

GAHC010183952021



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

Case No. : WP(C)/5982/2021

ABDUL MAZID

S/O LATE CHEKAN ALI, R/O VILL. SAPKATA, P.O. MUKALMUA, P.S.
MUKALMUA, DIST. NALBARI, ASSAM, PIN 781126, PRESENTLY SERVING
AS THE ASSTT. TEACHER, GALDIGHALA HIGH SCHOOL, VILL.
GALDIGHALA, P.O. ADABARI, P.S. MUKALMUA, DIST. NALBARI, ASSAM,
PIN 781126

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECY. TO THE GOVT. OF
ASSAM, EDUCATION DEPTT., DISPUR, GUWAHATI 781006

2:THE DIRECTOR
SECONDARY EDUCATION SECONDARY EDUCATION DEPTT.
KAHILIPARA GUWAHATI 781019

3:THE INSPECTOR OF SCHOOLS NALBARI AT NALBARI
ASSAM PIN 781335

4:STATE SELECTION BOARD REPRESENTED BY ITS SECY. I.E. DIRECTOR
OF SECONDARY EDUCATION ASSAM KAHILIPARA GUWAHATI 781019

5:DIST. LEVEL SELECTION COMMITTEE
REPRESENTED BY ITS SECY. I.E. INSPECTOR OF SCHOOLS
NALBARI DIST. NALBARI ASSAM PIN 781126

6:HEADMASTER GALDIGHALA HIGH SCHOOL
VILL. GALDIGHALA P.O. ADABARI
P.S. MUKALMUA DIST. NALBARI ASSAM PIN 781126

7:RIAZ UDDIN AHMED S/O LATE HAJI NURUDDIN AHMED
R/O VILL. BORNIA P.O. SONIADI DIST. KAMRUP ASSAM PIN 78110

Advocate for the Petitioner : MR. S N TAMULI
Advocate for the Respondent : SC, SEC. EDU.

Linked Case : I.A.(Civil)/2320/2021

SARADA KUMAR HALOI
S/O- LT. LOSO RAM HALOI
R/O- VILL. AND P.O. KAITHALKUCHI
DIST.- NALBARI
ASSAM
PIN- 781370

VERSUS

TARUN CH. BARMAN
S/O- LT. SAMBHURAM BARMAN
R/O- VILL- KHATARUPIA BATHAR
P.O. GAMARIMURI
DIST.- NALBARI
ASSAM
PIN- 781306

Advocate for : MR. P MAHANTA
Advocate for : MR. I H SAIKIA appearing for TARUN CH. BARMAN

Linked Case : WP(C)/5636/2021

TARUN CH. BARMAN
S/O- LT. SAMBHU RAM BARMAN
R/O- VILL- KHATARUPIA BATHAR
P.O. GAMARIMURI
DIST.- NALBARI
ASSAM
PIN- 781306

VERSUS

THE STATE OF ASSAM AND 4 ORS.
THROUGH THE COMM. AND SECY. TO THE GOVT. OF ASSAM
EDUCATION (SECONDARY) DEPTT.
DISPUR
GHY-06

2:THE STATE SELECTION BOARD
THROUGH ITS CHAIRMAN CUM THE COMM. AND SECY. TO THE GOVT. OF
ASSAM
EDUCATION (SECONDARY) DEPTT.
DISPUR
GHY-6

3:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GHY-19

4:THE INSPECTOR OF SCHOOLS
NALBARI DISTRICT CIRCLE
NALBARI
P.O.
P.S. AND DIST.- NALBARI
ASSAM
PIN- 781335

5:SARADA KUMAR HALOI
S/O- LT. LOSO RAM HALOI
R/O- VILL. AND P.O. KAITHALKUCHI
DIST.- NALBARI
ASSAM
PIN- 781306

Advocate for : MR. I H SAIKIA
Advocate for : SC SEC. EDU. appearing for THE STATE OF ASSAM AND 4 ORS.

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date of hearing : 21.03.2024

Date of Judgment : 21.03.2024

Judgment & order(Oral)

Heard Mr. S. N. Tamuli, learned counsel, appearing on behalf of the petitioner. Also heard Mr. Bedanta Kaushik, learned standing counsel, Secondary Education Department, appearing on behalf of respondents No. 1, 2, 3, 4 & 5; and Mr. P. Mahanta, learned counsel appearing on behalf of respondents No. 6 & 7.

