

GAHC010237872023



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

Case No. : WP(C)/6347/2023

MD. OBIR ALI
S/O- MD. NUR MOHAMMAD,
VILL- NO- NO-1 ARIMARI, P.O- KJHARUPETIA,
DIST- DARRANG, ASSAM, PIN-784115

VERSUS

1: THE STATE OF ASSAM AND 3 ORS REP. BY THE COMMISSIONER AND
SECRETARY TO THE GOVT. OF ASSAM, HIGHER EDUCATION
DEPARTMENT DISPUR, ASSAM, GUWAHATI-6.

2: THE DIRECTOR OF HIGHER EDUCATION
ASSAM C KAHILIPARA GUWAHATI-781019

3: THE PRINCIPAL KHARUPETIA COLLEGE X
P.O.-KHARUPETIA DIST- DARRANG (ASSAM) PIN-784115

4: THE GOVERNING BODY KHARUPETIA COLLEGE
P.O.-KHARUPETIA DIST- DARRANG (ASSAM) PIN-78411

Advocate for the Petitioner : MR K BHUYAN

Advocate for the Respondent : SC, HIGHER EDU

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 19-01-2024

Heard Mr. K. Bhuyan, learned counsel for the petitioner. Also heard Mr.
K. Gogoi, learned standing counsel, Education (Higher) Department,

representing the respondent Nos.1 & 2.

The petitioner, by way of filing the present proceeding, has presented a challenge to a speaking order dated 28.08.2023 issued by the Secretary to the Government of Assam, Higher Education Department, by which the prayer of the petitioner for regularization of his services as a Grade-IV staff of Kharupetia College, Kharupetia, was rejected.

The petitioner was initially engaged as a Grade-IV employee in Kharupetia College, Kharupetia by the College Authorities vide an appointment order dated 06.11.1997. On the date of engagement of the petitioner as a Grade-IV employee at the said College, the said College was in the venture stage. The said College was taken over by the Government under the Deficit System of Grants-in-Aid w.e.f. 25.03.1998. After coming into force of the Assam College Employees (Provincialisation) Act, 2005 (for short, "2005 Act"), the services of the employees in the said College working in the sanctioned post came to be provincialised. However, on account of the fact that only 5(five) Grade-IV posts were sanctioned to the said College, services of 5(five) Grade-IV employees senior to the petitioner were came to be provincialised. The service of the petitioner, who stood at serial No.7 amongst the Grade-iv employees on the basis of seniority determined with regard to their respective dates of appointment in the said College, could not be provincialised for want of a sanctioned post. It is to be noted that the petitioner is working against a non-sanctioned post.

The persons provincialised in their services in terms of the provisions of the 2005 Act having retired from their services on reaching the age of superannuation, the College Authorities, from time to time, submitted proposals before the Director of Secondary Education, Assam, seeking approval for

appointment of the petitioner against such vacancies in the sanctioned vacant Grade-IV post becoming available in the College. The petitioner also preferred representations from time to time.

The proposals submitted by the College Authorities for provincialisation of the services of the petitioner against the vacant sanctioned post of Grade-IV becoming available in the College and also the representations made in this connection by the petitioner having not evoked any response from the respondent authorities, the petitioner had earlier approached this Court by way of instituting WP(C) No.2609/2023, *inter alia*, praying for regularization of his services against any of the available vacant sanctioned post of Grade-IV in the College.

This Court, vide order dated 26.06.2023, after noticing the facts existing in the matter, was pleased to dispose of the said writ petition requiring the Commissioner & Secretary to the Government of Assam, Department of Education (Higher) to consider and dispose of the representation submitted by the petitioner on 02.04.2023 on its own merits and in accordance with law.

In pursuance to the said directions passed by this Court vide order dated 26.06.2023, the Secretary to the Government of Assam, Higher Education Department, vide a speaking order dated 28.08.2023, by holding that the Grade-IV posts as available in the College in terms of the provisions of the 2005 Act and the Assam College Employees (Provincialisation) Rules, 2010 (in short, "2010 Rules") are required to be filled up on direct recruitment basis by following a due selection process and that there existed no provision either under the said 2005 Act or the 2010 Rules for adjustment/regularization of Grade-IV staff working against the non-sanctioned post, against sanctioned post, rejected the prayer of the petitioner for regularization of his services.

