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2026:GAU-AS:16495-DB

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

Case No. : WP(C)/2672/2024

IDRISH ALI
SON OF LATE ASIR UDDIN, RESIDENT OF VILLAGE- BOWALGURI, P.O. GOROIMARI, DISTRICT- MORIGAON, ASSAM, PIN- 782104

VERSUS

THE STATE OF ASSAM AND 4 ORS
TO BE REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM, DEPARTMENT OF SCHOOL (SECONDARY) EDUCATION, JANATA BHAWAN (ASSAM SECRETARIAT COMPLEX), DISPUR, GUWAHATI- 781006

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

3:THE INSPECTOR OF SCHOOLS
MORIGAON DISTRICT CIRCLE
MORIGAON
ASSAM

4:THE BOWALGURI SECONDARY SCHOOL
(TO BE REPRESENTED BY ITS HEADMASTER) VILL. BOWALGURI
P.O. GOROIMARI
DISTRICT- MORIGAON
ASSAM
PIN- 782104

5:SOFIQUL ISLAM
ASSISTANT HEADMASTER
BOWALGURI SECONDARY SCHOOL
VILL.- BOWALGURI

P.O. GOROIMARI
DIST.- MORIGAON
ASSAM
PIN- 78210

– B E F O R E –

HON'BLE THE CHIEF JUSTICE MR. ASHUTOSH KUMAR

HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

For the Petitioner(s) **:** Mr. A.R. Choudhury, Senior Advocate, assisted by Mr. N.Z. Choudhury, Advocate.

For the Respondent(s) **:** Mr. N.J. Khataniar, Standing Counsel, Education (Secondary) Department.

Date on which judgment is reserved **:** 02.11.2026.

Date of pronouncement of judgment **: 11.11.2026.**

Whether the pronouncement is of the operative part of the judgment ? **: No**.

Whether the full judgment has been pronounced **: Yes**.

JUDGMENT & ORDER (CAV)

(K. Goswami, J)

We have heard Mr. A.R. Choudhury, learned Senior Advocate, assisted by Mr. N.Z. Choudhury, learned Advocate for the petitioner; Mr. N.J. Khataniar, learned Standing Counsel, Education (Secondary) Department for the respondents.

2] By way of the instant writ petition under Article 226 of the Constitution of India, the petitioner, *inter alia*, puts to challenge the constitutional validity of Rule 28 of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018 (hereinafter referred to as the "Service Rules, 2018), which governs the amalgamation of schools under the "Siksha Khetra" Scheme.

3] The brief facts of the case are that the petitioner was appointed as a B.Sc. Assistant Teacher (Science) in Bowalguri M.E. Madrassa on 29.02.1992. Subsequently, by an order dated 27.09.2011, his services were regularised with effect from 01.03.2011. Thereafter, in terms of the Siksha Khetra Amalgamation Policy, Bowalguri M.E. Madrassa was amalgamated with Bowalguri High School on 13.02.2018. Consequent upon the amalgamation, the petitioner was redesignated as Assistant Headmaster-in-Charge on 06.09.2018.

Subsequently, on 28.04.2022, another institution, namely, Bowalguri Girls M.E. Madrassa, was also amalgamated with Bowalguri High School. The petitioner contends that, following the said amalgamation, the Inspector of Schools, Morigaon (respondent No. 3), by an order dated 29.07.2022, redesignated respondent No. 5, who was serving as the Headmaster of Bowalguri Girls M.E. Madrassa prior to its amalgamation, as Assistant Headmaster, thereby displacing the petitioner from the said post. According to the petitioner, such redesignation was effected by invoking Rule 28 of the Service Rules, 2018, notwithstanding the fact that the respondent No. 5 did not possess the requisite qualifications prescribed for the post.

Aggrieved by the aforesaid order dated 29.07.2022, the petitioner initially approached this Court by way of a writ petition, being WP(C) No. 6587/2022. However, the said writ petition was subsequently withdrawn with liberty to challenge the constitutional validity of Rule 28 of the Service Rules, 2018. It is in the aforesaid backdrop that the petitioner has instituted the present writ petition.

4] Mr. A.R. Choudhury, learned Senior Advocate for the petitioner, submits that Rule 28 of the Service Rules, 2018 is arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution of India, inasmuch as it permits individuals, who do not possess the requisite qualifications prescribed for the post of Assistant Headmaster, to be redesignated to the said post consequent upon the merger of schools, thereby circumventing the merit-based eligibility criteria stipulated under Rule 15 of the Service Rules, 2018. It is contended that the petitioner, despite possessing the requisite qualifications for the post, has been superseded by respondent No. 5, who does not fulfil the prescribed eligibility criteria and has been redesignated as Assistant Headmaster by virtue of Rule 28.

