

GAHC010269602023



2024:GAU-AS:8968

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

Case No. : WP(C)/7040/2023

JYOTSHNA DAS

W/O- AMIYA KUMAR MEDHI, SENIOR MOST GRADUATE TEACHER,
SANKARDEV HIGH SCHOOL, KAMRUP DISTRICT CIRCLE, AMINGAON,
R/O- VILL.- PAKHURIPARA, P.O. NAGARBERA, DIST. KAMRUP, ASSAM,
PIN- 781127.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM,
DEPARTMENT OF SCHOOL EDUCATION, DISPUR, GUWAHATI-6.

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

3:THE INSPECTOR OF SCHOOLS KAMRUP DISTRICT CIRCLE
AMINGAON
DIST. KAMRUP
ASSAM

4:KULEN TALUKDAR
ASSISTANT TEACHER
SANKARDEV HIGH SCHOOL
VILL.- KALUBARI
P.O. NAGARBERA
DIST. KAMRUP
ASSAM
PIN- 781127

Advocate for the Petitioner : MR. A K DUTTA, MR. B PURKAYASTHA,MR. B ZAMAN

Advocate for the Respondent : SC, SEC. EDU., S. J. SAHARIAH (r-4),MR. D SARMAH (r-4)

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

Date of hearing : 24.06.2024

Date of Judgment: 10.09.2024

Judgment & Order(CAV)

Heard Mr. B. Purkayastha, learned counsel for the petitioner. Also heard Mr. U. Sarma, learned standing counsel, Secondary Education Department, appearing on behalf of respondents No. 1 to 3; and Mr. D. Sarma, learned counsel, appearing on behalf of respondent No. 4.

2. The petitioner by way of instituting the present proceeding, has presented a challenge to an order, dated 07.11.2023, issued by the Director, Secondary Education Department, Assam, allowing the respondent No. 4, herein, to hold the charge of the post of Headmaster of Sankardev High School, Kamrup, along with financial power. The petitioner has also presented a challenge to an order, dated 28.02.2005, by which the services of the petitioner was so regularized with immediate effect with a further prayer that the same shall be so made from the date of her initial appointment.

3. The petitioner, herein, was initially appointed as a Science Graduate Teacher by the then District Elementary Education Officer (DEEO), Kamrup, vide order, dated 17.11.1993, and posted at Sankardev ME School, initially, for a period of 4 months. The said initial appointment of the petitioner was extended from time to time and subsequently, vide order, dated 30.08.1994, issued by the then District Elementary Education Officer

(DEEO), Kamrup, such appointment was so extended until further orders.

4. The Sankardev ME School, wherein, the petitioner was so appointed, came to be amalgamated with Sankardev High School vide order, dated 22.09.1999 w.e.f. 07.09.1999. It is seen that subsequent to such amalgamation being effected; the services of the petitioner came to be so regularized with immediate effect by the Inspector of Schools, Kamrup District Circle, Guwahati, vide order, dated 28.02.2005.

5. The petitioner vide her representation, dated 22.03.2005, had prayed before the Inspector of Schools, Kamrup District Circle, Guwahati, that the regularization of her service made w.e.f. 28.02.2005, ought to be so made with effect from the date of her initial joining i.e. 26.11.1993. However, the said prayer of the petitioner was not considered.

6. It is seen that a vacancy so arising in the post of Headmaster in Sankardev High School, a proposal came to be so initiated for filling-up of the said post of Headmaster on in-charge basis. Accordingly, the names of the petitioner as well as the private respondent No. 4 came to be so forwarded by the jurisdictional Inspector of Schools to the Director, Secondary Education Department, Assam. In terms of the processing so made and also on a communication, dated 16.10.2023, issued by the Deputy Secretary to the Government of Assam, Department of School Education, directing for allowing the respondent No. 4, herein, to hold the charge of the post of Headmaster of Sankardev High School, Kamrup; the Director, Secondary Education Department, Assam, vide order, dated 07.11.2023, proceeded to allow the respondent No. 4 to hold the charge of

the post of Headmaster of Sankardev High School, Kamrup, along with financial power.

7. Being aggrieved; the petitioner has instituted the present proceeding praying for reliefs as noticed hereinabove.

8. Mr. Purkayastha, learned counsel for the petitioner, has submitted that the petitioner, herein, with effect from the date of her initial appointment; was drawing her pay and allowances in the Graduate scale of pay and she continued to draw the same even after regularization of her service, so effected vide order, dated 28.02.2005.

