

GAHC010222722023



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

Case No. : WP(C)/5784/2023

JAHIRUL ISLAM
SON OF LATE ABU FAZAL HAQUE,
VILL.- FORINGAPARA,
P.O.- LAKHIPUR,
DIST.- GOALPARA, ASSAM,
PIN- 783129.

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF
ASSAM,
SECONDARY EDUCATION DEPARTMENT,
DISPUR, GUWAHATI-6.

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

3:THE INSPECTOR OF SCHOOLS
GDC
GOALPARA
P.O.- GOALPARA

DIST.- GOALPARA
ASSAM.

4:NANI GOPAL KARMAKAR
S/O- LT. TARAPADA KARMAKAR

ADDITIONAL TEACHER (CONTRACTUAL)

SIMULBARI HIGHER SECONDARY SCHOOL

VILL- SIMULBARI
P.O.- AOLATOLI

DIST.- GOALPARA
ASSAM
PIN- 783129

Advocate for the Petitioner : MR. N H BARBHUIYA, MS. S. DEY, MS. N.A. LASKAR

Advocate for the Respondent : SC, SEC. EDU., MR. A BORUA (r-4), MS. P BHATTACHARYA (r-4), MR. T J MAHANTA (r-4)

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

02-09-2024

Heard Ms. S. Dey, learned counsel for the petitioner and Ms. H. Terangpi, learned Standing Counsel, Secondary Education Department for the respondent Nos. 1 to 3. Also heard Ms. P. Bhattacharya, learned counsel for the respondent No.4.

2. Grievance of the petitioner is that without considering his status and seniority, the Inspector of Schools, Goalpara District Circle by order under No. GDC/Venture/Pt-II/2022-2023/4573 dated 04.04.2023 allowed the respondent No.4 to act as the Academic in-Charge of Simulbari Higher Secondary School on the basis of the Resolution No.1 dated 22.03.2023 of the School Management and Development Committee (SMDC) of said Simulbari Higher Secondary School for smooth running of the environment and academic side as the earlier in-Charge Principal of the School retired from service on 22.02.2023, on attaining the age of superannuation.

3. The petitioner contended that he is the senior most Assistant Teacher of said

Simulbari H.S. School, whereas, the respondent No. 4 was only a contractual Teacher.

4. It is to be noted herein that pursuant to the order of the State Government in the Education Department dated 31.03.2017 Simulbari M V School was amalgamated with Simulbari High School. After provincialisation of Simulbari H. S. School by the State Government in the Education Department vide order dated 30.11.2021, said Simulbari High School was subsequently amalgamated with the former H. S. School. In Simulbari High School, the petitioner was the senior most Assistant Teacher, he received Graduate Scale of Pay since 22.06.1993, also obtained M.A. Degree, whereas, the respondent No.4 who was appointed only as a contractual Teacher on 14.09.2010 whose seniority is at 5th position, being an additional teacher as per the Assam Secondary Education (Provincialised School) Service Rules, 2018.

5. Aggrieved with the order of the Inspector of Schools, Goalpara District Circle dated 04.04.2023 allowing the respondent No.4 to hold the Academic in-Charge of said Simulbari H.S. School, the petitioner has filed this writ petition.

6. Initially, the Court by order dated 09.10.2023 considering the provision of Rule 12 of the *Assam Secondary Education (Provincialised Schools) Service Rules, 2018* came to the view that the Principal of a Higher Secondary School is to be appointed by the Director of Secondary Education, Assam by following the procedure provided in said 2018 Rules, whereas, the impugned order dated 04.04.2023 was issued by the Inspector of Schools, Goalpara allowing the respondent No.4 to be the in-Charge Principal of the said H.S. School, though he is not the appointing authority and also below the appointing authority as per the provision of Rule 12 of the said 2018 Rules, by order dated 09.10.2023 stayed the said order dated 04.04.2023 passed by the Inspector of Schools, Goalpara.

7. With regard to the ex-parte stay order dated 09.10.2023, the respondent No.4 filed an interlocutory application, being I.A.(C) No. 72/2024. A Co-ordinate Bench of this Court after hearing the petitioner as well as the respondent No.4 and also the

Secondary Education Department of the State, on 19.02.2024 came to the finding, which are extracted herein below:--

“(5) On perusal of the impugned order dated 04.04.2023, issued by the Inspector of Schools, who is the In-Charge Principal of the said School, find that same clearly mentioned that the applicant/respondent No.4 is allowed to act as the Academic In-charge of the Higher Secondary School for the smooth running of the school environment and academic side. It is to be taken note that the interest of the students and the School should be given preference to any other individual dispute with regard to holding of charge by the teacher of the said school.

(6) Since the order dated 04.04.2023, allowed the applicant/respondent No.4 act only as the Academic In-charge for the betterment of the school, while holding the In-charge Principal to be himself by the Inspector of Schools, I prima facie find no infirmity in the impugned order dated 04.04.2023.

(7) The appointment/arrangement to hold the charge of Academic In-charge for the betterment of the school, cannot be construed to be an order allowing the applicant/respondent No.4 in charge of Principal of the school.

(8) In view of above, I am of the prima facie view that the order dated 04.04.2023, allowing the applicant/respondent No.4 to act as an Academic In-Charge cannot be considered to be an order for allowing to hold the In-charge Principal of the said school.

(9) Thus, I am of the view that the order dated 09.10.2023 is liable to be modified. Accordingly, the applicant/respondent No.4 shall be allowed to act as the Academic In-charge of the Simulbari Higher Secondary School forthwith.

(10) It is made clear that the allowing the applicant/respondent No.4 to act as the Academic In-charge of the Simulbari Higher Secondary School shall not be construed that he would be allowed to hold the charge of In-Charge Principal of the said school.”

8. Accordingly, the Co-ordinate Bench by order dated 19.02.2024 vacated the ex-parte stay order dated 09.10.2023 and allowed the respondent No. 4 to act as the Academic in-Charge of the said Simulbari H.S. School forthwith.

9. Aggrieved with the same, it is submitted by Ms. Dey, learned counsel that the petitioner preferred an appeal, being Writ Appeal No. 155/2024. However, on 15.05.2024, the petitioner had withdrawn the said writ appeal.

10. As the Co-ordinate Bench after hearing the learned counsels for the parties, prima facie came to the view that to act as an Academic in-Charge of an Educational Institution cannot be considered to be an order for allowing to hold the in-Charge

Principal of the said Institution and since the petitioner failed to establish any material before the Court that by order dated 04.04.2023 the respondent No.4 has been allowed to hold the post of In-Charge Principal of said Simalubari Higher Secondary School, this writ petition being devoid of merit, stands dismissed.

JUDGE

Comparing Assistant