According to the learned Senior Advocate, such a provision not only undermines the eligibility requirements prescribed under Rule 15 but also confers an undue advantage upon unqualified incumbents at the expense of qualified candidates, thereby rendering Rule 28 unconstitutional.

It is further submitted that the impugned provision discriminates against qualified graduates, such as the petitioner, by according

preferential treatment to unqualified incumbents upon amalgamation of schools, in violation of Article 16 of the Constitution of India.

5] *Per contra*, Mr. N.J. Khataniar, learned Standing Counsel, Education (Secondary) Department for the respondents, submits that Rules 15 and 28 of the Service Rules, 2018 operate in distinct and different fields and are applicable in entirely different circumstances. It is contended that Rule 28 provides for relaxation of the requisite qualifications for the post of Assistant Headmaster only for the limited purpose of protecting the status, position and dignity of an incumbent whose school has been amalgamated with another school. Such a provision, according to Mr. Khataniar, is intended to safeguard the service interests of existing incumbents in the event of amalgamation and cannot be construed as a regular mode of recruitment or promotion to the post in question.

It is further submitted that the constitutional validity of a statutory provision cannot be assailed merely on the ground that its operation may adversely affect the service interests or expectations of a particular incumbent. In the absence of any demonstrated *mala fides*, arbitrariness or discriminatory treatment on the part of the respondents, no ground is made out warranting interference by this Court in exercise of its writ jurisdiction.

6] We have given our due consideration to the arguments advanced by the learned counsel appearing for the contending parties and have perused the material available on record.

7] From the material placed on record, it appears that Bowalguri M.E.

Madrassa School was amalgamated with Bowalguri High School vide order dated 13.02.2018, at which point the petitioner was serving as the Headmaster of the M.E. School. Consequent upon the said amalgamation, the petitioner was redesignated as Assistant Headmaster in-charge (Academic) and was allowed to discharge the said functions by order dated 06.09.2018. Subsequently, on 28.04.2022, Bowalguri Girls M.E. School was also amalgamated with Bowalguri Secondary School (erstwhile Bowalguri High School). At the time of the second amalgamation, respondent No. 5 was serving as the regular Headmaster of Bowalguri Girls M.E. School. Thus, upon the second amalgamation, the petitioner entered the amalgamated institution in the capacity of an in-charge Headmaster, whereas respondent No. 5 entered as the regular Headmaster of the erstwhile Bowalguri Girls M.E. School.

In the aforesaid circumstances, the Inspector of Schools, Morigaon, by order dated 29.07.2022, invoking the provisions of Rule 28 of the Service Rules, 2018, cancelled the earlier redesignation of the petitioner as Assistant Headmaster in-charge and redesignated the respondent No. 5 as Assistant Headmaster of Bowalguri Secondary School.

8] The issue that arises for consideration in the present writ petition is the constitutional validity of Rule 28 of the Service Rules, 2018.

9] Rule 28 of the Service Rules, 2018, read as under:

> "***28. Scheme for Amalgamation of schools under Siksha Khetra****:- (1) Under Siksha Khetra a scheme for amalgamation and merger of schools, the schools situated in same campus or in any nearby area may be*

amalgamated/merged and all the schools are brought into one single administrative and academic unit.

(2) In case LP or ME/MV School or both are amalgamated with a High School, all the teachers and other staff of the LP or ME or both Schools shall be the employee of the amalgamated School and their services shall be at the disposal of the Secondary Education Department. The Headmaster of the High School shall continue after amalgamation. The post of Headmaster of ME School shall be re-designated as Assistant Headmaster with the same pay scale to be held by the existing Headmaster of the ME/MV School without requiring the qualification for the post of Assistant Headmaster. However, after cessation of the services of the incumbent of the post of such Assistant Headmaster, the vacancy shall be filled up as per normal procedure stipulated in the Service Rules. The staff pattern shall be fixed as per existing norms for a High School and the excess teaching and non-teaching employees shall be posted elsewhere against the vacant post with their seniority of the earlier school.

