

GAHC010237742023



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

Case No. : WP(C)/6190/2023

SANJIB SEKHAR BHUYAN,
SON OF-LATE SISHU RAM BHUYAN,
VILL- PHULBARI, P.O.- MORIGAON,
DIST.- MORIGAON, ASSAM.

.....**Petitioner**

---VERSUS---

1. THE STATE OF ASSAM,
TO BE REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF
ASSAM, SCHOOL EDUCATION DEPARTMENT,
DISPUR, GUWAHATI-06.

2:THE DIRECTOR OF SECONDARY EDUCATION, ASSAM,
KAHILIPARA, GUWAHATI- 781019.

3:THE INSPECTOR OF SCHOOLS,
DIBRUGARH DISTRICT CIRCLE,
DISTRICT- DIBRUGARH, ASSAM.

.....**Respondents**

- B E F O R E -

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

For the Petitioner	:	Mr. A.R. Bhuyan, Advocate.
For the Respondents	:	Mr. U. Sarma, Standing Counsel, Education (Secondary) Department.

Date of Hearing & Order : **29.01.2024**

JUDGMENT AND ORDER (ORAL)

Heard Mr. A.R. Bhuyan, learned counsel for the petitioner. Also heard Mr. U. Sarma, learned Standing Counsel, Education (Secondary) Department appearing for the respondents.

2. The petitioner, by way of instituting the present proceedings, has raised a grievance with regard to his possible exclusion from the process underway for recruitment to the vacant posts of Principals in various Higher Secondary Schools of the State on the ground that he has not garnered the teaching experience as mandated under the provisions of Rule 12(3)(ii) and Rule 12(3) (iv) of Assam Secondary Education (Provincialised Schools) Rules, 2018 (in short, Rules of 2018).

3. The facts requisite for consideration of the issue arising in the present proceedings are noted as under.

4. The petitioner was appointed as a Graduate Teacher (Science) in Lakhimpur Government Higher Secondary School vide order dated 16.02.2006. The petitioner joined his such services, in pursuance to the said order of appointment dated 16.02.2006, on 17.02.2006. It is to be noted that the petitioner earlier, in pursuance to an advertisement issued on 08.02.2003, had submitted his application for being considered for recruitment against the post of Post Graduate Teacher (Science) in Higher Secondary School of the State. The recruitment process, as initiated vide the said advertisement dated 08.02.2003, was concluded only in the year 2013 and the petitioner, on his selection, was vide order dated 06.04.2013 appointed as a Post Graduate

Teacher at Meragarh N. Dev Higher Secondary School, Majuli (Jorhat).

5. The petitioner by resigning from the post of Graduate Teacher in Lakhimpur Government Higher Secondary School, joined against the post of Post Graduate Teacher (Biology) in Meragarh N. Dev Higher Secondary School on 22.04.2013. Thereafter, the petitioner, on the basis of a mutual transfer effected in his case and another teacher came to be transferred and posted at Dinjoy H.M. Higher Secondary School vide an order dated 28.06.2023. The petitioner is presently discharging his duties as a Post Graduate Teacher (Biology) in Dinjoy H.M. Higher Secondary School.

6. The respondent No.1, vide his communication dated 11.09.2023, required the Director of Secondary Education, Assam to furnish the list of vacancies in the post of Principal of Higher Secondary Schools and Headmasters of High Schools for initiating the process of selection against the said vacant post.

7. In terms of the said letter dated 11.09.2023, the Director of Secondary Education, Assam vide communication dated 26.09.2023 required the jurisdictional Inspector of Schools to submit the vacancy position against the post of Principal and Headmaster of Provincialised Secondary Schools under their respective jurisdictions, within 03.10.2023 in the format as was provided for in the said communication. The vacancies to be reported, were the vacancies arising against the said posts till 31.12.2023.

