Civil) 3215/2019 (in WP(C) 7717/2018), proceeded to direct the respondent authorities to make appointments to the post of Headmaster in terms of the said decision of the State Selection Committee. The relevant paragraph of the said order dated 30.09.2019 being relevant are extracted herein below:-

“3. Petitioners/applicants herein submits that the main grievance of the petitioners are highlighted in the writ petition which has been otherwise taken care of by the subsequent decision as made by the State Selection Committee in its meeting held on 22.11.2018 whereby it was decided as follows:

“Resolution:-3(7):- The members observed that the SSB will consider Rule 4(ii) of the Assam Secondary Education (Provincialised) Service Rule 2003 for the process of selection of HM in schools provincialised in the year 2013 read with Rule 4(i) of the Venture Educational Institutions (Provincialisation) of Services Act, 2011. It will consider the teaching experience as stipulated in the Act and for the purpose the date considered in the initial first appointment orders will be considered for category of 2013 provincialised candidates to fulfill the criteria of ten years teaching experience or else the huge numbers of HMs shall remain vacant without any valid reason..... The Committee decided to call for the interview of the candidates for selection of HM in the vacant post in the schools that was provincialised in the year 2013 as was done previously and complete the process by December, 2018.....”

4. It has been submitted that the aforesaid resolution has virtually granted relief sought for in this petition.

5. In view of the above, the earlier interim order stands modified and by allowing the respondent authorities to make appointment to the post of Headmasters in which the petitioners had applied”

11. Accordingly the promotion of the respondent No.5 herein being so effected in terms of the decision of the State Selection Committee dated 22.11.2018, and such decision not being under challenge, the promotion of the respondent No.5 does not call for any interference. It is to be noted that the petitioner has assailed the promotion of the respondent No.5 only on the ground of non fulfillment of the provisions of Rule 14(4)(ii) of the said Rules of 2003 and not having made any contention with

regard to the respondent No.5 not fulfilling any other prescribed eligibility criteria and or made allegation of such recruitment process to be vitiated on account of mala fides, the promotion of the respondent No.5 does not call for any interference.

12. The writ petition is devoid of any merit and accordingly, the same stands dismissed.

13. At this stage, Mr. B. Purkayastha, learned counsel appearing for the respondent No. 5 submits that in view of the pendency of the present proceeding the respondents have not released to the respondent No.5 his due pay and allowances against the post of Headmaster in pursuance to his promotion effected vide order dated 11.09.2020.

14. In view of the fact that the promotion of the respondent No.5 has not been interfered with, he would be entitled to receive his salaries in the pay band authorized to the post of Headmaster along with the Grade Pay attached thereto w.e.f. the date he assumed charge of the post of Headmaster of Ujan Tarapur High School in pursuance to the order dated 11.09.2020. Respondent authorities to act accordingly in the matter.

JUDGE

Comparing Assistant