

GAHC010221062021



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

Case No. : WP(C)/7169/2021

HASNUR ALI CHOUDHURY
S/O. LT. AHMED ALI CHOUDHURY, VILL. MAJARKURI, P.O. RAMDIA, DIST.
KAMRUP (R), 781102, ASSAM.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE PRINCIPAL SECY. TO THE GOVT. OF ASSAM, HIGHER
EDUCATION DEPTT., DISPUR, GUWAHATI-06.

2:DIRECTOR OF HIGHER EDUCATION ASSAM
KAHILIPARA GUWAHATI-19.

3:DEPUTY DIRECTOR OF HIGHER EDUCATION
ASSAM KAHILIPARA GUWAHATI-19.

4:THE GOVERNING BODY REP. BY ITS PRESIDENT
BINANDI CHANDRA MEDHI COLLEGE RAMDIA
VILL. MAJARKURI P.O. RAMDIA DIST. KAMRUP ASSAM PIN-781102.

5:THE PRINCIPAL BINANDI CHANDRA MEDHI COLLEGE RAMDIA
VILL. MJARKURI P.O. RAMDIA DIST. KAMRUP ASSAM PIN-781102.

6:NIVA KALITA
D/O. SRI KARUNA KALITA
VILL. UJANKURI
P.O. UJANKURI
P.S. HAJO
DIST. KAMRUP
ASSAM

Advocate for the Petitioner : MR. B PRASAD

Advocate for the Respondent : SC, HIGHER EDU

Linked Case : I.A.(Civil)/1007/2023

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D/O. SRI KARUNA KALITA
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2:THE STATE OF ASSAM
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
HIGHER EDUCATION DEPARTMENT.
DISPUR
GUWAHATI-06.

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VILL. MJARKURI P.O. RAMDIA DIST. KAMRUP
ASSAM PIN-781102.

Advocate for : MR. P D NAIR
Advocate for : SC HIGHER EDU appearing for HASNUR ALI CHOUDHURY AND 5
ORS.

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

ORDER

Date : 22.04.2024

Heard Mr. B. Prasad, learned counsel for the petitioner. Also heard Mr. S. Das, learned standing counsel, Higher Education Department, appearing on behalf of Respondents No. 1, 2 & 3; Mr. Z. Hussain, learned counsel appearing on behalf of respondents No. 4 & 5; and Mr. Parswajyoti Das Nair, learned counsel appearing on behalf of Respondent No. 6.

2. The petitioner by way of instituting this present proceedings, has presented a challenge to the speaking order, dated 22.10.2021, issued by the Director, Higher Education Department, Assam, determining the seniority of the respondent No. 6 over the petitioner, herein.

3. The facts as requisite for consideration of the issues as arising in the present proceedings, is noticed hereinbelow:

The authorities of Binandi Chandra Medhi College, Ramdia(at the relevant point of time, a venture educational institution), issued a local Advertisement, dated 24.04.1997, inviting applications from eligible candidates for ministerial posts as indicated in the said Advertisement.

It is contended that the petitioner as well as the respondent No. 6 submitted their respective applications for being considered against the post of Lower Division Assistants as advertised vide the Advertisement, dated 24.04.1997. In

pursuance of the applications as submitted; the Managing Committee of the College, in question, considered the cases of the candidates in the fray and vide resolution No. 4 adopted in the meeting of the Governing Body held on 26.04.1997, prepared a list based on merit of the candidates for appointment against the post of Lower Division Assistants. The petitioner, herein, was placed at Serial No. 1 in the said list while the respondent No. 6 was so placed at serial No. 2. In the said meeting of the Managing Committee of the college; it was further provided that in the event, any candidate does not join his or her post within the time specified, the next candidate in terms of merit as placed in the list; would be offered such appointment. It is further contended that the petitioner and the respondent No. 6 were both appointed as Lower Division Assistants by the college authorities by way of issuance of an orders of appointment, both, dated 28.04.1997.

4. Both the petitioner, herein, and the respondent No. 6 joined their respective services in terms of the said order of appointment. Thereafter, it is projected that the Managing Committee of the College in its meeting held on 30.01.2004, proceeded to adopt a resolution being resolution No. 10 for authorizing a remuneration to the petitioner and 2(two) others. Thereafter, the name of the petitioner was contended to have been included in the acquaintance roll of the employees working in the said college. The respondent No. 6, herein, was extended with the benefit of remuneration with effect from the year 2007. Thereafter, upon enactment of the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011, the cases of serving eligible teachers were taken-up for consideration for provincialization of their services and on conclusion of the scrutiny, as involved, vide order, dated 26.05.2014,

issued by the Director, Higher Education Department, Assam; the services of both the petitioner, herein, and the respondent No. 6; came to be provincialized along with other teaching and non-teaching staff, of the College, in question found to be eligible for provincialization of their services.

