

GAHC010202602017



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

Case No. : WP(C)/6302/2017

ABDUS SAMAD,
S/O LT. HUSSAIN ALI,
PRESENTLY RESIDING NATBAMA
P.S. HATIGAON, GAUHATI -38,
DIST. KAMRUP M, ASSAM

---VERSUS---

1.THE STATE OF ASSAM and 5 ORS.,
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
EDUCATION DEPARTMENT, DISPUR, GUWAHATI -6.

2:THE DIRECTOR OF ELEMENTARY EDUCATION, ASSAM,
KAHILIPARA, GUWAHATI-19.

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER,
KAMRUP, AMINGAON, P.O. AMINGAON,
DIST. KAMRUP R, ASSAM, PIN - 781031.

4:THE DEPUTY INSPECTOR OF SCHOOLS,
REHABARI, GUWAHATI-7, DIST. KAMRUP, ASSAM

5:THE BLOCK ELEMENTARY EDUCATION OFFICER,
CHHAYGAON, P.O. and P.S. CHHAYGAON
DIST. KAMRUP R, ASSAM, PIN - 781124.

6:AJMAL HOQUE,
ASSTT. TEACHER, HATIPARA L.P. SCHOOL,
VILL and P.O. HATIPARA,
DIST. KAMRUP R, ASSAM, PIN - 71124

Advocate for the Petitioner : MS.M AHMED

Advocate for the Respondent : MR.A DASR-6

– B E F O R E –

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

08.01.2024

Heard Ms. A. Hussain, learned counsel appearing on behalf of Mr. J. Ahmed, learned counsel for the petitioner. Also heard Mr. P.K. Bora, learned Standing Counsel, Elementary Education Department for respondent Nos.1, 2, 3, 4 & 5 and Mr. A. Das, learned counsel for respondent No.6.

2. The petitioner, by way of instituting the present writ petition, has presented a challenge to an order dated 16.10.2017 passed by the Director Elementary Education, Assam, by which he was transferred along with his post to Batahidia L.P. School.

3. The facts requisite for consideration of the issues arising in the present proceeding is noticed hereinbelow.

4. The petitioner was appointed as an Assistant Teacher of 762 No. Hahuwa Pathar L.P. School by an order dated 30.01.1996. Thereafter, the petitioner was subjected to transfers to various L.P. Schools. The services of the petitioner was confirmed as Head Teacher of Fakirpara Natun Simina L.P. School vide an order dated 26.12.2011 with effect from 01.12.2011. Thereafter, vide order an dated 30.12.2015, the District Elementary Education Officer, Kamrup, for the purpose of rationalization/transfer/mutual transfer of the teachers, had transferred the petitioner to Hatipara L.P. School. However, in the said order, the petitioner was denoted as an Assistant Teacher. The same was corrected by a Corrigendum dated 31.12.2015, wherein the petitioner was denoted as Head

Teacher. The petitioner joined his transferred post on 31.12.2015.

5. The respondent No.6 vide an order dated 02.01.2016 was directed by the Block Elementary Education Officer, Chhaygaon to take over the charge of the post of Head Teacher of Hatipara L.P. School on the incumbent in the post retiring on attaining the age of superannuation.

6. The petitioner assailed the said order by instituting WP(C) No.1489/2016 before this Court.

This Court, noticing that the petitioner was transferred to Hatipara L.P. School in the capacity as a Head Teacher and as regular Head Teacher could not have been replaced by the respondent No.6, vide order dated 04.03.2017, stayed the effect and operation of the order dated 02.01.2016.

Thereafter, the present impugned order dated 16.10.2017 had been issued by which the petitioner along with his post had been transferred and posted to Batahidia L.P. School.

7. The said order dated 16.10.2017 is under challenge in the present proceedings.

8. The petitioner has contended that the impugned order dated 16.10.2017 is in continuation of the earlier order dated 02.01.2016, by which the respondent No.6 was sought to be in charge of the post of Head Teacher of the school. This hon'ble Court having interfered with the order dated 02.01.2016, the respondents have proceeded to issue the order dated 16.10.2017 transferring the petitioner out of the school so as to facilitate holding of charge of the post of Head Teacher by the respondent No.6. The petitioner has further contended that there was no administrative exigency behind the issuance of the order dated 16.10.2017.

9. This Court vide order dated 25.10.2017 passed in the present proceeding had stayed the operation of the impugned order dated 16.10.2017 with the further direction that the petitioner shall be allowed to function as Head Teacher of Hatipara L.P. School.

10. It is seen from the records that the respondent No.6 had instituted an Interlocutory Application, I.A.(Civil) No.4318/2017, claiming vacation/modification of the said order dated 25.10.2017. However, on the prayer made by the respondent No.6, vide order dated 26.02.2018 passed by this Court, the said Interlocutory Application was closed as not pressed.

11. The respondent No.2, i.e. the Director of Elementary Education, Assam, has filed an affidavit in the matter and therein has sought to justify the transfer of the petitioner on the ground that there were public complaints lodged against him with regard to misappropriation of Mid Day Meal Scheme rice and also with regard to negligence on duty. It was contended in the affidavit that an enquiry was conducted and therein also certain anomalies came to light with regard to enrolment and stock position of Mid Day Meal Scheme rice. It was further contended in the affidavit that the District Elementary Education Officer has submitted a proposal requesting transfer of the petitioner to Batahidia L.P. School, a zero teacher school as its Head Teacher, basing on the complaints leveled against him with regard to the utilization of Mid Day Meal Scheme rice as well based on three cases registered against the petitioner for misbehaving with the girl students of the school. It is this proposal that was finally placed before the Government and the Government vide a communication dated 12.10.2017 approved the proposal of transfer of the petitioner to Batahidia L.P. School. Accordingly, the Director of Elementary Education, Assam had issued the order dated 16.10.2017.

12. The impugned order dated 16.10.2017 does not reflect any reason as to why the petitioner had to be transferred and posted to Batahidia L.P. School. However, the disclosure made in the affidavit filed by the respondent No.2 shows that the same was on account of allegations leveled against the petitioner.

13. It is to be noted here that although the allegations against the petitioner were highlighted in the affidavit filed by the respondent No.2, there is nothing brought on record as to show how the said allegations were dealt with by the respondent authorities. There is nothing brought on record to show that any departmental proceeding was initiated against the petitioner and even a notice was given to him to explain as to the allegations that may be existing against him which had required issuance of the transfer order dated 16.10.2017.

It is seen that after transferring the petitioner vide order dated 16.10.2017, the respondent authorities have not proceeded to have the allegations against the petitioner examined in the manner required. It is clear that in the event the petitioner is not fit to continue in his services as a Head Teacher in the Hatipara L.P. School, it is not understood how a person against whom allegations were leveled, can be permitted to be a Head Teacher of a different school. In the event there were allegations against the petitioner, the said allegations reveal commission of misconduct by the petitioner in discharging his duties, it was open to the departmental authorities to proceed against him in the form of departmental proceeding and if the matter is so justified, the authorities could have also placed the petitioner under suspension for having an impartial enquiry conducted. The respondent authorities have not brought on record any material to justify invocation of provisions of Assam Services (Discipline and Appeal) Rules 1964 (in short, 'the Rules of 1964') for

proceeding against the petitioner and as such, the allegations leveled against the petitioner have remained unsubstantiated till date.

14. In the said view of the matter, the allegations leveled against the petitioner cannot now be given any credence for the purpose of justifying the transfer effected in his case vide an order dated 16.10.2017.

15. Accordingly, in view of above conclusions, the order dated 16.10.2017 stands set aside and quashed. However, it is provided that in the event there are allegations existing against the petitioner, the Director, Elementary Education, Assam shall be at liberty to examine the said allegations and if it is found that the same do disclose a misconduct being committed by the petitioner in discharging his duties, to initiate appropriate proceedings as may be required under the provisions of the said Rules of 1964. The Director, Elementary Education, Assam would also be at liberty, in the event the allegations available against the petitioner were justified, to invoke the powers available under the Rule 6(1) of the said Rules of 1964, for placing the petitioner under suspension, if so mandated.

16. With the above observations and directions, the present writ petition stands disposed of.

JUDGE

Comparing Assistant