

GAHC010180572022



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

Case No. : WP(C)/5914/2022

SHANTANU KUMAR DAS
S/O- LATE SUKUMAR DAS,
R/O-A. C SEN ROAD
P.O, P.S AND DISTRICT - KARIMGANJ , ASSAM, PIN-788710

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMMISSIONER AND SECRETARY. TO THE GOVT. OF ASSAM,
EDUCATION DEPARTMENT DISPUR, GHY-06

2:THE DIRECTOR
SECONDARY EDUCATION DEPTT.
KAHILIPARA
GHY-19

3:THE INSPECTOR OF SCHOOLS
KARIMGANJ DISTRICT CIRCLE

P.O AND DIST-KARIMGANJ
ASSAM

PIN-788710

4:DEBASHISH DAS
EX PRINCIPAL
BUDHAN H.S SCHOOL

P.O- OLIVIA CHERRA

P.S- RATABARI
KARIMGANJ

DIST- KARIMGANJ
ASSAM
PIN-788737

5:KRISHNA GOWALA
I/C PRINCIPAL

BUDHAN H.S SCHOOL

P.O- OLIVIA CHERRA

P.S- RATABARI
KARIMGANJ

DIST- KARIMGANJ
ASSAM
PIN-78873

For the Petitioner(s)	: Ms. N. Saikia, Advocate
For the Respondent(s)	: Mr. P. K. Roy, Sr. Advocate : Mr. B. Kaushik, Standing Counsel
Date of Hearing	: 18.04.2024
Date of Judgment	: 18.04.2024

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

JUDGMENT AND ORDER (ORAL)

Heard Ms. N. Saikia, learned counsel for the Petitioner and Mr. P. K. Roy, learned Senior counsel appearing for the respondent No.5. Also heard Mr. B. Kaushik, learned Standing counsel appearing for the Secondary Education Department.

2. The petitioner by way of instituting the present proceedings has presented a challenge to an order dated 26.08.2022 passed by the Director, Secondary Education, Assam allowing the respondent No.5 herein to hold the charge of the post of Principal in Budhan Higher Secondary School.

3. The petitioner herein was initially appointed as a Science Teacher in Budhan M.E. School, Karimganj vide an order dated 30.12.1991. The petitioner in terms of the said order of appointment, joined his services on 01.01.1992 and thereafter has been continuing in the said capacity in the said School. The respondent authorities in terms of the Siksha Khetra Scheme vide a communication dated 06.06.2017 proceeded to amalgamate Budhan M.E. School with Budhan H.S. School. It is to be noted that the respondent No.5 herein was working in Budhan H.S. School as a Hindi language teacher. On a vacancy arising in the post of Principal of the said School, the Director of Secondary Education, Assam vide an order dated 26.08.2022 proceeded to allow the respondent No.5 herein to hold the charge of the post of Principal along with financial power to draw and disburse the salary of the staff in addition to her normal duties as Hindi Teacher w.e.f. 01.09.2022. The petitioner herein being aggrieved by the said order dated 26.08.2022 has instituted the present proceedings.

4. Ms. N. Saikia, learned counsel for the petitioner has submitted that the petitioner having been appointed as a Science Graduate Teacher in Budhan M.E. School vide an order dated 30.12.1991, it has to be deemed that the petitioner is a graduate teacher even after amalgamation of Budhan M.E. School with Budhan H.S. School in terms of the provisions of the Assam Secondary Education (Provincialized School) Rules, 2018 (for short "Rules of 2018") and accordingly he being senior in service to the respondent No.5 herein ought to

have been reckoned for the purpose of holding the charge of the post of Principal on a vacancy arising therein.

5. Ms. N. Saikia, learned counsel for the petitioner has further submitted that in the proposal as submitted by the then Principal of the school on 02.08.2022 for the purpose of holding the charge of the post of Principal of Budhan H.S. School, the Petitioner was placed at Serial No.1 while the Respondent No.5 was placed at Serial No.2 reckoning the date from which they received the graduate scale of pay. It was highlighted that the petitioner herein has received the graduate scale of pay w.e.f. 01.01.1992 whereas the respondent No.5 had received such scale of pay only w.e.f. 23.05.1992. Basing on the said submissions, it was contended that the petitioner being senior to the respondent No.5 herein, his case could not have been ignored while considering the case of eligible teachers of the said school for the purpose of holding the charge of the post of Principal of the school on a vacancy arising therein.

6. This Court while issuing notice in the matter on 09.09.2022 had passed an interim direction suspending the operation of the order dated 26.08.2022 thereby restraining the respondent No.5 from holding the charge of the post of Principal of Budhan H.S. School. It is contended by Ms. N. Saikia that in terms of the interim direction passed by this Court, the jurisdictional Inspector of Schools has been allowed to hold the charge of the post of Principal of the School in question in the interregnum.