5. It is to be noted that vide order, dated 26.05.2014, the services of the petitioner, herein, was provincialized as a Senior Assistant in the college while the services of the respondent No. 6 was so provincialized as a Junior Assistant. Being aggrieved with the provincialization of the services of the petitioner, herein, as a Senior Assistant; the respondent No. 6 approached this Court by way of instituting a writ petition being WP(c)4272/2014. This Court, vide an order, dated 12.09.2014, was pleased to stay the effect and operation of the order, dated 26.05.2014, insofar as it concerns the provincialization of the services of the petitioner, herein, to the post of Senior Assistant. However, this Court directed that the petitioner, herein, would be authorized the salary of the Junior Assistant in the meantime.

6. The said order, dated 12.09.2014, was modified by this Court vide an order, dated 02.05.2016, passed in M.C. No. 3095/2014, wherein, this Court had directed that while the respondent No. 6, herein, would be entitled to her salaries against the post of Junior Assistant w.e.f. 10.10.2014; the salaries of the petitioner, herein, was directed to be authorized against the post of Senior Assistant with effect from the date of his provincialization in services. Thereafter, the said writ petition being WP(c)4272/2014 was taken-up for final consideration and vide an order, dated 18.11.2019, noticing the issues as arising in the proceedings, this Court was pleased to direct the Director, Higher

Education Department, Assam, to verify the claim of the respondent No. 6 as well as the petitioner, herein, and after hearing the college authorities to decide the inter-se seniority dispute between the respondent No. 6 and the petitioner, herein.

7. It is contended that in terms of the directions as passed by this Court in WP(c)4272/2014 vide order, dated 18.11.2019; a hearing was held in the matter by the Deputy Director of Higher Education, on 24.12.2019, wherein, the petitioner, herein, as well as the respondent No. 6 along with the college authorities had participated. In pursuance of the said hearing held and in terms of the directions passed by this Court vide order, dated 18.11.2019; the Director, Higher Education Department, Assam, issued a speaking order, dated 22.10.2021, and therein, holding that both the petitioner and the respondent No. 6, herein, were appointed as Junior Assistants on 26.04.1997, and both of them having joined the said college on 30.04.1997; the date of joining of the petitioner and the respondent No. 6 being the same, the Director, Higher Education Department, Assam, by reckoning the date of birth of the petitioner as well as the respondent No. 6, herein; proceeded to hold that the respondent No. 6, herein, is senior to the petitioner. Accordingly, the seniority dispute, as existing, was resolved. Being aggrieved with the speaking order, dated 22.10.2021, the present proceedings has been instituted by the petitioner.

8. Mr. Prasad, learned counsel for the petitioner, submits that the Director, Higher Education Department, Assam, while passing the speaking order, dated 22.10.2021, failed to take into consideration, the resolutions as adopted by the college authorities in its meeting held on 26.04.1997 and thereby, committed an

error in declaring the petitioner to be junior to the respondent No. 6 although in the selection as held at the time of their initial appointment in the said college, it was the petitioner, herein, who was held to be senior to the respondent No. 6, on merits, as evidenced from the resolutions adopted by the Managing Committee of the college in its meeting held on 26.04.1997.

9. Mr. Prasad, learned counsel, also submits that the petitioner had not raised any grievance with regard to the decisions as arrived at in the meeting of the Executive Committee of the said college held on 30.01.2004, in allowing the petitioner, herein, to draw a remuneration. The learned counsel further submits that such benefit was extended to the respondent No. 6, herein, only with effect from the year 2007.

10. Mr. Prasad, by drawing the attention of this Court to the acquaintance roll as brought on record, submits that the petitioner, herein, was drawing his remuneration at a higher rate than that of the respondent No. 6, which evidenced the fact that it is the petitioner who was always considered to be senior to the respondent No. 6 in the college and the said position was never disputed by the respondent No. 6, herein, before the provincialization of their respective services under the provisions of the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011.

11. Mr. Prasad, learned counsel for the petitioner, also submits that while submitting the particulars of the serving eligible teachers for consideration of their cases for provincialization of their services; the name of the petitioner was

placed above that of the respondent No. 6 and accordingly, the concerned authorities, upon verification of the respective particulars, proceeded vide the order, dated 26.05.2014, to provincialize the services of the petitioner herein, as a Senior Assistant and the respondent No. 6 being junior; her services were provincialized as a Junior Assistant.

12. Mr. Prasad, learned counsel, by referring to the speaking order, dated 22.10.2021, submits that a perusal of the same, would reveal that the Director, Higher Education Department, Assam, had not considered the facts as existing in the matter at the time of initial recruitment of the petitioner and proceeded to determine the inter-se seniority between the petitioner and the respondent No. 6 only basing on their respective date of birth, by ignoring the manner in which they were initially recruited in the college.