8. The petitioner, on coming to learn of the said process, had made enquiries with the respondent authorities disclosing the particulars of the services rendered by him as a Graduate Teacher and thereafter, as a Post Graduate Teacher. During such enquiry, he was given to understand that in terms of the provisions of Rule 12 of the said Rules of 2018, the teaching experience

garnered by him based on his such services would not be reckoned and would be held to be insufficient to be considered for recruitment against the post of Principal as and when the said posts are so advertised to be filled up.

9. Accordingly, the petitioner basing on the said premises has approached this Court by way of instituting the present proceedings.

10. The issue in the present proceedings revolves around the interpretation of Rule 12 and more particularly, Rule 12(3)(ii) and Rule 12(3)(iv) of the said Rules of 2018.

The provisions of Rule 12 being material to the present proceedings, the same is extracted hereinbelow:

“12. Recruitment of Principal and procedure thereof-

(1) *The posts of the Principal in provincialised Higher Secondary Schools shall be filled up by direct recruitment from the candidates amongst the cadre of Post Graduate Teachers of Senior Secondary and Higher Secondary School and Graduate Teachers of Higher Secondary School as per procedure under sub-rule(5).*

(2) *The posts of the Principal in provincialised Senior Secondary schools shall be filled up by direct recruitment from the candidates amongst the cadre of Post Graduate Teachers of Senior Secondary and Higher Secondary School as per procedure under sub-rule (5).*

Explanation:- The Senior Secondary and Higher Secondary School shall include any Senior Secondary and Higher Secondary School in the State.

(3) *The minimum qualifications for appointment to the post of Principal in Higher Secondary School and Senior Secondary School shall be as follows:-*

- (i) *The candidate must be M.A./M.Sc./M.Com with B.T./B.Ed. degree from any recognized University having uniform good academic career. In respect of Hindi Teacher having degree qualification, the Hindi ‘Parangat’ and ‘Nishanat’ shall be considered instead of B.T/B.Ed;*
- (ii) *The candidate must have rendered at least 15 years of service as Post Graduate Teachers in any of the provincialised Higher Secondary/Senior Secondary School; or*

- (iii) *The candidate must have rendered at least 5 years of service as Vice-Principal in any of the Provincialised Higher Secondary School; or*
- (iv) *The candidate must have 17 years of teaching experience as Graduate Teacher in any Higher Secondary School;*
- (v) *The age of the candidate must not be more than 57 years as on the first January of the year of recruitment :*

Provided that the service and teaching experience acquired in a School during provincialised period shall be counted. The period rendered prior to provincialisation of the school shall not be counted.

- (vi) *The candidate must possess commanding personality, administrative ability, leadership skills and integrity.*

(4) *The Government in the Secondary Education Department shall issue Office Memorandum with detail recruitment procedure for the post of Principal. There shall be also detail guidelines for assessment of merits of the candidate such as leadership, administrative ability, integrity, academic career etc."*

11. A perusal of the provisions of Rule 12, more particularly, Sub Rule (3)(ii) and Sub Rule (3)(iv) thereof, it is seen that to be eligible for being considered for appointment against the post of Principal, in addition to meeting the other requisite eligibility criterias, a candidate must have garnered at least 15 years of teaching experience as a Post Graduate Teacher in a provincialised Higher Secondary School/Senior Secondary school and/or must have rendered 17 years of teaching experience as a Graduate Teacher in a Higher Secondary School. The service requisite for the purpose of the eligibility with regard to teaching experience to be rendered by a candidate either as a Post Graduate Teacher or a Graduate Teacher is to be required to be so rendered in a Higher Secondary School.