9. Mr. Purkayastha, learned counsel, has further submitted that the petitioner being in continuous service with effect from the date of her initial appointment i.e. w.e.f. on 26.11.1993; the seniority of the petitioner ought to be so assigned by also reckoning the services so rendered by her before her service was regularized vide the order, dated 28.02.2005.

10. Mr. Purkayastha, learned counsel, by referring to the provisions of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, more particularly, Rule 24 thereof; has submitted that in case of a Graduate Teacher of an amalgamated school; seniority shall be counted from the date of getting scale of pay meant for a Graduate teacher. The learned counsel, accordingly, has submitted that the seniority of the petitioner ought to be so reckoned w.e.f. 26.11.1993, i.e. the date when she was authorized her salaries in the Graduate scale of pay.

11. Mr. Purkayastha, learned counsel, has submitted that the respondent No. 4, herein, having been authorized his Graduate scale of pay only w.e.f. 03.01.1994, he would be junior to the petitioner, herein, and accordingly, it is the petitioner who would be required to be allowed to hold the charge of the post of Headmaster of Sankardev High School, Kamrup.

12. Mr. Purkayastha, learned counsel for the petitioner, has further submitted that the impugned order of regularization, dated 28.02.2005, having regularized the services of the petitioner only with prospective effect; the same cannot be sustained in-as-much as the said order ought to have been so issued with retrospective effect i.e. regularizing the services of the petitioner with effect from 26.11.1993.

13. Mr. Purkayastha, learned counsel, has, therefore, submitted that the order, dated 28.02.2005, requires an interference to the extent that it is prospective in nature with a further direction to the respondent authorities to consider the petitioner to have been regularly appointed with effect from the date of her initial appointment i.e. 26.11.1993.

14. In the above premises; Mr. Purkayastha, learned counsel for the petitioner, has contended that the impugned order, dated 07.11.2023, allowing the respondent No. 4 to hold the charge of the post of Headmaster of Sankardev High School, Kamrup, along with financial power, would now require an interference from this Court.

15. Mr. Sarma, learned standing counsel, Secondary Education Department, on the other hand, has submitted that the services of the

petitioner having been so regularized only w.e.f. 28.02.2005, the substantive appointment of the petitioner having occasioned only w.e.f. 28.02.2005; the seniority of the petitioner would be reckonable only with effect from the date, her services were so regularized and not from a date prior to such date of regularization of her services. The respondent No. 4, herein, having been appointed as a regular teacher w.e.f. 29.12.1993 and he having been authorized the Graduate scale of pay w.e.f. 03.01.1994; the respondent No. 4 would rank senior to the petitioner, herein, in the cadre of Graduate teachers of the school, in question.

16. Mr. Sarma, learned standing counsel, Secondary Education Department, has also submitted that the petitioner has failed to bring on record, any material to support her claim that her services is called upon to be so regularized w.e.f. 26.11.1993. The learned standing counsel has submitted that in the absence of any material being so brought on record, the challenge to the order, dated 28.02.2005, in addition to being not maintainable on the ground of delay so occasioning; is also not maintainable on merits.

17. Mr. Sarma, learned standing counsel, Secondary Education Department, has further submitted that the respondent No. 4, admittedly, being senior to the petitioner, herein; the challenge to the order, dated 07.11.2023, would not warrant any acceptance from this Court.

18. Mr. D. Sarma, learned counsel appearing for respondent No. 4; by reiterating the fact that the respondent No. 4, herein, was regularly appointed as a Graduate teacher w.e.f. 29.12.1993, and has been drawing

his Graduate scale of pay w.e.f. 03.01.1994; has submitted that the respondent No. 4 was senior to the petitioner, herein, and accordingly, no error has occasioned in the authorities allowing him to hold the charge of the post of Headmaster of Sankardev High School, Kamrup, vide issuance of the order, dated 07.11.2023.

