

GAHC010279412023



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

Case No. : WP(C)/7243/2023

JIAUR ALI
S/O SRI NOWSHED ALI
R/O ATHIABARI
P.O. SAPATGRAM
DIST.KOKRAJHAR
PIN-78337

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM EDUCATION (SECONDARY) DEPARTMENT, DISPUR,
GUWAHATI-6.

2:THE DIRECTOR OF SECONDARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI-19.

3:THE INSPECTOR OF SCHOOLS

DHUBRI DISTRICT CIRCLE

DHUBRI
ASSAM

4:THE INSPECTOR OF SCHOOLS

KOKRAJHAR DISTRICT CIRCLE

KOKRAJHAR.

5:THE HEAD MASTER

SAPATGRAM HIGH MADRASSA

P.O. AND P.S. SAPATGRAM

DIST. DHUBRI

ASSAM

PIN-78333

Advocate for the Petitioner : MRS. K DEVI

Advocate for the Respondent : SC, SEC. EDU.

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 13.02.2024

Heard Ms. B. Choudhury, learned counsel for the petitioner. Also heard Ms. P. Das, learned standing counsel, Secondary Education Department, appearing on behalf of respondents No. 1, 2 & 3.

In view of the order that is being passed today, notice on respondent No. 4 is not deemed necessary.

2. With the consent of the learned counsels appearing for the parties; this writ petition is taken-up for disposal.

3. The grievance raised by the petitioner in the present proceedings, pertains to the denial to him of the benefit of provincialization of his services as a Grade-IV employee in Sapatgram High Madrassa. The petitioner was appointed in the said school on 02.03.1994 and had joined his such services on 02.03.1994. The school, at the relevant

point of time, was a venture school and the appointment of the petitioner was duly approved by the Inspector of Schools, Kokrajhar. Thereafter, the case of the eligible teaching and non-teaching staff of the said school were considered for provincialization under the provisions of the Assam Venture Educational Institutions (Provincialization of Services) Act, 2011.

4. Although the petitioner was also within the purview of such consideration, the case of the petitioner could not be recommended for provincialization of his services in-as-much as only one post of Grade IV was allotted to the school for the purpose of provincialization of the services of the Grade-IV employee working therein, and there being a person senior to the petitioner, the services of the petitioner came to be dropped.

5. Further with the coming of the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017, the services of the petitioner not having been considered for provincialization of his services inspite of favourable reports from the District authorities of the Education Department; the present writ proceeding has been instituted by the petitioner before this Court.

6. Ms. Das, learned standing counsel, Secondary Education Department, has placed before this Court, the instructions received by her which reflects that the case of the petitioner could not be considered under the purview of the Assam Education (provincialization of services of non-teaching staff of Venture Educational Institutions) Act, 2018, in so far as a High School is concerned; only one post of Grade IV post is allotted to the school. The schedule to the said Act of 2018 confirms to the contentions as made in the instructions received by Ms. Das, learned standing counsel.

7. In that view of the matter; a direction cannot be issued by this Court requiring the respondent authorities to consider the case of the petitioner for provincialization of his services. However, from the materials on record, it is brought to the notice of this Court that there is a vacancy existing in the school after the amalgamation of 654 No. Sapatgram Moktab L.P. School with Sapatgram M.E. Madrassa.

8. In view of the said submission that a vacant post of Grade IV post is available in the school, the respondent No. 2 viz. Director, Secondary Education Department, is required to verify the said position and if a vacant post is so available in the said school, the respondent authorities shall take steps for advertising the said post through the Class IV and Class III Recruitment Commission. In the event of such post being advertised by the said Commission, the petitioner shall be permitted to participate in such selection process and the competent authority shall also on an application made by him, condone the over-age of the petitioner, if any.

9. Further, the petitioner shall be considered in the said selection by extending to him weightage for the services as rendered by his in the said school. In the event, the petitioner in pursuance of the selection process comes within the merit position; the case of the petitioner shall be considered for appointment against any of the Grade-IV posts that may be so advertised along with the post now available in the said school. Process for initiating the recruitment process as required, be initiated by the respondents at the earliest.

10. In the event, the post in question, has been advertised and the selection process has not been concluded, the petitioner shall also be permitted to participate therein and her case be considered in terms of the directions as passed hereinabove.

11. The petitioner shall submit a representation before the Director, Secondary Education Department, along with a certified copy of this order. The Director, Secondary Education Department, shall, on receipt of the same, take necessary steps for compliance of the directions as made hereinabove.

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

JUDGE

Comparing Assistant