12. The petitioner in the present case was appointed as a Graduate Teacher on 16.02.2006 and he continued in the said capacity till his appointment as a Post Graduate Teacher (Science) on 06.04.2013. In short, the petitioner had

garnered around 10 years of teaching experience as a Post Graduate Teacher and about 7 years of teaching experience as a Graduate Teacher. In the event the provisions of Rule 12(3)(ii) and Rule 12(3)(iv) are considered independently, the petitioner is not found to have acquired the eligibility criteria with regard to teaching experience for being considered for the post of Principal of a provincialised Higher Secondary School/Senior Secondary School. What is to be noted in the present case is that the provisions of Rule 12(3)(ii) and Rule 12(3)(iv) pertain to the teaching experience of a candidate participating in the said selection process. The petitioner admittedly had rendered continuous services initially as a Graduate Teacher and then as a Post Graduate Teacher in a Higher Secondary School and no dispute in this connection exists. Accordingly, the issue arising is as to whether the services rendered by the petitioner in two separate cadres in a Higher Secondary School i.e. Lakhimpur Government Higher Secondary School as a Graduate Teacher and as a Post Graduate Teacher in Meragarh N. Dev Higher Secondary School and Dinjoy H.M. Higher Secondary School is requisite to hold him to be eligible to be considered for recruitment to the post of Principal as and when the process for filling up the vacancies against the said post is initiated. However, the petitioner had only completed around 7 years of service as a Graduate Teacher and around 10 years of service as a Post Graduate Teacher. The provisions of Rule 12 mandate that a candidate to be eligible must have 15 years of teaching experience as a Post Graduate Teacher and/or 17 years teaching experience as a Graduate Teacher in a Higher Secondary School. In the event the services of the petitioner with effect from the date of initial appointment is reckoned i.e. with effect from 16.02.2006, the petitioner, as on date has garnered more than 17 years of teaching experience, but his experience was so garnered by serving in two different grades.

13. On an consideration made with regard to the provisions of Rule 12(3)(ii) and Rule 12(3)(iv), it is seen that the said two provisions pertain to acquisition of teaching experience. In the event the said Rules are to be read independently then the petitioner must be held to be ineligible to participate in the selection process for the post of Principal inasmuch as on date he has not garnered more than 15 years of teaching experience as a Post Graduate Teacher or teaching experience of 17 years as a Graduate Teacher.

However, the said provisions cannot be given a narrow meaning and the services of the petitioner with effect from the date of his initial appointment i.e. from 16.02.2006 being continuous in nature and such services having been rendered by him in a Higher Secondary School, the entire services rendered by the petitioner as a Graduate Teacher and then as a Post Graduate Teacher has to be reckoned together for the purpose of determining his teaching experience and the petitioner having garnered more than 17 years of teaching experience during the course of his service, he is required to be held to be satisfying the requirement with regard to teaching experience as mandated under the provisions of Rule 12 of the said Rules of 2018.

Further the petitioner having garnered such teaching experience by rendering service in Higher Secondary Schools since the date of his initial appointment, he would be eligible for being considered for recruitment to the post of Principal as and when the recruitment process for the same is initiated.

14. In considered view of this Court given the manner in which the provisions of Rule 12 have been structured, more particularly, the provisions of Rule 12(3) (ii) and Rule 12(3)(iv) thereof, the same cannot be read independently but must be read conjointly inasmuch as both the said provisions mandate possession of

a particular length of teaching experience by a candidate concerned for being considered for appointment as a Principal of a provincialised Higher Secondary School and given the teaching experience garnered by the petitioner he must be held to be satisfying such conditions enshrined under the Rules of 2018.

15. What is to be noted here is that such teaching experience must be garnered in a Higher Secondary School. The petitioner admittedly having served in a Higher Secondary School since the date of his initial appointment, the services rendered by him as a Graduate Teacher with effect from 16.02.2006, in the considered view of this Court cannot be ignored and the said services and the services so rendered by him on his subsequent appointment as a Post Graduate Teacher (Science) with effect from 06.04.2013 has to be understood to be in continuance of the services rendered by the petitioner as a Graduate Teacher with effect from 16.02.2006. In the event the Rule 12(3)(ii) and Rule 12(3)(iv) is conjointly read, the petitioner has garnered more than 17 years of teaching experience by now and would be eligible in terms of the provisions thereof to be considered for recruitment to the post of Principal as and when the said process would stand initiated.

