

GAHC010276242023



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

Case No. : WP(C)/7084/2023

ARPAN KUMAR BARMAN
S/O- LATE K.N. BARMAN, RESIDENT OF AMBIKAGIRI NAGAR, MILAN
PATH, ZOO ROAD, GUWAHATI-24

VERSUS

THE ASSAM HIGHER SECONADRY EDUCATION COUNCIL (AHSEC) AND 3
ORS
BAMUNIMAIDAM, GUWAHATI-21, (REPRESENTED BY ITS THE
CHAIRMAN)

2:THE CHAIRMAN
AHSEC
BAMUNIMAIDAM
GUWAHATI-21

3:THE SECRETARY
AHSEC
BAMUNIMAIDAM
GUWAHATI-21

4:THE ADMINISTRATION COMMITTEE
AHSEC
BAMUNIMAIDAM
GUWAHATI-2

Advocate for the Petitioner : MR. S K TALUKDAR

Advocate for the Respondent : SC, AHSEC

**BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR**

ORDER

Date : 28.05.2024

- 1.** Heard Mr. S.K. Talukdar, learned counsel for the petitioner.
- 2.** Also heard Mr. N.N. Upadhyay, learned Standing counsel, Assam Higher Secondary Education Council, for all the respondents.
- 3.** The petitioner was appointed as Assistant Secretary (Academic – Computer) under the Assam Higher Secondary Education Council (hereinafter Council in short) by an order dated 19.08.1998 issued by the Secretary of the Council. The post of Assistant Secretary (Academic – Computer) was re-designated as Academic Officer (Academic – Computer) by the Council. While the petitioner was serving, as such, the Administration Committee of the Council in its meeting held on 16.12.2017 at Item No.8, approved for creation of two posts of Deputy Secretary for the branches (A) Registration Permission and Recognition, (B) Technical and IT. Thereafter, the Council in its meeting held on 30.12.2017 under Item No.8(A), resolved to upgrade the post of Academic Officer (Academic – Computer) to the rank of Deputy Secretary (Technical and IT), if otherwise eligible.
- 4.** The Administration Committee of the Council, in its meeting held on 21.03.2018, recommended the petitioner to be promoted to the post of Deputy Secretary (Technical and IT) and the post of Academic Officer (Academic – Computer) be abolished. The Council in its meeting held on 29.03.2018 under Item No.7(e), approved the promotion of the petitioner to the post of Deputy

Secretary (Technical and IT) and the post of Academic Officer (Academic – Computer) be abolished immediately after the promotion of the petitioner.

5. Consequent to the resolution passed by the Administration Committee as well as the Council, the Secretary of the Council issued an order dated 30.07.2019 in terms of the resolution of the Council's meeting held on 30.10.2017, placing the petitioner in the IT Section as In-Charge, Deputy Secretary (Technical and IT) to look after the certain activities of the Council.

6. As the petitioner was not given promotion on substantive basis to the post of Deputy Secretary (Technical and IT), he made representations before the concerned authorities of the Council. However, the Administration Committee in its meeting held on 05.08.2022 at Item No.9, came to the opinion that as the post of Deputy Secretary (Technical and IT) being a single cadre post, the post should be filled up through open advertisement. The Council in its meeting held on 31.03.2023 at Item No. C-149/23/01/9, declined to consider the case of the petitioner for promotion to the post of Deputy Secretary (Information Technology) as the Revised Service Regulation does not permit promotion to such post as it was a single cadre post.

7. Being aggrieved with the decision of the Council taken in its meeting held on 31.03.2023, the petitioner is before this Court by way of the present writ petition.

8. Mr. S.K. Talukdar, learned counsel for the petitioner submits that Section 24 of the Assam Higher Secondary Education Act, 1984 (hereinafter the Act of 1984), provides that the Council may subject to the approval of the Government

make regulations for the purpose of carrying out the provisions of the Act and the proviso to Section 24 provides that all the regulations, alterations and revocation thereof shall be subject to the approval of the Government and published in the Official Gazette. He submits that the Revised Service Regulation, under which, the Council in its meeting held on 31.03.2023, declined to give permission for promotion of the petitioner, has not been approved by the Government nor published in the Official Gazette. Therefore, the case of the petitioner could not have been rejected on the basis of a non-existing regulation. He also places reliance on Section 19 of the Act, 1984, which provides that it shall be the duty of the Chairman to see that the provisions of the Act and the regulations made under it, are faithfully observed and the decisions of the Council are duly implemented and he shall have all the powers necessary for this purpose. He therefore submits that when the Council has taken a decision to promote the petitioner to the post of Deputy Secretary (Information Technology), the Chairman should have pursued the decision of the Council and promoted the petitioner to the post of Deputy Secretary (Information Technology). However, it has not been done and therefore, a direction is required to consider the case of the petitioner for promotion to the post of Deputy Secretary (Information Technology).