2. The petitioner by way of instituting the present writ petition, has presented a challenge to an order, dated 20.10.2021, issued by the Director,

Secondary Education Department, Assam, by which the respondent No. 7, herein, namely, Riaz Uddin Ahmed, was promoted as the Headmaster of Galdighala High School.

3. The facts requisite for adjudication of the issues arising in the present proceeding is noticed as under:

The petitioner, herein, was appointed as an Assistant Teacher of Galdighala High School on 30.12.1998 and he had joined his service on 15.01.1989. At the time of joining his service in the said school, the school was in its venture stage. Subsequently, the services of the petitioner and other serving teachers of the said school, came to be provincialized under the provisions of the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011, vide an order, dated 17.08.2013 w.e.f. 01.01.2013. It is contended that the petitioner was deputed to undergo B.Ed. Course in Banikanta College of Teacher Education, Guwahati, vide order, dated 28.06.2018 i.e. with effect from the academic session 2016-2018 for a period of 2(two) years. The petitioner successfully completed his B.Ed. course and acquired the said degree in the year 2018 and more specifically w.e.f. 08.11.2018 when the result of the final examination of the said course was declared.

It is also contended that the post of the Headmaster of the said school had fallen vacant on the incumbent therein proceeding on retirement after attaining the age of superannuation w.e.f. 31.03.2018. The petitioner has contended that being the senior-most Assistant Teacher of the school, in

question, he had staked a claim to be appointed as the in-charge Headmaster of the school. Accordingly, the petitioner was allowed vide an order, dated 12.10.2018, issued by the Director, Secondary Education, Assam, to function as the in-charge Headmaster of the said school.

4. It is found that in the year 2018, a process was initiated for recruitment on regular basis against the vacant post of Headmaster as available in the said school and other provincialized schools of the State. The said process was so initiated under the provisions of the Assam Secondary Education (Provincialized) Service Rules, 2003, as amended.

5. As the petitioner, herein, at the relevant point of time, had not acquired the B.Ed. Degree, he was ineligible for being considered for appointment on regular basis as the Headmaster of the said school. However, the respondent No. 7, herein, had submitted his application for the said purpose and the application of the respondent No. 7 was processed as being the only eligible teacher in the said school for being considered for appointment on regular basis as the Headmaster of Galdighala High School.

6. The selection for the post of Headmaster of the said school was conducted on 26.09.2018. However, the respondent No. 7 not possessing the B.Ed. Degree as mandated under the provisions of the Assam Secondary Education (Provincialized) Service Rules, 2003, his case was not further considered and was kept in abeyance by the authorities competent to consider the matter.

7. The issue as to whether "Parangat" Degree was equivalent to that of B.Ed. Degree was in issue before this Court in the proceedings of WP(c)1048/2018 and other analogous matters. The said writ petition was given a final consideration and vide order, dated 22.08.2019, was disposed of by granting liberty to the respondent authorities to incorporate the "Parangat" Degree by amending the provisions of the Assam Secondary Education(Provincialized) Service Rules, 2003. In pursuance of the said directions of this Court, vide order, dated 22.07.2010, the Government of Assam in the Secondary Education Department, noticing the said position and also the provisions as existing in the Assam Secondary Education(Provincialized Schools) Service Rules, 2018, which had come into force w.e.f. 18.09.2019, recognizing the "Parangat" and "Nishant" Degree as equivalent to that of B.T./B.Ed. Degree for the purpose of recruitment in the post of Headmaster/Principal of provincialized High School/Higher Secondary Schools of the State; proceeded to direct the Director, Secondary Education Department. Assam, to take further steps as per the service rules in place.

It is contended that thereafter, the pending proposals pertaining to the process initiated under the provisions of the Assam Secondary Education(Provincialized) Service Rules, 2003, pertaining to the recruitment to the posts of Headmaster of provincialized schools including the case of respondent No. 7, herein, were taken-up for further consideration.

At this stage; the provisions of the Assam Secondary Education (Provincialized Schools) Services Rules, 2018, which mandate the "Parangat" Degree to be an equivalent qualification to that of B.Ed./B.T. Degree for

promotion to the post of Headmaster in provincialized schools, came to be challenged before this Court in the proceeding of WP(c)4094/2020 and the same was so pending.