In the event the petitioner's services as a Post Graduate Teacher (Science) is held to be in continuance of his earlier services as a Graduate Teacher in Lakhimpur Government Higher Secondary School, no prejudice would be caused to any person and the petitioner would be entitled to have his case considered for recruitment against the post of Principal on merits.

16. It is to be noted that in the event the petitioner had continued in his services as a Graduate Teacher in pursuance to such appointment effected on 16.02.2006, the petitioner would have by now garnered 17 years of teaching

experience as a Graduate Teacher and he would have been eligible for being considered for appointment against the post of Principal as and when the recruitment process thereon is initiated. In that view of the matter, the services as rendered by the petitioner as a Graduate Teacher and the teaching experience garnered by him in course of such services, cannot be held to have been wiped out on account of his subsequent appointment as a Post Graduate Teacher. The teaching experience as held herein above, garnered by the petitioner against both the said posts have to be reckoned and such teaching experience, being garnered by the petitioner by working in the Higher Secondary Schools, he is to be held fulfilled the criteria with regard to teaching experience as provided under the provisions of Rule 12 of the said Rules of 2018.

17. In the said view of the matter, the petitioner, having been held to have, as on date the, requisite experience for having his case considered for appointment as a Principal of a Higher Secondary School as and when the recruitment process thereon is initiated, the apprehension as raised by the petitioner is held to be misplaced and the petitioner is held to be eligible for having both the teaching experience as garnered by him as a Graduate Teacher and as a Post Graduate Teacher to be reckoned jointly for the purpose of determining his eligibility in terms of the provisions of Rule 12(3)(ii) and Rule 12(3)(iv) of the said Rules of 2018.

18. It is to be noted that taking the services of the petitioner as a Graduate Teacher with effect from 16.02.2006 till the present date the petitioner has already garnered around 17 years of teaching experience and by 17.02.2024, the petitioner would have garnered more than 18 years of teaching experience and as such, the petitioner having acquired the minimum teaching experience

as required under the provisions of Rule 12 i.e. 17 years, he must be held eligible for having his case considered for recruitment against the post of Principal.

19. In view of the said conclusions reached by this Court, the present petition is disposed of holding that the services rendered by the petitioner both as a Graduate Teacher in the Higher Secondary School with effect from 16.02.2006 and subsequently as a Post Graduate Teacher with effect from 06.04.2013 again in a Higher Secondary School must be reckoned jointly for the purpose of determining his eligibility with regard to teaching experience in a Higher Secondary School in terms of the Rule 12(3)(ii) read with Rule 12(3)(iv) of the said Rules of 2018. Accordingly, the petitioner having garnered around 17 years of teaching experience as on date and by 17.02.2024, would have garnered 18 years of teaching experience, the petitioner is held to have satisfied the eligibility criteria prescribed with regard to teaching experience, under the Rule 12(3)(ii) and Rule 12(3)(iv) of the Rules of 2018 by reading the said Rules conjointly, when the said posts are put up for recruitment by the respondent authorities.

20. In the event the petitioner applies for having his case considered for recruitment against the post of Principal as and when the same is advertised, the respondent authorities shall not reject the case of the petitioner holding that the petitioner does not have the required length of service of 15 years as a Post Graduate Teacher or 17 years as a Graduate Teacher separately but in terms of the conclusions reached by this Court herein above, would hold that by reckoning the continuous services of the petitioner initially as a Graduate Teacher and then as a Post Graduate Teacher hold that he fulfills the criteria of having 17 years of teaching experience as mandated under the provisions of

Rule 12 of the Rules of 2018 and permit the petitioner to participate in such selection. The petitioner's case would be thereafter considered by the respondent authorities in the manner as mandated in the said Rules of 2018 and in the event the petitioner satisfies the other eligibility criteria as mentioned in Rule 12 of the said Rules of 2018 for recruitment to the post of Principal, his case would be considered on merit.

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

JUDGE

Comparing Assistant