13. Mr. Prasad, further contends that a process of selection having been carried-out by the college authorities at the time of the appointment of the respondent No. 6 and the petitioner, herein, as Lower Division Assistants in the said college; the Director, Higher Education Department, Assam, could not have ignored the said position and ought to have taken the same into consideration, while passing the speaking order, dated 22.10.2021. Mr. Prasad, also contends that the ignorance by the Director, Higher Education Department, Assam, of the factual matrix as existing in the case including the fact that the appointment of the petitioner and the respondent No. 6 was preceded by a process of selection, has vitiated the speaking order, dated 22.10.2021, and the same, accordingly, requires the interference from this Court.

14. The college authorities have filed an affidavit in the matter and has contended that the appointments as made in the college against the post of Lower Division Assistants in pursuance to the Advertisement, dated 24.04.1997, was so made on a consideration of the eligibility of the candidates as participating in the said selection process. It was further contended that the selected candidates have been appointed on 26.04.1997, and they have joined their respective services on 30.04.1997, in the said college. It was also contended that the names of the petitioner, herein, and the respondent No. 6 were forwarded by the college authorities for provincialization of their services against the post of Lower Division Assistants, now Junior Assistants, along with 3(three) other serving Lower Division Assistants of the college, in question. However, the services of the petitioner, herein, was provincialized against the post of a Senior Assistant while the services of the respondent No. 6 was so provincialized against the post of a Junior Assistant. It was further argued that the Director, Higher Education Department, Assam, had provincialized the services of 2(two) Senior Assistants and the name of the petitioner which was placed at Serial No. 1 in the list of Junior Assistant, was also provincialized as a Senior Assistant.

15. Per contra, Mr. Nair, learned counsel for respondent No. 6, submits that the criteria as applied by the Director, Higher Education Department, Assam, for the purpose of determining the inter-se seniority between the petitioner, herein, and the respondent No. 6, does not call for any interference in-as-much as the petitioner and the respondent No. 6 were appointed and had joined their respective services on the same dates and the only criteria now available for determining the inter-se seniority was their respective date of birth and the

respondent No. 6 being senior in age than the petitioner, herein; there was no error on the part of the departmental authorities in denoting the respondent No. 6 to be senior to the petitioner, herein.

16. Mr. Nair, learned counsel, also submits that the selection process as carried-out in pursuance to the Advertisement, dated 24.04.1997, was a process of a selection simpliciter and the Governing Body had only examined the eligibility of the candidates in the fray in the said selection process and there was no selection on merit as normally involved in such matters of recruitment.

17. Mr. Nair, learned counsel, further submits that the seniority of the respondent No. 6 having been determined by applying a criteria known to law; this Court would be pleased not to interfere with the speaking order, dated 22.10.2021, and direct the respondent authorities to take a consequential action as may be mandated in pursuance thereof.

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

19. At the outset, it is to be noted that the parties to the proceeding have not disputed the fact that an Advertisement, dated 24.04.1997, was issued by the college authorities inviting applications, amongst others, for 4(four) posts of Lower Division Assistants. The contesting parties have also not disputed the resolutions as adopted by the Managing Committee of the said college in its meeting held on 26.04.1997. The parties are in dispute only with regard to the

interpretation of the resolutions as adopted by the Managing Committee of the college, in question, in its meeting held on 26.04.1997. The resolutions as adopted in the matter on 26.04.1997, being the bone of contention in the matter; the resolutions so adopted are reproduced hereinbelow:

“The house resolves to ask (some illegible words).... to transfer his right, title and interest over his land in favour of the College Authority at the earliest, and also resolves that written consent to that effect be obtained from him.

Resolution No. 3: The house resolves in today's meeting to ask the donor Sri Binod Medhi to deliver over 'possession' of his share/portion of land to the College Authority.

Resolution No. 4: In pursuant to the advertisement published locally, the house resolves in today's meeting to appoint the following candidates against the mentioned posts on the basis of merit.

U.D. Assistant: Sri Biren Deka - Uzankuri
L.D. Assistant: (Ka) Md. Hasnur Ali Choudhury- Majarkuri
(Kha) Smt Niva Kalita - Uzankuri
(Ga) Sri Ramen Medhi - (Illegible)
(Gha) Sri Riten Medhi - (Illegible)
(Illegible): Smt Joya Medhi - Chakamtoli
Library Assistant: Sri Binod Thakuria - Santar
Grade IV: (Ka) Sri Bhanima Mazumdar - Bongaltola
(Kha) Sri Ramesh Chandra Das - Kanhibari
Library Bearer: Sri Dambarudhar Pare - Majarkuri

Resolution No. 5: The house resolves in today's meeting that if any appointed candidate does not join his/her service within the stipulated time, appointment shall be made on locality basis as well as in order of merit as per the merit list. The house instructs the Secretary to obtain approval of the Executive Committee, if there is any necessity for further appointment. It is mentioned here that the Merit List will remain valid for one year with effect from today.”