8. At this stage, the respondent No. 7 along with other similarly situated persons approached this Court by way of instituting WP(c)4086/2021, being aggrieved by a stipulation made in a communication, dated 04.06.2021, wherein, it was provided that in the process directed to be initiated for filling-up the post of Headmaster under the provisions of the Rules of 2018, the cases of candidates having "Parangat" and "Nishant" degrees, be not considered. The Court vide order, dated 14.09.2021, clarified the position.

9. The Government, thereafter, on the matter, placed before it basing on the recommendations made by the State Selection Board in the matter, proceeded to grant approval to such proposals which included the proposal for appointing the respondent No. 7 as the Headmaster of the Galdighala High School, vide communication, dated 11.10.2021. Accordingly, in terms of the said approval granted in the matter by the Government; the Director, Secondary Education Department, Assam, proceeded to issue the order, dated 20.10.2021, promoting 6 persons to the posts of Headmaster of various provincialized schools including the respondent No. 7, who was included at Serial No. 1 in the said order. However, the promotion as effected vide order, dated 20.10.2021, was made subject to the final outcome of WP(c)4094/ 2020(Hashiram Mandal v. State of Assam & ors.).

10. Being aggrieved; the petitioner has instituted the present proceeding.

11. Mr. Tamuli, learned counsel for the petitioner, at the outset, submits that the respondent No. 7, herein, was clearly ineligible for being considered for promotion to the post of Headmaster of Galdighala High School, in-as-much he did not have the requisite educational and professional qualification as mandated for the post of Headmaster under the provisions of the said Rules of 2003. It was further contended that the respondent No. 7 having come on transfer to the said school in the year 2017; his past service under the provisions of the Assam Secondary Education(Provincialized) Service Rules, 2003, cannot be considered and accordingly, he on the said count also was not eligible for being considered for promotion to the post of Headmaster of the said school.

12. It is the contention of Mr. Tamuli, learned counsel for the petitioner, that the respondent authorities although had initiated steps for filling up the post of Headmaster in the said school under the provisions of the Assam Secondary Education(Provincialized) Service Rules, 2003, and admittedly, thereunder, the respondent No. 7 being ineligible to be so considered for promotion to the post of Headmaster, had kept the process in abeyance and thereafter, arbitrarily, after coming into force of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, had continued the said process and the State Selection Board, had recommended the case of respondent No. 7, herein, for promotion to the post of Headmaster of the said school under the provisions of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, without initiating a process as mandated in the matter under the said Rules of

2018.

13. It is also the contention of Mr. Tamuli, learned counsel for the petitioner that after coming into force of the Rules of 2018, there was no advertisement issued by the respondent authorities calling for applications from eligible candidates for filling up of the post of Headmaster as available in the school, in question, as provided under the provisions of the Assam Secondary Education(Provincialized Schools) Service Rules, 2018. It is also contended that the provisions of the said Rules of 2018, had come into force w.e.f. 10.10.2019 and the same was prospective in nature. Accordingly, the process as mandated thereunder not having been initiated for the purpose of promotion to the post of Headmaster of the said school; the promotion of the respondent No. 7 as effected vide order, dated 20.10.2021, admittedly, under the provisions of the said Rules of 2018, is not sustainable and requires interference from this Court.

14. With regard to the purport of the order, dated 14.09.2021, passed by the Court in WP(c)4086/2021; Mr. Tamuli, learned counsel for the petitioner, has submitted that the same, given the nature of challenge involved; would have to be construed to be applicable for the purpose of consideration of cases of persons possessing "Parangat" and "Nishant" degree, in a fresh process of recruitment initiated for the post of Headmaster in provincialized schools, under the provisions of the Rules of 2018.

15. In the above premises; Mr. Tamuli, learned counsel for the petitioner, has submitted that the order, dated 20.10.2021, issued towards promoting the

respondent No. 7, herein, as the Headmaster of the said school, requires to be interfered with by this Court.

16. Mr. Kaushik, learned standing counsel, Secondary Education Department, has submitted that the petitioner, herein, on the date when the process for recruitment to the post of Headmaster as available in the said school was so initiated, being not eligible for applying against the said post of Headmaster; does not have the locus to present a challenge to the selection and promotion of the respondent No. 7 to the post of Headmaster of the school, in question. It is further contended by Mr. Kaushik, that the petitioner had acquired the B.Ed. Degree only on 08.11.2018 and by that time, the process as involved in the matter including the process of interview, had already been completed.

17. It is also contended by Mr. Kaushik, learned standing counsel, that it was only the respondent No. 7 who was the qualified candidate having the "Parangat" Degree for promotion to the post of Headmaster of the said school and accordingly, his case was so considered, however, the State Selection Board did not recommend his name along with the names of other similarly situated persons having "Parangat" Degree in view of the fact that the issue was subjudiced before this Court in the proceedings of WP(c)1048/2018 and other analogous matters.

18. This Court having disposed of the said writ petition with a direction to the authorities for incorporating the "Parangat" Degree by making necessary amendments in the provisions of the Assam Secondary Education(Provincialized)

Service Rules, 2003; the pending proposals including the proposal in respect of the respondent No. 7, came to be again placed before the State Selection Board.

19. Mr. Kaushik, learned standing counsel, Secondary Education Department, has referred to a communication, dated 21.07.2020, issued by the Commissioner and Secretary to the Government of Assam in the Secondary Education Department, requiring the Director, Secondary Education, Assam, to proceed with the matter of selection and promotion against the posts of Headmaster of various provincialized schools in the State and has submitted that the Director, Secondary Education, Assam, in compliance of the directions passed by the Government, vide communication, dated 03.01.2020, had issued a communication, dated 04.06.2021, requiring the jurisdictional Inspector of Schools to submit the requisite particulars of the eligible teachers for recruitment to the post of Headmaster and other posts involved wherein the selection is mandated.

20. In the said communication, dated 04.06.2021, the Director, Secondary Education, Assam, had provided that the post of Headmaster shall be filled-up by promotion of candidates amongst the graduate teachers under the provision of Rule 14 as per the district-wise seniority list on the recommendation of the District Selection Committee. However, it was provided that the candidates having "Parangat" and "Nishant" Degrees be not considered and it was contended that such prescription was made in view of the fact that the incorporation of the said qualifications was under challenge in proceedings instituted before this Court.

21. Mr. Kaushik, learned standing counsel, has submitted that being aggrieved, the respondent No. 7, herein, along with other similarly situated persons had instituted WP(c)4086/ 2021, assailing the said communication, dated 04.06.2021. This Court vide order, dated 14.09.2021, had clarified that the provisions of the Assam Secondary Education(Provincialized Schools) Service Rules, 2018, more particularly, the provision of Rule 14(2) therein, having not been stayed and the Hindi "Parangat" and Hindi "Nishant" Degrees having not been held by this Court to be not equivalent to that of B.Ed./B.T. Degree; the stipulation made contrary thereto, in the aforesaid communication, dated 04.06.2021, was not sustainable.

22. Mr. Kaushik, learned standing counsel, accordingly, has submitted that the offending provision in the said communication, being stayed and liberty granted to the authorities to take the selection forward; the respondent authorities proceeded with the matter and the recommendations made by the State Selection Board was approved by the Government of Assam in the Secondary Education Department, vide communication, dated 11.10.2021, and such approval also having been granted in respect of the respondent No. 7, herein; the Director, Secondary Education, Assam, proceeded to issue the order, dated 20.10.2021.

23. Accordingly, it has been submitted that the procedure as followed in the matter by the respondent authorities being the one prescribed under the provisions of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, and the qualifications as possessed by the respondent No. 7 having

been held to meet the eligibility criteria mandated under the Rules of 2018, for being considered for the post of Headmaster of a provincialized school; there exists no infirmity in the process leading to the promotion of the respondent No. 7, vide the order, dated 20.10.2021, and accordingly, it has been submitted by Mr. Kaushik, that the same does not require any interference by this Court.

24. Mr. Mahanta, learned counsel for respondent No. 7, has adopted the contentions advanced in the matter by Mr. Kaushik, learned standing counsel, Secondary Education Department, and has further contended that admittedly, the respondent authorities had considered the case of the respondent No. 7 under the provisions of the Assam Secondary Education(Provincialized Schools) Service Rules, 2018, by following the procedure therein, and accordingly, this Court vide the order, dated 14.09.2021, passed in WP(c)4086/2021, having permitted the respondent authorities in the Secondary Education Department to take the selection process involved to its logical conclusion; the order, dated 20.10.2021, as passed in the case of the respondent No. 7, does not call for any interference by this Court.

25. Mr. Mahanta, learned counsel, by relying on the contentions of the respondent No. 7 made in the additional affidavit; has submitted that the process involved leading to the issuance of the order, dated 20.10.2021, in respect of the respondent No. 7, herein, was a special drive carried-out by the State Respondents for persons, like the respondent No. 7, having Hindi "Parangat" and Hindi "Nishant" Degree instead of B.T./B.Ed. Degree by holding them to be qualified in terms of the provisions of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, and accordingly, in the

said premises; the State Selection Board came to recommend the names of respondent No. 7 along with other similarly situated persons and the same on being approved by the Government; the Director, Secondary Education, Assam, had issued the order, dated 20.10.2021, promoting the respondent No. 7, herein, to the post of Headmaster of Galdighala High School.

26. Mr. Mahanta, learned counsel, has relied on the communication, dated 04.06.2021, wherein, the Director, Secondary Education, Assam, had required the jurisdictional Inspector of Schools to submit the vacancy position of the posts of Principal, Vice-Principal, Superintendent, Headmaster, etc., and it is stated that therein, an offending provision being incorporated excluding from the purview of the selection; the Hindi Teachers having “Parangat” and “Nishant” Degrees, the same having been so interfered with by this Court vide order, dated 14.09.2021, in WP(c)4086/2021; the selection and consequential promotion of the respondent No. 7, herein, does not call for any interference.

27. I have heard the learned counsels appearing for the parties and also perused the materials available on record.

28. At the outset, it is to be noted that the post of Headmaster in the said School had fallen vacant on the retirement of the incumbent therein on 31.03.2018. At the relevant point of time, the provisions of Assam Secondary Education (Provincialized) Service Rules, 2003, were holding the field and accordingly, in terms of the said Rules of 2003, it was a mandatory requirement that for promotion to the post of Headmaster, the teacher concerned must have

B.Ed./B.T. Degree.

29. Accordingly, in terms of the said Assam Secondary Education (Provincialized) Service Rules, 2003, persons having Hindi “Parangat” and Hindi “Nishant” Degrees were not considered eligible for promotion to the said post. The said aspect of the matter came to be assailed before this Court in a writ petition being WP(c)1048/2018 which was disposed of by this Court, vide order, 22.08.2019, granting liberty to the respondents to make necessary amendments in the Rules of 2003 to incorporate the said qualification of Hindi “Parangat” and Hindi “Nishant” Degrees treating it to be equivalent to that of B.Ed./B.T. Degree and render the Hindi Teachers eligible for promotion to the post of Headmaster. During the pendency of the said proceedings, under the Provisions of Rules of 2003; a process was initiated for filling up of the posts of Headmaster in different provincialized Secondary Schools of the State in the year 2018, including the post of Headmaster lying vacant in Galdighala High School.

30. In the said process, a proposal came to be submitted in favour of the respondent no. 7, herein, by the jurisdictional Inspector of Schools and therein, it was also noted that the respondent no. 7 was the only eligible teacher in the said school for being considered for promotion to the post of Headmaster. The petitioner, herein, at that relevant point of time, was not eligible to be considered for promotion to the post of Headmaster, in-as-much as he had, by that time, not acquired his B.Ed. Degree qualification, which was so acquired by him subsequently on 08.11.2018. Although it is contended that in respect of the respondent no. 7, a proposal was so forwarded recommending his case for

promotion to the post of Headmaster of the said School; the State Selection Board did not recommend the names of respondent no. 7 and other similarly situated persons due to the pendency of proceedings in WP(c)1048/2018.

31. In the backdrop of the said developments; the Government vide the communication, dated 21.07.2020, noticing the directions of this Court in WP(C)1048/2018 and also the provisions of the Rules of 2018, which had come into force by that time and wherein, the Hindi “Parangat” and Hindi “Nishant” Degrees were recognised to be equivalent to that of B.Ed./B.T. Degree course for the purpose of promotion of Teachers possessing such qualification to the post of Headmaster; proceeded to direct the Director, Secondary Education, Assam, to take the matter forward. Accordingly, it is seen that vide communication, dated 04.06.2021, the Director, Secondary Education, Assam, had initiated a process for filling up of the vacant post of Headmasters in various provincialized High Schools of the State and had required the jurisdictional Inspector for Schools to furnish the requisite particulars. However, in the said communication, dated 04.06.2021, in view of the fact that the incorporation of the qualification of Hindi “Parangat” and Hindi “Nishant” Degrees in the Rule 14(2) of the said Rules of 2018 and making Hindi teachers eligible for being considered for promotion to the post of Headmaster being pending before this Court in WP(c)4094/2020; the Director, Secondary Education, Assam, required the jurisdictional Inspector of Schools not to forward the proposals in respect of Hindi Teachers having the qualification of Hindi “Parangat” and Hindi “Nishant” Degrees for the purpose of recruitment to the post of Headmaster. Being aggrieved, the Respondent No. 7, herein, along with other similarly situated persons, had instituted WP(C)4086/2021, assailing the

said offending provision as existing with regard to their eligibility in the communication, dated 04.06.2021.

32. This Court, vide order, dated 14.09.2021, on consideration of the matter, had stayed the said offending provision as contained in the communication, dated 04.06.2021, and had granted liberty to the State respondents to proceed with the selection process for promotion to the post of Headmaster of High Schools on regular basis on the basis of selection made. However, such process, if taken to its logical conclusion, was directed to be subject to the final outcome of WP(c)No. 4094/2020.

33. It is seen that in pursuance to the passing of the order, dated 14.09.2021, in WP(c)4086/2021, the respondents had further processed the matter and the same on being placed before the Government, the Government in the Secondary Education Department, vide communication dated 11.10.2021, thereafter, proceeded to accord approval to the promotion of the pending cases of Hindi Teachers for promotion to the post of Headmaster, including that of the respondent no. 7, herein. Accordingly, the Director, Secondary Education, Assam, thereafter, proceeded to issue the impugned order, dated 20.10.2021, promoting 6 similarly situated persons including the respondent no. 7 to the post of Headmaster Galdighla High School.

34. From the above, it is clear that the process which culminated in the issuance of the order, dated 20.10.2021 was so initiated under the provisions of the Rules of 2003 and the same was concluded under the provisions of Rules of

2018.

35. Under the provision of the Assam Secondary Education (Provincialized) Services Rules, 2003, the respondent No. 7, herein, admittedly was not eligible for being considered for promotion to the post of Headmaster of the said school in-as-much he did not possess the B.Ed./B.T. qualification for such promotion.

36. It is seen that after the coming into force of the provisions of the Assam Secondary Education(Provincialized Schools) Services Rules, 2018, the respondent authorities had not initiated a process therein by following the procedure prescribed under the said Rules of 2018, but, had proceeded with the process so initiated under the provisions of the Assam Secondary Education(Provincialized) Services Rules, 2003. The provisions of the Assam Secondary Education(Provincialized Schools) Services Rules, 2018, having mandated that the Head Teachers having Hindi "Parangat" and "Nishant" Degree to be eligible for promotion to the post of Headmaster of a provincialized school; the respondent authorities by adopting the eligibility criterias under the said Rules of 2018, to a process of recruitment under the provisions of the Assam Secondary Education(Provincialized) Services Rules, 2003, had proceeded to hold the respondent No. 7, herein, to be qualified for such promotion.

37. The provisions of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, having mandated the specified procedure to be followed for the purpose of promotion to the post of Headmaster of a provincialized

school and therein, a provision existing for giving an equal opportunity to all persons, it is seen that in the procedure that was followed in the matter leading to the promotion of respondent No. 7 to the post of Headmaster of the school, in question; the said procedure prescribed under the Rules of 2018, was clearly violated and accordingly, the petitioner, herein, was denied an opportunity of having his case considered for such promotion.