Assailing the said speaking order dated 28.08.2023, the present proceeding have been instituted.

The provisions of the 2005 Act, more particularly, Section 6 thereof, mandates that appointment against the teaching and non-teaching posts available in a College shall be made by the Director of Higher Education, Assam on the basis of a selection and recommendation of the Governing Body of the respective Colleges. The provisions of Section 6 when read with the method of recruitment as provided under Rule 5 of the said 2010 Rules brings to forefront that the sanctioned vacant posts of Grade-IV available in a provincialised College is to be filled up only on direct recruitment basis.

The petitioner, admittedly, is working against a non-sanctioned post since the date the College was brought under the Deficit System of Grants-in-Aid by the Government. It is the stand of the departmental authorities that in terms of the provisions of the 2005 Act read with the provisions of 2010 Rules, the services of persons working against non-sanctioned post cannot be regularized and/or adjusted against the sanctioned post and the authorities are bound to follow the procedure prescribed under the 2010 Rules and effect appointments on direct recruitment basis in pursuance to a due process of selection.

In absence of any provisions existing in the 2005 Act and the 2010 Rules permitting adjustment/absorption of a Grade-IV employee working against a non-sanctioned post to be accommodated against a sanctioned post, it is not open to this Court to pass any direction for such accommodation in clear violation of the provisions of the 2005 Act read with the 2010 Rules.

It is a settled position of law that even if a person is continuing in his services against a non-sanctioned post for a long period of time, it cannot be

said that such a person has acquired any vested legal right to be accommodated against a sanctioned post by way of a process of regularization. The appointment against a sanctioned vacant post on regular basis must be strictly effected in terms of the provisions of the Rules governing the service wherein such post exists and in no other manner.

In the present case, it is to be noted that there is no scheme for regularization of such category of employees as the petitioner. The only manner in which the petitioner can be appointed against a sanctioned vacant post is through a process of direct recruitment. It is to be noted that the petitioner in the present writ petition has not made any statement with regard to the fact that he was actually working against a sanctioned post since the date the College had been brought under the Deficit System of Grants-in-Aid by the Government and further that his such appointment was in pursuance to a due process of selection. In absence of the said particulars and given the scheme of the 2005 Act and the 2010 Rules, it is not open to this Court to direct the respondent authorities to consider the case of the petitioner for regularization of his services against any available sanctioned vacant post of Grade-IV. Accordingly, the prayer of the petitioner for regularization of his services against a sanctioned vacant post of Grade-IV available at Kharupetia College, Kharupetia, cannot be accepted and no direction in this connection can be issued by this Court to the respondent authorities.

However, as brought on record, there exists vacancy in the sanctioned post of Grade-IV and the same have to be filled up by way of direct recruitment. Accordingly, the petitioner is required to submit his application in the event the said sanctioned vacant Grade-IV posts are advertised by the authority competent to make such advertisement and to participate in the said

selection process. In the event the petitioner makes any such application in pursuance to the advertisement that may be published for recruitment against the available vacant sanctioned Grade-IV post(s) in Kharupetia College, Kharup, the authorities shall consider his case by extending to him weightage for the services that he has rendered in the College since the date of his initial appointment effected on 06.11.1997. Further, in the event it is found that the petitioner at the time of issuance of the advertisement had become over aged, the petitioner shall submit an application before the competent authority for condonation of his over age and the said authority shall sympathetically consider the same considering the length of the services rendered by the petitioner in the College and condone his such over age facilitating his participation in the selection process. In the event the petitioner is selected in the recruitment process and is placed within the merit position mandated after giving him the weightage, as directed hereinabove, the appointing authority shall appoint the petitioner against the Grade-IV post so advertised.

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

JUDGE

Comparing Assistant