

GAHC010198682021



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

Case No. : WP(C)/6245/2021

POLEN BORAH
S/O. ARABINDA BORAH, VILL. RANGMAHAL, P.S. GORESWAR,
DIST. BAKSA, BTC, ASSAM, PIN-781366.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM,
HIGHER EDUCATION, DISPUR, GUWAHATI-781006.

2:THE SECRETARY OF EDUCATION DEPTT.
KOKRAJHAR BTC ASSAM PIN-783370.

3:THE DIRECTOR OF EDUCATION
KOKRAJHAR BTC ASSAM PIN-783370.

4:THE GOVERNING BODY (G.B.) OF GORESWAR COLLEGE
REP. BY ITS PRESIDENT
P.O. AND P.S. GORESWAR
DIST. BAKSA ASSAM PIN-781366.

5:THE PRINCIPAL CUM SECRETARY OF GORESWAR COLLEGE
GORESWAR
P.O. GORESWAR
DIST. BAKSA
BTC ASSAM
PIN-781366

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : SC, HIGHER EDU

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

ORDER

Date : 10.06.2024

Heard Mr. J. Abedin, learned counsel for the petitioner and Mr. S. Bhuyan, learned Standing Counsel, Higher Education Department as well as Mr. S. Bora, learned Standing Counsel, BTC.

2. The petitioner by way of instituting the present proceeding has presented a challenge to an order dated 12.11.2021, by which he was transferred from Goreswar College, Goreswar to Khoirabari College, Khoirabari.

3. The petitioner herein pursuant to an advertisement dated 10.05.1999 had submitted his candidature against the Grade-III post so advertised in Goreswar College. The petitioner on being selected by the Selection Committee came to be appointment as a Grade-III employee in the said college on 01.09.1999.

Although the services of the petitioner was not provincialized along with the services of the other teaching and non-teaching staff in the said college upon enactment of the Assam College Employees (Provincialization) Act, 2005 (in short, 'the Act of 2005'), subsequently the services of the petitioner being approved on 21.12.2012 by the Bodoland Territorial Council (in short, 'BTC) against the post of Junior Assistant, the services of the petitioner came to be adjusted against a regular vacant post, vide an order dated 22.04.2013. The petitioner

accordingly continued in the post of Junior Assistant in Goreswar College. The petitioner received an order dated 12.11.2021 issued by the Director of Education, BTC, by which he was transferred and posted to Khoirabari College, Khoirabari as a Junior Assistant against a vacant post arising on account of the incumbent therein being promoted to the higher cadre.

4. The petitioner being aggrieved submitted representations before the authorities praying for cancellation of the said order of transfer on his personal grounds as well as on the ground that the said order was so issued in violation of the provisions of the Act of 2005.

5. The provisions of Section 3(c) of the Act of 2005 being relevant to the issue arising in the present proceeding is extracted hereinbelow.

“3. Employees to be provincialised

Subject to the provisions of Article 30 and 309 of the Constitution of India, all employees of the Colleges, save and except the employees who exercise option to continue in the existing terms and conditions of service under clause (d) below, shall be deemed to have become the employees of the Government on and from the date on which the Colleges have been brought under the deficit system of grants-in-aid, on the following terms and conditions, namely :-

.....

(c) The posts in each provincialised College shall constitute

an independent cadre for each category of employees including the post of the Principal. No inter cadre transfer from one college to another shall be allowed. Government may, however, for reasons to be recorded in writing, and in public interest, transfer a Principal from one College to another.”

6. In terms of the provisions of Section 3(c) of the said Act of 2005, each provincialised College is construed to constitute an independent cadre for each category of employees except the post of Principal of the college. It is further provided that save and except the cadre of Principal, no inter cadre transfer from one college to another including mutual transfer shall be permissible.

7. In view of the said position, the order dated 12.11.2021 having the effect of transferring the petitioner from one college to another, cannot be held to be a valid order, inasmuch as, the same was so issued in clear violation of the provisions of Section 3(c) of the said Act of 2005 and, accordingly, the same cannot be permitted to continue.

8. In the present proceeding, the Principal-in-charge, Goreswar College, Goreswar has filed an affidavit and therein by highlighting that the services of the petitioner in the said college to be indispensable had also contended that the matter was taken up with the respondent authorities for reconsideration of the said order of transfer.

9. In view of the above position, the order dated 12.11.2021 being so issued in the violation of the provisions of the Section 3(c) of the Act of 2005, the same is not sustainable and accordingly stands interfered with

by this Court. Consequently, the petitioner herein is permitted to continue to serve in Goreswar College, Goreswar as before.

10. With the above observation and direction, this writ petition stands disposed of.

JUDGE

Comparing Assistant