(3) In case ME/MV school is amalgamated with a Higher Secondary School or Senior Secondary School, all the teachers and other staff of the ME/MV School shall become the employee of the amalgamated School and their services shall be at the disposal of the Secondary Education Department. The post of Headmaster of the ME/MV School shall be re-designated as the Ex-officio Vice-Principal of the School with same pay scale to be held by the existing Headmaster of the ME/MV School without requiring the qualification for the post of Vice-Principal. However, after cessation of the services of such Ex-officio Vice-Principal, the vacancy shall be filled up as per normal procedure stipulated in the Service Rules and the incumbent shall be considered for the selection of candidates for filling up the said post in regular manner. The staff pattern shall be fixed as per existing norms for a Higher Secondary School and the excess teaching and non-teaching employees if any, shall be posted elsewhere against the vacant post with their seniority of the earlier school.

(4) In case a High School is amalgamated with the Senior Secondary School (erstwhile Junior College) or Higher Secondary School, all the teachers and other staff of the High School shall be the employee of the amalgamated Senior Secondary School or Higher Secondary School. The Principal of the Senior Secondary School/Higher Secondary School shall continue after amalgamation. The post of Headmaster of High School shall be re-designated as Vice-Principal with same pay scale to be held by the existing Headmaster of the High School without requiring the qualification for the post of Vice-Principal. However, after cessation of the services of such Vice-Principal, the vacancy shall be filled up as per normal procedure. The staff pattern shall be fixed as per existing norms for a composite Higher Secondary School and the junior excess teaching and non-

teaching employees shall be posted elsewhere against the vacant post with their seniority of the earlier school:

Provided that in the event 2 or more High Schools are Amalga-mated, the senior most incumbent shall hold the post of Vice-Principal and other shall be ex-officio Vice-Principal with scale of pay meant for the Vice-Principal:

Provided further that in the event one ME/MV school is Amalga-mated with a Higher Secondary School, the Headmaster of the amalgamated ME/MV school who is otherwise eligible for the post of Vice-Principal shall be re-designated as Vice-Principal with his existing pay structure."

10] A perusal of the aforesaid provision indicates that, upon the amalgamation of an ME/MV School with a High School under the Siksha Khetra Scheme, the post of Headmaster of the erstwhile ME/MV School is to be redesignated as Assistant Headmaster, carrying the same pay scale, to be held by the existing incumbent, notwithstanding the fact that such incumbent may not possess the qualifications prescribed for the post of Assistant Headmaster. The provision further stipulates that, upon cessation of the services of such incumbent, the resultant vacancy shall be filled up in accordance with the normal procedure prescribed under the Service Rules, 2018, namely, Rule 15 thereof. In this regard, it is pertinent to note that Rule 15 of the Service Rules, 2018, prescribes the eligibility criteria and the procedure for appointment to the post of Assistant Headmaster in a High School.

11] Rule 15 of the Service Rules, 2018, read as under:

"***15. Recruitment to the post of Assistant Head Master/Assistant Superintendent and procedure thereof:-*** *(1) The post of Assistant Headmaster of a High School and the Assistant Super-intendent of a High Madrassa shall be filled up by promotion from the candidates amongst Graduate Teachers of the same school on the recommendation of the District Promotion Committee constituted under Rule 16(4), and as per eligibility criteria under sub-rule (2).*

(2) Eligibility for the post of Assistant Headmaster/Assistant Superintendent in High School/High Madrassa as the case may be, shall be as follows:-

(a) He must be B.A/B.Sc/B.Com from any recognized University;

(b) He must have at least 10 years of teaching experience as Graduate Teacher in a High School/High Madrassa;

(c) In case of amalgamated High School the Headmaster of ME/MV School is eligible for selection as Assistant Headmaster subject to the condition that the incumbent should have at least 5 years of experience as Headmaster in ME School if he is a founder Headmaster and 10 years of experience as Headmaster in ME School if he is not the founder Headmaster of the ME School if otherwise eligible;

(d) In case of High School having amalgamation with ME/MV school, the Assistant Teacher must have degree qualification with 15 years of continuous service in amalgamated school together with the ME/MV School;

(e) In case of a High School having amalgamation with LP school, the teacher of erstwhile LP school having degree qualification and 20 years of teaching experience in both LP and amalgamated school may also be eligible for selection as Assistant Headmaster if otherwise eligible.

(3) The selection shall be based on satisfactory Annual Confidential Report for last 3 consecutive years and seniority of service in Graduate scale of pay as per procedure provided under sub-rule (4).