7. Mr. P. K. Roy, learned Senior counsel appearing for the respondent No.5 has submitted that the service of the petitioner came to be placed in a Higher Secondary School only on the amalgamation of the School i.e. Budhan M.E. School with the Budhan H.S. School w.e.f. 06.06.2017 and accordingly he having not acquired the requisite eligibility criteria as mandated under the

provisions of the said Rules of 2018, he could not have been permitted to hold the charge of the post of Principal of the School in question.

8. I have heard the learned counsel for the parties and also considered the materials available in record. It is an admitted position that the petitioner herein was initially appointed as a Science graduate teacher in Budhan M.E. School vide an order dated 30.12.1991 and his services came to be placed in Higher Secondary School i.e. Budhan H.S. School on amalgamation of the two schools in question w.e.f. 06.06.2017. The eligibility criteria for holding the post of Principal is laid down in the provisions of Rule 12 of the said Rules of 2018. Rule 12(3) mandates that in addition to the educational qualification as prescribed, a candidate to be eligible for appointment as principal of Higher Secondary School must have rendered at least 15 years of service as post graduate teacher in any provincialized Higher Secondary Schools/Senior Secondary Schools or must have rendered 17 years of teaching experience as a graduate teacher in any Higher Secondary School. The definition of a graduate teacher is provided in the provisions of Rule 2(i) of the said Rules of 2018 and the said definition also encompasses graduate teachers of M.E. Schools. However, what is to be noticed is that the provision of Rule 12 lays down a further requirement to the extent that the teaching experience as mandated for being eligible for consideration of appointment to the post of Principal must have been so acquired either as a post graduate teacher or as a graduate teacher in any Higher Secondary School. A post graduate teacher is mandated to have acquired 15 years of teaching experience while a graduate teacher is required to acquire a teaching experience of 17 years. The emphasis in terms of the provisions of Rule 12(3) of the said Rules of 2018 is of a teaching experience acquired by teaching in a Higher Secondary School.

9. Considered in the light of the provisions of the said Rule 12(3) of the Rules of 2018, the services rendered by the petitioner herein in a Higher Secondary School can be reckoned only w.e.f. the date of amalgamation of the two school in question i.e. w.e.f. 06.06.2017 and not from the date prior thereto.

10. This Court in the case of ***Jagannath Pegu Vs. State of Assam and Others reported in 2007 (3) GLT 389*** has held that even for holding a post on In-charge basis, the incumbent must satisfy the eligibility conditions mandated for recruitment to the post in question on regular basis.

11. Viewed in the light of the provisions of Rule 12 of the said Rules of 2018 as well as the decision of this Court in the case of ***Jagannath Pegu (supra)***, it is found that the petitioner herein has not acquired the requisite experience of 17 years as a graduate teacher in a Higher Secondary School on the date when the order dated 26.08.2022 was so passed allowing the respondent No.5 herein to hold the charge of the post of Principal of the School in question. The petitioner herein having not fulfilled the eligibility criteria as mandated under the provisions of Rule 12 more particularly Rule 12(3)(4) of the said Rules of 2018, it cannot be held that the petitioner was one of the eligible contenders to be considered for appointment as Principal In-charge of the school in question. Accordingly, the respondent authorities by allowing the respondent No.5 as the Principal In-charge of the School in question vide the order dated 26.08.2022 had not committed any error in the matter. Accordingly, the claim as made by the petitioner in the present writ petition does not merit acceptance.

12. At this stage, Ms. N. Saikia had submitted that the respondent No.5 also has not acquired the requisite eligibility for recruitment to the post of Principal in terms of the prescriptions of eligibility as contained in Rule 12 of the said Rules of 2018 and accordingly she also would not be eligible to hold the post of

Principal In-Charge in view of the decision of this Court in ***Jagannath Pegu (supra)***.

13. Having considered the rival submissions as made by the parties, this Court in view of the conclusions as reached hereinabove is of the considered view that the petitioner having not acquired the requisite eligibility criteria as mandated under the provisions of Rule 12(3) of the said Rules of 2018 was rightly not allowed by the respondent authorities to hold the charge of the post of Principal of the said School and the same cannot be said to be erroneous and it does not call for any interference by this Court. However, considering the submissions made by Ms. N. Saikia questioning the eligibility of the Respondent No.5 to hold the post of Principal in the said school, this Court while not interfering with the order dated 26.08.2022 directs the Director of Secondary Education, Assam to examine as to whether the respondent No.5 herein fulfills the eligibility criteria as mandated for the purpose of recruitment to the post of Principal and upon such examination being made and on satisfaction drawn that the respondent No.5 is eligible in terms of the provisions of Rule 12(3) of the Rules of 2018 for recruitment to the post of principal of the school in question, shall proceed to allow the said respondent No.5 to continue to hold the charge of the post of Principal of the School in question in terms of the order dated 26.08.2022 till a regular incumbent is so recruited against the said post. Till the above exercise is completed, the jurisdictional Inspector of Schools shall be allowed to continue to hold the charge of the said post.

14. The said exercise be initiated and concluded by the Director of the Secondary Education, Assam and appropriate orders passed thereon within a period of 1 (one) month from the date of receipt of certified copy of this order either from the petitioner herein or from the respondent no.5.

15. With above observations and directions, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant