

GAHC010210982014



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

Case No. : WP(C)/306/2014

HAREKRISHNA MAHANTA
S/O LT. TARINI MAHANTA, VILL. DEKARKUCHI, P.O. SONESWAR, P.S.
KAMALPUR, DIST- KAMRUP, ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY SECRETARY TO THE GOVT. OF ASSAM, EDUCATION
DEPARTMENT, DISPUR, GHY-6

2:THE INSPECTOR OF SCHOOLS
KAMRUP DISTRICT CIRCLE
KAMRUP
GHY-1

3:THE PRINCIPAL
PUTHIMARI HIGHER SECONDARY SCHOOL
SONESWAR
P.O. SONESWAR
DIST- KAMRUP
ASSAM
PIN-781382

4:SRI MADAN MALAKAR
S/O SRI KUHIRAM MALAKAR
VILL.-DEKARKUCHI
P.O.-SONESWAR
DIST.KAMRUP
ASSAM

Advocate for the Petitioner : MR. U.B. Sarma, Advocate.

Advocate for the Respondent : Mr. B. Kaushik, Standing Counsel,
Elementary Education.

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

JUDGMENT (ORAL)

Date : 18-04-2024

Heard Mr. U.B. Sarma, learned counsel for the petitioner. Also heard Mr. B. Kaushik, learned Standing Counsel for the Elementary Education Department appeared for respondent Nos.1 & 2. None has entered appearance for the respondent Nos.3 & 4.

2. The petitioner, by way of instituting the present proceedings has prayed for a direction upon the respondent authorities for appointing him against any of the Grade-IV post, lying vacant in Puthimari H.S. School, Soneswar in Kamrup District.

3. The petitioner has contended in the Writ Petition that he having cleared his Higher Secondary Examination was on a look out for a suitable employment and accordingly, in the year 2004, the Principal of Puthimari H.S. School requested the petitioner to serve as a Grade-IV employee (Peon) in the school and accordingly, the petitioner joined in such services in the month of July, 2004. It was contended by the petitioner that at the time of joining his services, it was assured to him that such services would be regularized within a short span of time. The petitioner thereafter was regularly approaching the authorities for issuance of appropriate orders towards regularization of his services against any of the vacant Grade-IV post, available in the said school. However, the

respondent authorities without considering the prayer of the petitioner, proceeded to issue an advertisement dated 30.10.2012, inviting applications from eligible candidates for filling up of three vacant sanctioned post of Grade-IV employee available in the school. The petitioner being eligible also submitted his candidature in pursuance to the said advertisement and appeared in the selection process.

4. It is the contention of the petitioner that the respondent authorities proceeded to appoint two persons, the third post was however contended to be not filled up. Being aggrieved by the denial of appointment to him, the petitioner had instituted the present proceedings before this Court.

5. At the outset, it is to be noted that this Court vide order an dated 24.01.2014, while issuing notice in the matter had passed an interim direction to the effect that the third vacant post of Grade-IV be not filled up in the meanwhile. The respondent No.4 herein, who had impleaded himself in the present proceedings, thereafter instituted the I.A. (Civil) No.265/2016, praying for vacation and/or modification of the said order dated 24.01.2021. In the said Interlocutory Application, it was brought on record that on conclusion of the selection process as initiated pursuant to the advertisement dated 30.10.2012, a selection list containing names of three candidates was prepared against three posts so advertised. It was further contended that out of the said select list, two persons had already joined in their services. However, in view of the interim direction passed by this Court in the present proceedings, the respondent No.4 could not join his services.

6. This Court upon considering the issues so arising was pleased vide order dated 02.12.2016, to allow the I.A. (Civil) No.265/2016, by vacating the interim direction passed vide order dated 24.01.2014.

7. It is to be noted that in the present proceeding, the petitioner has not presented a challenge to the said selection process and had only prayed for a direction upon the respondent authorities to appoint him against any of the available vacant Grade-IV post.

8. In view of the fact that the petitioner had not challenged the selection process, as initiated by the said advertisement dated 30.10.2012, this Court would not venture to examine the validity of such selection and appointment, as effected in pursuance to the said advertisement dated 30.10.2012.

9. The learned counsel for the petitioner at this stage submits that the petitioner has been continuously serving in the said school since the date of his initial appointment in July, 2004 and that there are vacant posts in Grade-IV category presently available in the school, against which the petitioner can be considered for appointment on regular basis.

10. In view of the said prayer, as made by the learned counsel for the petitioner, this Court on consideration of the issues as arising in the matter, would like to pass the following directions:

(i) In the event there are vacant posts of Grade-IV category presently available in the school in question, the authority empowered to advertise and conduct selection for such post(s), is required to advertise the post(s) in question expeditiously;

(ii) In the event the said available vacant post(s) in the school in question is put up for recruitment by the Body authorized to carry out the process of recruitment, the petitioner shall be eligible to apply in pursuant to such advertisement;

(iii) In the event upon issuance of the advertisement as directed herein above, it is found that the petitioner has become overaged for participating in the process of selection, the petitioner is at liberty to approach the respondent authorities by way of an appropriate application, praying for condonation of

such overage and in the event of submission of such application, the respondent authorities, more particularly the appointing authority shall consider such application, strictly in accordance with the norms in place, in this connection; and

(iv) In the event the petitioner participates in the selection process as undertaken, considering the length of services rendered by the petitioner since July, 2004 in the School, the Selection Committee shall award to the petitioner marks for his such services and the selection so far the petitioner is concerned, shall be so done by reckoning such weightage that would now be required to be awarded to the petitioner.

11. With the above observations and directions, the Writ Petition stands disposed of.

JUDGE

Comparing Assistant