9. Mr. N.N. Upadhyay, learned standing counsel for the Council, while not denying the facts of the case, submits that the post of Deputy Secretary (Technical and IT) does not exist in the earlier regulation and therefore, the issue of promoting the petitioner to the post of Deputy Secretary (Technical and IT) does not arise. He further submits that the revised service regulation has not been given approval by the Government till date.

10. I have considered the submissions forwarded by the learned counsel for the parties.

11. Rule -24(1) of the Act, 1984, provides that the Council may subject to the approval of the Government make regulations for the purpose of carrying out the provisions of the Act. The proviso to Rule-24 provides that all regulations, alterations and revocation thereof shall be subject to the approval of the Government and published in the Official Gazette.

12. The respondent Nos. 1, 2, 3 & 4 have filed affidavit in opposition in the present case. In the said affidavit-in-opposition, at paragraph No. 5, it is stated that the Revised Service Regulation has already been sent to the Government for its approval vide Office Letter dated 01.02.2022 but no communication is received from the Government in this regard. A bare reading of the statement made in paragraph No. 5 of the affidavit in opposition filed by the respondent Nos. 1, 2, 3 & 4, clearly indicates that the Government's approval in regard to the Revised Service Regulation is yet to be given. It is only after the approval of the Government is given and the same is published in the Official Gazette, the respondents would be in a position to follow the new Revised Service Regulation. However, in the instant case, the Council in its meeting held on 31.03.2023 relied on the revised service regulation, which is yet to get approval from the Government and thereby, rejected the case of the petitioner for promotion to the post of Deputy Secretary (Information Technology) on the ground that it is a single cadre post under the revised service regulation. The action of the Council in rejecting the case of the petitioner on the basis of non-existing Revised Service Regulation, is not in terms of the requirements of Section 24 of the Act, 1984. On this ground, the decision of the Council denying

the petitioner for promotion to the post of Deputy Secretary (Information Technology) stands vitiated.

13. The ground taken by the learned standing counsel for the Council that there is no post of Deputy Secretary (Technical and IT), has been taken note of by this Court. It is to be borne in mind that the Council in its meeting held on 30.10.2017 under Item No.8(A), decided to upgrade the post of Academic Officer (Academic – Computer) to the rank of Deputy Secretary (Technical and IT). Further, the Administration Committee of the Council in its meeting held on 21.03.2018, recommended that the petitioner be promoted to the post of Deputy Secretary (Technical and IT) and the post of Academic Officer (Academic – Computer) be abolished. Further, the Council in its meeting held on 29.03.2018 resolved to promote the petitioner to the post of Deputy Secretary (Technical and IT) and the post of Academic Officer (Academic – Computer) be abolished immediately after his promotion. It was only thereafter that the order dated 30.07.2019 was issued by the Secretary of the Council placing the petitioner as In-Charge, Deputy Secretary (Technical and IT) by order dated 30.07.2019. Therefore, when the petitioner was placed in the IT Section as In-Charge, Deputy Secretary (Technical and IT), the post earlier held by the petitioner, namely, Academic Officer (Academic – Computer) stood automatically abolished. Therefore, the contention of the learned standing counsel that there is no post of Deputy Secretary (Technical and IT) is not acceptable before this Court inasmuch as the post of Academic Officer (Academic – Computer) was upgraded to the post of Deputy Secretary (Technical and IT).

14. In terms of the discussions made hereinabove, this writ petition succeeds and accordingly, the Minutes of the Council held on 31.03.2023 with regard to

Item No. C-149/23/01/9, are set aside and quashed.

15. As the respondents have already issued the order dated 30.07.2019 placing the petitioner as In-Charge, Deputy Secretary (Technical and IT), the respondents are directed to issue an appropriate order permitting the petitioner to hold the substantive post of Deputy Secretary (Information Technology) after following the due procedure as prescribed by law. Let such exercise be done and completed within a period of 1 (one) month from the date of receipt of a copy of the order of this Court.

16. Writ petition is allowed.

17. No Cost.

JUDGE

Comparing Assistant