

GAHC010265612023



2024:GAU-AS:12480

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

Case No. : WP(C)/6852/2023

TRAILOKYA CHOUDHURY
S/O- LATE LAKSHMI KANTA CHOUDHURY,
VILL AND P.O.- BHOTANTA MOHITARA,
PS- PATACHARKUCHI,
DIST.- BARPETA (ASSAM),
PIN- 781328.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM,
DEPARTMENT OF SCHOOL EDUCATION,
ASSAM, DISPUR, GUWAHATI-06.

2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
CUM CHAIRMAN
STATE LEVEL COMMITTEE FOR TRANSFER
ASSAM
KAHILIPARA
GUWAHATI-19.

3:THE MISSION DIRECTOR
SAMAGRA SIKSHA ABHIJAN
ASSAM
KAHILIPARA
GUWAHATI-19.

4:THE DISTRICT COMMITTEE FOR TRANSFER
BAREPTA
REPRESENTED BY ITS CHAIRMAN CUM ADDITIONAL DEPUTY

COMMISSIONER (EDUCATION)

BARPETA
ASSAM
PIN- 781301.

5:THE INSPECTOR OF SCHOOLS
BARPETA DISTRICT CIRCLE
BARPETA
ASSAM
PIN- 781301

Advocate for the Petitioner : MR. K R PATGIRI, MS K BARMAN,MS CHITRALEKHA DAS

Advocate for the Respondent : SC, ELEM. EDU, SC, SSA,GA, ASSAM

Linked Case : WP(C)/5729/2023

TRAILOKYA CHOUDHURY
S/O LATE LAKSHMI KANTA CHOUDHURY
VILL AND P.O.-BHOTANA MOHITARA
P.S.-PATACHARKUCHI
DIST-BARPETA (ASSAM)
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REPRESENTED BY ITS CHAIRMAN CUM THE ADDITIONAL DEPUTY
COMMISSIONER (EDUCATION) BARPETA
ASSAM
PIN-781301

5:THE INSPECTOR OF SCHOOLS
BARPETA DISTRICT CIRCLE
BARPETA
ASSAM
PIN-781301

Advocate for : MR. K R PATGIRI
Advocate for : SC
SEC. EDU. appearing for THE STATE OF ASSAM AND 4 ORS

BEFORE

HON'BLE MR. JUSTICE LANUSUNGKUM JAMIR

O R D E R

11.12.2024

Heard Mr. K.R. Patgiri, learned counsel for the petitioner as well as Mr. N.J. Khataniar, learned Standing Counsel, Department of School (Secondary) Education, Assam for the respondents.

2. Both the writ petitions having been common cause of action and the relief sought for being identical are being disposed of by this common order.

3. The petitioner while serving as Principal of Kamargaon H.S. School, Kamargaon, applied for transfer to any Higher Secondary School near his

residence through the online portal launched by the respondent authorities. It is the case of the petitioner that while he was functioning as Principal of Kamargaon H.S. School, he developed certain health issues inasmuch as, he had to travel for about 04(four) kilometres from his residence to the said Kamargaon H.S. School. Accordingly, the Inspector of Schools, BDC, Barpeta on the recommendation of the District Level Committee of Transfer and Posting of Teachers, issued an Order dated 07.08.2023, transferring the petitioner from Kamargaon H.S. School to Bajali H.S. School, Barpeta district. However, as no release order was issued to the petitioner, the petitioner approached this Court by filing WP(C) No.5729/2023.

4. During the pendency of WP(C) No.5729/2023, the in-charge Inspector of Schools, BDC, Barpeta again issued an order on 01.11.2023, cancelling the earlier order dated 07.08.2023 on the ground that the Assam Elementary and Secondary School Teachers (Regulation of Posting and Transfer) Act, 2020 (the Act of 2020 in short) as well as the Assam Elementary and Secondary School Teachers (Regulation of Posting and Transfer) Rules, 2022 (the Rules of 2022 in short) does not have any provision for transfer of a regular Principal. On that ground, the transfer of the petitioner to Bajali H.S School, Barpeta district was cancelled. Being aggrieved, the petitioner again filed the second writ petition being WP(C) No.6852/2023.

5. The respondent No.2/Director of Secondary Education, Assam has filed counter affidavit in WP(C) No.5729/2023, wherein it is stated that the transfer of the petitioner vis-a-vis the recommendation of the District Level Committee in respect of the petitioner could not be implemented as it was

found that the Act of 2020 as well as the Rules of 2022 do not provide any provision of transfer of a regular Principal of Government/ Provincialised Secondary Schools. Accordingly, the Director of Secondary Education, Assam by a letter dated 03.10.2023, requested the Inspector of Schools, BDC, Barpeta for placing the matter before the District Level Committee to re-visit the earlier recommendation and thereafter take necessary action as per the Rules and procedures. Accordingly, the matter was placed before the District Level Committee, which held its meeting on 11.10.2023 and in the said meeting, the District Level Committee decided to cancel the transfer order of the petitioner and accordingly, the in-charge Inspector of Schools, BDC, Barpeta issued the order dated 01.11.2023, cancelling the transfer of the petitioner to the Bajali H.S School, Barpeta district.

6. The learned Standing Counsel, Department of School (Secondary) Education, Assam submits that the transfer of the petitioner is not permitted in view of the exclusive provision made under Section 2(p) of the Act of 2020, which provides the definition of teachers. He submits that teachers mean Teachers or Tutors of both Elementary and Secondary Schools, drawing salary or fixed pay or honorarium from the Government exchequer or from the Samagra Siksha Abhiyan (SSA), Assam excluding the Head of Schools. Under the circumstances, there is no provision either under the Act of 2020 as well as the Rules of 2022 to permit the respondents to transfer a Principal from one Higher Secondary School to another Higher Secondary School.

7. The learned counsel for the petitioner on the other hand submits that though there may be no provision for transfer of a Principal from one

Higher Secondary School to another Higher Secondary School under the Act of 2020 as well as the Rules of 2022, the respondents requires to take a humanitarian consideration in respect of the petitioner, inasmuch as, he is having serious health issues to function from Kamargaon H.S. School.

8. After hearing the learned counsel for the parties, both the writ petitions are disposed of by directing the petitioner to make a representation before the Director of Secondary Education, Assam by highlighting all the difficulties faced by him. Let such representation be made within a period of two weeks from today. Thereafter, the Director of Secondary Education, Assam on receipt of the representation, shall consider and dispose of the same in accordance with law within a period of 01(one) month from the date of receipt of the said representation.

9. With the above observations and directions, both the writ petitions are accordingly disposed of.

JUDGE

Comparing Assistant