20. A perusal of the resolution No. 4 as adopted by the Governing Body in its meeting held on 26.04.1997, would reveal that the Managing Committee of the college had resolved to appoint the candidates named against the various posts involved. It was contended in the said resolution that the candidates were so

placed against the various posts on the basis of merit.

21. The resolution No. 5 as adopted by the Governing Body in its meeting held on 26.04.1997, further reveals that in the event, any appointed candidate does not join his/her service within the stipulated time, it was decided that the appointment shall be made on locality basis as well as in the order of merit as per the merit list and the merit list as indicated is the merit list as incorporated in the resolution No. 4 so adopted in the said meeting. It was further provided that the said merit list would remain valid for a year.

22. The respondent No. 6 has not disputed the contention of the petitioner herein that in view of the fact that the petitioner was placed above the respondent No. 6, on merits, he was granted remuneration much before the date of grant of such remuneration to the respondent No. 6.

23. A perusal of the resolutions as adopted by the Governing Body in its meeting held on 26.04.1997, goes to show that the candidates as placed against various posts were so placed on merits on the basis of a selection made. The said resolutions reveal that such placement of the candidates was on merits. While the petitioner contends that the said selection was on merits, the college authorities and the respondent No. 6 contend that such selection was only on the basis of examination of eligibility. Be that as it may, the criteria as adopted for making the selection, in question, is not what is relevant, but it is to be noted that a process of selection was carried-out and candidates placed against the posts involved on the basis of merit. There being no ambiguity in the

resolutions as adopted by the managing committee in its meeting held on 26.04.1997, with regard to the placement of candidates against various posts i.e. the placement of such candidates on merit, it has to be noted that the petitioner, herein, was placed above the respondent No. 6 in the select list prepared against the post of Lower Division Assistants on the basis of merit.

24. It is immaterial as to the factors that may have been considered by the Managing Committee for determination of merits of the candidates, herein. The said position, at this distant point of time, cannot be allowed to be questioned. However, the Managing Committee of the college having in its resolution categorically stated that the candidates were placed against the posts, in question, strictly, in accordance with merit; this Court would hold that the placements, therein, was in pursuance of a process of selection carried-out by the said Committee. The petitioner, herein, having been placed at Serial No. 1, on merit; such placement ought to be given some meaning.

25. The Director, Higher Education Department, Assam, while issuing the speaking order, dated 22.10.2021, having not reckoned the process as adopted by the Managing Committee of the college, in question, prior to appointment of the petitioner and the respondent No. 6, herein, against the post of Lower Division Assistants; this Court is of the considered view that the conclusion as arrived at vide the speaking order, dated 22.10.2021, with regard to the issue of inter-se seniority between the petitioner and the respondent No. 6, was so arrived at by ignoring the consideration relevant to the matter and accordingly, the same is liable to be interfered with.

26. In view of the conclusions as reached hereinabove by this Court, the speaking order, dated 22.10.2021, is hereby set aside.

27. In view of the interference made by this Court with the speaking order, dated 22.10.2021; following directions are being passed:

(i). The Director, Higher Education Department, Assam, would now re-consider the issue of inter-se seniority between the petitioner, herein, and the respondent No. 6.

(ii). The Director, Higher Education Department, Assam, while considering the issue of inter-se seniority between the petitioner and the respondent No. 6, would take into consideration, the resolutions, as adopted by the Managing Committee of the college in its meeting held on 26.04.1997 as well as the contention of the petitioner herein, with regard to the resolutions as adopted by the Governing Body of the said college in its meeting held on 30.01.2004.

(iii). The Director, Higher Education Department, Assam, on consideration of the said resolutions of the Governing Body as adopted in its meeting held on 26.04.1997, as well as in its meeting held on 30.01.2004, and upon hearing the petitioner, the respondent No. 6 as well as the college authorities; proceed to pass appropriate orders in the matter towards determining the issue of inter-se seniority between the petitioner and the respondent No. 6, herein.

(iv). Till the consideration as mandated hereinabove, is made; the petitioner, herein, shall be permitted to continue as a Senior Assistant in the said college while the respondent No. 6 would so continue in her services as a Junior Assistant of the college, in question.

(v). The above position would be, thereafter, regulated in terms of the orders that would now be passed by the Director, Higher Education Department, Assam, in terms of the directions as passed by this Court hereinabove.

(vi). The exercise as now required to be carried-out in terms of the directions passed by this Court hereinabove, shall be so initiated and completed by the Director, Higher Education Department, Assam, within a period of 3(three) months from the date of receipt of a certified copy of this order, either, from the petitioner, or, from the respondent No. 6.

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

JUDGE

Comparing Assistant