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

20. It is an admitted position that the petitioner, herein, was initially appointed on adhoc basis for a period of 4 months and such appointment was not preceded by any selection process. The initial appointment of the petitioner on adhoc basis came to be so extended and was subsequently, vide order, dated 30.08.1994, extended until further orders. The materials available on record does not reveal that the petitioner had appeared in any selection process for regular appointment as a Graduate teacher in a provincialized High School of the State. The initial appointment of the petitioner on adhoc basis was in an Upper Primary School which school was subsequently amalgamated with a High School i.e. Sankardev High School vide order, dated 22.09.1999, w.e.f. 07.09.1999. It is seen that on amalgamation of the said school; the services of the petitioner was continued in the amalgamated school. However, the said school now came under the control of the Secondary Education Department, Assam. It is also seen that the jurisdictional Inspector of Schools i.e. an authority under the Secondary Education Department, Assam, had vide order, dated 28.02.2005, regularized the adhoc appointment of the petitioner with immediate effect i.e. 28.02.2005. Although the petitioner had submitted

representations for grant of retrospective effect, to the order of her regularization of her service; however, the same was not considered and the said order continued to hold the field until, it was so put to challenge in the present proceeding so instituted before this Court on 05.12.2023.

21. The petitioner, admittedly, being an adhoc appointee, cannot be held to be holding a substantive post in the service till her services were so regularized vide order, dated 28.02.2005. The regularization of the services of the petitioner vide order, dated 28.02.2005, was not made pursuant to any regular process of selection but was so done by way of an administrative exercise carried-out by the jurisdictional Inspector of Schools, after an approval received in this connection from the departmental authorities. Accordingly, the petitioner would not be entitled to count her services w.e.f. 26.11.1993 till 28.02.2005 for the purpose of assignment to her seniority in the cadre of Graduate teacher, in the school, in question.

22. The submission of Mr. Purkayastha, learned counsel for the petitioner, that the petitioner is entitled to count her seniority in the school, in question, in the Graduate cadre with effect from the date of drawal by her of the graduate scale of pay in terms of the provisions of Rule 24(5) of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, is now required to be examined.

23. The provisions of Rule 24(5) of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, is clear. The provisions of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018,

mandates that in case of amalgamation of a ME/MV/Lower Primary School with a Higher Secondary School/High School; the employees of the amalgamated school shall be given seniority with effect from the date they had so joined on substantive basis or regularization.

24. The proviso to the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, mandates that in case of a Graduate teacher, the seniority shall be counted from the date of getting scale of pay meant for a Graduate teacher.

25. The proviso of Rule 24(5) of the said Rules of 2018, therefore, cannot be read in isolation and has to be read in consonance with the provisions of Rule 24(5).

26. The petitioner not being appointed on substantive w.e.f. 26.11.1993, in terms of the provisions of Rule 24(5) of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018; she would not be entitled to reckon her seniority w.e.f. 26.11.1993. The petitioner's services having been regularized only w.e.f. 28.02.2005, in terms of the provisions of Rule 24(5) of the said Rules of 2018; she would be entitled to reckon her seniority with effect from the date of her regularization i.e. w.e.f. 28.02.2005 and not from a date, prior thereto.

27. The drawal of the graduate scale of pay by the petitioner since the date of her initial appointment i.e. w.e.f. 26.11.1993; given the nature of the appointment of the petitioner i.e. it being on adhoc basis, would be of no consequence for reckoning such period of adhoc service for the purpose

of assignment of seniority to her.

28. Admittedly, the respondent No. 4, herein, being so appointed on regular basis w.e.f. 29.12.1993, and he having been authorized the Graduate scale of pay w.e.f. 03.01.1994; the petitioner, herein, being entitled to reckon her services for assignment of seniority w.e.f. 28.02.2005 only; the respondent No. 4 has to be deemed to be senior to the petitioner, herein, in the cadre of Graduate teacher in the school, in question, and accordingly, the respondent No. 4 would be entitled to hold the charge of the post of Headmaster of Sankardev High School, Kamrup, on a vacancy arising therein.

29. In view of the above conclusion; this Court is of the considered view that the order, dated 07.11.2023, issued by the Director, Secondary Education Department, Assam, allowing the respondent No. 4 to hold the charge of the post of Headmaster of Sankardev High School, Kamrup, along with financial power; would not call for any interference.

30. Likewise, the challenge made by the petitioner to the order, dated 28.02.2005, regularizing her services with immediate effect; would also not call for any interference in-as-much as regularization is not a mode of recruitment mandated under the provisions of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, and the petitioner having not demonstrated as to why her such regularization has to be given, a retrospective effect; this Court is of the considered view that the order, dated 28.02.2005, regularizing the services of the petitioner with immediate effect from the said date, would not call for any interference.

31. In view of the conclusions reached by this Court hereinabove; this writ petition is held to be bereft of any merit and the same, accordingly, stands dismissed. However, there shall be no order as to costs.

JUDGE

Comparing Assistant