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

Case No. : WP(C)/2373/2019

TRAILOKYA NATH DAS
ASSISTANT TEACHER, CHENGA H.S.SCHOOL, S/O LT. DHARMA KANTA DAS, R/O BARPETA, DIST.-BARPETA, ASSAM, PIN-781309

VERSUS

THE STATE OF ASSAM AND 7 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM, EDUCATION (SECONDARY)DEPTT. DISPUR, GUWAHATI-781006

2:THE JOINT SECRETARY

3:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM

4:THE INSPECTOR OF SCHOOLS
BARPETA DIST. CIRCLE

5:THE STAET SELECTION BOARD

6:SCHOOL SELECTION COMMITTEE OF CHENGA H.S.SCHOOL
BARPETA

7:DHARMANANDA THAKURIA

8:MUKUL KRISHNA MISHR

Advocate for the Petitioner : S N SARMA

Advocate for the Respondent : SC, SEC. EDU.

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

Date : 25-11-2020

JUDGMENT & ORDER (ORAL)

Heard Mr. SN Sarma, learned senior counsel for the petitioner, Mr. R Mazumdar, learned standing counsel for the Secondary Education Department, Mr. SK Das, learned counsel for the respondent No.7 and Mr. R Barua, learned counsel for the respondent No.8.

2. The petitioner is an Assistant Teacher in the Chenga Higher Secondary School. An advertisement was issued on 17.12.2017 by the Member Secretary of the School Selection Committee of Chenga Higher Secondary School inviting applications from the eligible candidates for appointment of a regular Principal. The petitioner herein as well as the respondent No.7 and respondent No.8 all offered their candidature pursuant to the said advertisement.

3. The procedure for selection of Principal is provided under Rule 13 of the Assam Secondary Education (Provincialised) Rules, 2003, which is extracted as below:-

> "*13. Procedure of selection of Principals- (1) Before the end of each year, the Member Secretary of the School Selection Committee shall invite applications from the intending eligible candidates through an advertisement to be published at least in two widely circulated local news papers.*
>
> *(2) On receipt of applications from the eligible candidates the School Selection Committee constituted under rule 8(4) after scrutiny of applications, shall hold an interview and prepare a panel of names of three candidates on the basis of qualities such as leadership skills, administrative ability, integrity and commanding personality.*
>
> *(3) The panel of names so prepared by the School Selection Committee shall be forwarded through the concerned Inspector of Schools to the State Selection Board*

constituted under rule 16 for approval.

(4) After receipt of the panel under sub-rule (3) the State Selection Board shall prepare a Select List equal to the number of vacant posts taking into consideration such as leadership skills, administrative ability, integrity and commanding personality. The panel of names so prepared and recommended by the State Selection Board shall be submitted to the Government, which may after causing such verification as may be deemed necessary, shall accord approval for appointment.

(5) The Select List so prepared and approved shall be in force for one year from the date of its approval by the Government:

Provided that if the School Selection Committee fails to prepare panel of names under sub-rule (2) within 6 months from the date of vacancy arises, the State Selection Board shall make the selection and prepare the panel of names following such procedure as laid down under rule 13."

4. A reading of Rule 13 of the Rules of 2003 shows that before the end of each year, the Member Secretary of the School Selection Committee shall invite applications from intending eligible candidates through an advertisement, which in fact had been done as per the Annexure-8 advertisement dated 17.12.2017. Rule 13(2) of the Rules of 2003 provides that on receipt of the application from the eligible candidates, the School Selection Committee constituted under Rule 8(4), after scrutiny of the applications, shall hold an interview and prepare a panel of names of three candidates on the basis of leadership skills, administrative ability, integrity and commanding personality. The expression used in Rule 13(2) of the Rules of 2003 is that the School Selection Committee shall prepare a panel of names of three candidates. The Rule clearly indicates that there is no requirement of arriving at any inter-se merit assessment by the School Selection Committee as regards the panel of three names that are to be prepared. Rule 13(3) of the Rules of 2003 provides that the panel of names prepared by the School Selection Committee shall be forwarded to the State Selection Board constituted under Rule 16 for its approval and Rule 13(4) provides that after receiving the panel of names prepared by the School Selection Committee, the State Selection Board shall prepare a select list equal to the number of vacant post.

5. We have taken note of that the requirement of the School Selection Committee is to prepare the panel list, meaning thereby that the list so prepared would contain only the names of three candidates as may be recommended. In the aforesaid circumstances, the School Selection Committee of Chenga Higher Secondary School prepared a panel list of three candidates comprising of the writ

petitioner, respondent No.7 and respondent No.8. Although it was not a requirement under the Rules, the School Selection Committee for its own reason had also stated the marks given to the respective candidates, leading to a dispute by the respondent No.7 Sri Dharmananda Thakuria that he was given less marks. As the Rules itself did not require any inter-se merit assessment to be made by the School Selection Committee, we are of the view that the marks indicated by the School Selection Committee is irrelevant and has no effect in the eye of law and nor any such marks given can be further acted upon by State Selection Board.

