GAHC010033812020

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

Case No. : WP(C)/1449/2020

BITU PABAN DAS
S/O SRI MANIRAM DAS, VILL. CHAPARMUKH, P.O. CHAPARMUKH, P.S RAHA, DIST. NAGAON, PIN-782425

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REP BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM EDUCATION, DEPTT. (SECONDARY) DISPUR, GUWAHATI-6

2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM

3:THE INSPECTOR OF SCHOOLS

4:THE PRINCIPA

Advocate for the Petitioner : MR. A K SARMA

Advocate for the Respondent : SC, SEC. EDU.

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

JUDGMENT & ORDER (ORAL)

Date : 20-11-2020

Heard Mr. A.K. Sarma, learned counsel for the petitioner. Also heard Mr. R. Mazumdar, learned counsel for the Secondary Education Department of Government of Assam.

2. Considering the nature of the matter, we are of the view that notice to the respondent no. 4 being the Principal, Chaparmukh, need not to be issued.

3. The petitioner is presently serving as a Grade-IV employee in the Chaparmukh B.B.H.H.S. School. It is stated that one post of Junior Assistant is presently vacant in the said school. The petitioner claims that under the Assam Secondary Education (Provincialised Schools) Service Rules, 2018 under Rule 5(2) 5% of the total posts of Junior Assistant of a district is required to be filled by direct recruitment from the candidates amongst the Grade-IV staffs of the school in the concerned district.

4. In the circumstance, this writ petition is instituted for a direction to the respondent authorities to promote the writ petitioner to the post of Junior Assistant in the Chaparmukh B.B.H.H.S. School.

5. The petitioner refers to a judgment dated 11.09.2019 of the Division Bench of this Court in Mihir Chakraborty & others vs. the State of Assam & others in WP(C) No. 7969/2015 and other writ petitions, which is also stated to be reported in 2019 (5) GLT 280. In paragraph 25 of the said judgment, the Division Bench has issued a direction to the respondents to consider framing suitable provision for promotion of the Class IV employees for the Junior Assistant by prescribing any such eligibility criteria that may be deemed

appropriate.

6. Mr. R. Mazumdar, learned counsel for the Secondary Education Department states that pursuant to the requirement of the said direction, the Assam Secondary Education (Provincialised Schools) Service Rules, 2018 is framed, and Rule 5(2) specifically for the compliance of the direction in the aforesaid judgment dated 11.02.2019. A reading of the Rule 5(2) goes to show that 5% of the total post of the Junior Assistant of a district can be filled by direct recruitment from the candidates amongst the Grade-IV staffs in the schools of the district and therefore, the petitioner would not be entitled to the benefits of the consideration being Rule 5(2).

7. Rule 5(2) provides that 5% of the total post of the Junior Assistant of a district shall be filled by direct recruitment from the candidates amongst the Grade-IV staffs of the concerned district. As per the requirement of Rule 5(2) the respondent authorities would identify the vacancies for direct recruitment amongst the Grade-IV employees of the district which would comprise of 5% of the total posts of Junior Assistant in the district and thereupon issue necessary advertisement for direct recruitment from amongst the eligible Grade-IV staffs. All such Grade-IV staffs which may be eligible and desirous to avail the benefit of direct recruitment may apply. The petitioner may also participate in such process for direct recruitment and compete on merit.

8. The requirement of initiating the direct recruitment process to at least some of the posts which may be included in the 5 % of the total number of posts in the cadre be initiated within a period of three months as agreed to by the learned counsel for the Secondary Education Department.

9. In doing so, the respondents may also consider which are the vacant posts in Chaparmukh B.B.H.H.S. School and is also required to be included within 5% post for the Grade-IV staffs.

10. In the above terms, the writ petition stands disposed of.

JUDGE

Comparing Assistant