38. A perusal of the communication, dated 11.10.2021, would reveal that the same is only limited to the Hindi Teachers who were in the fray for consideration of their cases for promotion to the post of Headmaster under the provisions of the Assam Secondary Education(Provincialized) Service Rules, 2003, and in whose cases, such promotions could not be effected in view of the fact that qualification of Hindi "Parangat" and "Nishant" Degree were not recognized as eligible qualifications for promotion to the post of Headmaster. The communication, dated 11.10.2021, when considered along with the contentions as made in the matter by the State Respondents as well as the contentions made in the affidavit-in-opposition filed in the matter by the Director, Secondary Education, Assam, it is seen that the State Respondents had not followed the provisions of the Assam Secondary Education (Provincialized Schools) Services Rules, 2018, while making the promotions, in question, more particularly, the promotion as effected in the case of respondent No. 7 to the post of Headmaster of the said school. It is also seen that no advertisement as mandated under the provision of Rule 14 of the Assam Secondary Education(Provincialized Schools) Services Rules, 2018, was issued in the matter.

39. It has also to be noticed that the provisions of the Assam Secondary Education(Provincialized Schools) Services Rules, 2018, had came into effect only on 10.09.2019, and by that time; the selection process under the provisions of the Assam Secondary Education(Provincialized) Services Rules, 2003, had concluded and it was only the process of verification and approval of the same by the authorities empowered in the matter that was pending. Accordingly, a process which was carried-out under the provisions of the Assam Secondary Education(Provincialized) Service Rules, 2003, basing on the qualifications as mandated therein, could not have been concluded under the provisions of the Assam Secondary Education(Provincialized Schools) Service Rules, 2018, and that too, by limiting it to the persons who were so considered under the provisions of the Assam Secondary Education(Provincialized) Services Rules, 2003. The petitioner, herein, having become eligible for being considered for promotion to the post of Headmaster on acquiring the B.Ed. Degree in the year 2018, was deprived of an opportunity to have his considered for such promotion.

40. The respondent No. 7 in his additional affidavit has also contended that the promotion as effected in his case is one so effected by applying the provisions of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018. However, it was not demonstrated that after coming into force, the Assam Secondary Education(Provincialized Schools) Services Rules, 2018; the respondent authorities had initiated a process as per the mandate therein, for the purpose of recruitment to the post of Headmaster of the school, in question.

41. In view of the above conclusions reached by this Court in the matter; it is

held that the promotion of respondent No. 7 having been so effected in clear violation of the procedure as mandated by the provisions of the Assam Secondary Education(Provincialized Schools) Services Rules, 2018; same cannot be sustained and requires interference of this Court. Accordingly, the order, dated 20.10.2021, insofar as it concerns the respondent No. 7, herein, is set aside and quashed.

42. Accordingly, in view of the interference made by this Court with the order, dated 20.10.2021, insofar as it concerns the respondent No. 7; the following directions are hereby issued:

(i). The respondent No. 2 shall now initiate a process for promotion to the post of Headmaster of Galdighala High School strictly by adhering to the procedure as mandated under the provisions of Assam Secondary Education (Provincialized Schools) Service Rules, 2018, and thereafter, having considered the case of eligible teachers of the said school including the case of the petitioner and respondent No. 7, and after assessing their eligibility considered for such promotion by the jurisdictional District Selection Committee, initiate further action for such consideration in terms of the said Rules of 2018. On the process as mandated in the said Rules being completed, the person so found eligible and recommended for promotion as the Headmaster of the said school, shall be so issued with necessary orders promoting him in such capacity.

(ii). In the event, there are other vacant posts in the District of Nalbari, which also requires to be so considered, the respondent No. 2 shall extend the consideration directed hereinabove to such other schools also.

43. The petitioner in the present proceeding having raised a dispute with regard to the inter se seniority between him and the respondent No. 7 on account of the fact that the respondent No. 7 had joined the petitioner's school only on 26.12.2017, the respondent No. 2 while considering the case of the petitioner and the respondent No. 7 for promotion to the post of Headmaster of the said school in terms of the provisions of the Assam Secondary Education(Provincialized Schools) Services Rules, 2018, shall also decide the issue of inter se seniority between the petitioner and the respondent No. 7.

44. The exercise as now directed to be carried out by the respondent No. 2 shall be so initiated and concluded within a period of 90 days from the date of receipt of a certified copy of this order.

45. With the above directions and observations, this writ petition stands disposed of.

JUDGE

Comparing Assistant