6. Be that as it may, being aggrieved by less marks been given, the respondent No.7 preferred a representation dated 31.07.2018 and approached this Court by way of WP(C) No.5334/2018, wherein a direction was given that the representation of the petitioner submitted on 31.07.2018 be given a consideration by the Director of Secondary Education, Assam by adhering to the provisions of Rule 13(2) and 13(3) of the Assam Secondary Education (Provincialised) Rules, 2003. By requiring the representation to be given a consideration, amongst others, under Rule 13(2) and 13(3) of the Rules of 2003, it would have to be understood that the Director was required to arrive at a conclusion as to whether the marks given to the respondent No.7 Sri Dharmananda Thakuria was appropriate or not. In doing so, the Director was also required to look into the provisions of Rule 13(2) of the Rules of 2003 that the School Selection Committee does not prepare any kind of select list, so as to give marks and all that is required is to prepare a panel list of three names without determining any inter-se merit, meaning thereby that no marks could have been given. But the Director of Secondary Education, Assam instead of taking a more reasoned view as per the provisions of Rule 13 (2) of the Rules of 2003, took it upon himself to place the representation of the petitioner before the State Selection Board of which the Director is the Member Secretary. In the resultant situation, the order dated 20.11.2018 was passed, which is stated to be from the office of the Director of Secondary Education, Assam, but at the end of the order it was signed by the Chairman of the State Selection Board as well as Member Secretary of the State Selection Board. It is stated that the Chairman of the State Selection Board is the Commissioner and Secretary to the Government of Assam in the Secondary Education Department, whereas the Director is the Member Secretary of the State Selection Board. In our view, the Director of Secondary Education, Assam has messed up the entire requirement of the order dated 08.08.2018 in WP(C) No.5334/2018 which merely requires a consideration of the representation dated 31.07.2018. The order dated 20.11.2018 issued from the office of the Director of Secondary Education signed by the Chairman of State Selection Board and the Member Secretary of State Selection Board begins with the expression "*In compliance of the order dated 08.08.2018 passed in WP(C) No.5334/2018, a hearing was held on 16.11.2018 in the*

Conference Room of the Directorate of Secondary Education, Assam over the said petition dated 31.07.2018 submitted by Dharmananda Thakuria in the matter of selection of Principal in Chenga HS School, District- Barpeta. In the hearing the following persons were present. Heard all of them.

1. Dharmananda Thakuria, A/T, Patacharkuchi Vidyapith HS School

2. Mukul Krishna Misra, I/C Principal, Chenga HS School

3. Trailokya Nath Das, S/T, Chenga HS School."

7. If the Director had signed the order dated 20.11.2018 as the Member Secretary of the State Selection Board along with the Chairman of the State Selection Board, the State Selection Board could not have considered the representation dated 31.07.2018 by one of the candidates. Any such consideration of a representation by the State Selection Board can be construed to be a case of a candidate canvassing his case in a given manner. Secondly, the State Selection Board is a statutory authority constituted under Rule 16 of the Rules of 2003 and its functions had been clearly provided under Rule 13(4) of the Rules of 2003 and there is no provision of providing any hearing to any of the candidates who participate in the selection process.

8. From all the aforesaid aspects, it can be seen that the entire procedure adopted appears to be contrary and in conflict with the requirement of the Rules of 2003. In the situation, the order dated 20.11.2018 from the office of the Director of Secondary Education signed by the Chairman of State Selection Board and Member Secretary of State Selection Board is set aside. All other consequential orders pursuant to such order are also set aside. The matter now shall be processed further by the authorities by considering the list prepared by the School Selection Committee to be a list under Rule 13(2) of the Rules of 2003, meaning thereby that it is a list of panel of three candidates. Entire records of the candidates and whatever other materials are relevant, be presented to the State Selection Board and the State Selection Board shall arrive at its own decision on the respective merits of the candidates and prepare the select list under Rule 13(4) of the Rules of 2003 and thereafter the authorities shall bring the process to its logical end.

9. Mr. SK Das, learned counsel for the respondent No.7 states that as a consequence of complying with the selection which had been interfered, he had been released from his earlier place of posting at Patacharkuchi Higher Secondary School and nor allowed to join as the Principal of Chenga Higher Secondary School and therefore, he is not receiving his salary. As the respondent No.7 had to endure a situation where he had been released from Patacharkuchi Higher Secondary School and not allowed to join at Chenga Higher Secondary School because of a procedure adopted by the respondent

authorities, which is contrary to the law, necessary orders be passed by the Commissioner and Secretary to the Secondary Education Department, Government of Assam in respect of the respondent No.7 for the payment of his salary and allowances for the intervening period considering him to be in duty in Patacharkuchi Higher Secondary School itself. The requirement of the respondent No.7 to be released from Patacharkuchi Higher Secondary School is not because of any fault of his, but because of the incorrect procedure adopted by the respondent authorities in arriving at the order dated 20.11.2018 as indicated above. The requirement of paying the salary to the respondent No.7 be done within a period of one month from the date of receipt of a certified copy of this order. For the purpose of paying the salary to the respondent No.7, whatever order for regularizing the gap is required to be passed, be done by the authorities as per law.

10. The requirement of doing the needful of completing the selection process be proceeded without any delay and the same be brought to its logical end.

In terms of the above, the writ petition stands allowed.

JUDGE

Comparing Assistant