(4)(i) Before the end of the year the Inspector of Schools shall make an assessment of the number of vacancies to be occurred in the cadres of Assistant Headmaster/Assistant Superintendent and to be filled up by promotion in the next year;

(ii) The Inspector of Schools shall call particulars in the prescribed format of the eligible candidates/teachers for filling up of the vacancies through promotion from the School. The Member-Secretary shall hold the process of the applications and submit them to the District Promotion Committee;

(iii) The District Promotion Committee shall verify the records pertaining to seniority and merits and prepare the select list equal to the number of vacancies;

(iv) The select list so prepared by the District Promotion Committee shall be submitted to the Director who shall after necessary verification as may be required, approve the select list and publish the same in the office notice Board or in such other places as the Director may consider fit and proper;

(v) After receipt of approval of the Director on the select list, the Inspector of School shall issue promotion order from the approved select list;

(vi) The validity of the select list shall not exceed beyond one year from the date of its approval."

12 A conjoint reading of Rules 15 and 28 of the Service Rules, 2018, makes it evident that the two provisions operate in distinct fields and contemplate different circumstances. Rule 15 primarily governs the appointment to the post of Assistant Headmaster by way of promotion and prescribes the requisite eligibility criteria, including educational qualifications, teaching experience and the procedure for selection through the District Promotion Committee. Rule 28, on the other hand, provides for a special arrangement in the event of amalgamation of schools under the Siksha Khetra Scheme. In terms of the said provision, where an ME/MV School is amalgamated with a High School, the existing Headmaster of the erstwhile ME/MV School is to be redesignated as Assistant Headmaster, carrying the same pay scale, notwithstanding the fact that he may not possess the qualifications ordinarily prescribed for the said post. The provision further expressly stipulates that such redesignation shall be confined to the existing incumbent and that, upon cessation of his services, the resultant vacancy shall be filled up in accordance with the normal procedure prescribed under the Service Rules, 2018.

It is, therefore, evident that Rule 28 does not contemplate recruitment or promotion to the post of Assistant Headmaster in the ordinary course. Rather, it provides for a special transitional arrangement intended to protect the service status and continuity of the existing

Headmaster of an ME/MV School upon its amalgamation with a High School under the Siksha Khetra Scheme. The redesignation contemplated under Rule 28 is, thus, distinct in nature and operation from promotion under Rule 15, which entails consideration of eligible candidates in accordance with the prescribed qualifications and selection procedure.

Significantly, Rule 15(2)(c) also recognises the eligibility of an existing Headmaster of an ME/MV School for consideration for appointment to the post of Assistant Headmaster in an amalgamated High School, subject to the fulfillment of the experience criteria stipulated therein. The two provisions, therefore, cannot be construed as mutually inconsistent or as operating in derogation of each other. Rather, they are complementary in nature and regulate distinct aspects of the service consequences arising out of the amalgamation of schools. While Rule 28 provides for the redesignation of the existing Headmaster of an amalgamated ME/MV School as Assistant Headmaster, notwithstanding the absence of the prescribed qualifications, Rule 15 governs the filling up of the post of Assistant Headmaster in the regular course, in accordance with the prescribed eligibility criteria and selection procedure.

13] It is a settled principle of constitutional law that every legislative enactment carries with it a presumption of constitutionality, and the burden of establishing its invalidity rests upon the person who challenges it. A statutory provision may be declared unconstitutional only upon the establishment of a recognised constitutional infirmity, such as lack of

legislative competence or violation of any Fundamental Right or other constitutional limitation. Mere assertion of arbitrariness, unreasonableness or discriminatory effect, without establishing the requisite constitutional infirmity, would not suffice to invalidate a legislative provision. The Court must, therefore, endeavour to adopt an interpretation that sustains the constitutionality of a statutory provision, particularly where two reasonable interpretations are possible, one preserving and the other defeating its validity. [**Refer**: - ***State of Andhra Pradesh & Ors. –Vs- McDowell & Co. & Ors. :: (1996) 3 SCC 709; Commissioner of Sales Tax, M.P. & Ors. –Vs- Radhakrishan & Ors. :: (1979) 2 SCC 249; State of Bihar & Ors. –Vs- Bihar Distillery Limited :: (1997) 2 SCC 453***].

14] In the case of ***Justice K.S. Puttaswamy (Retd.) & Anr. v. Union of India, :: (2017) 10 SCC 1,*** a nine-Judge Constitution Bench of the Apex Court expanded the scope of Article 21 of the Constitution and propounded the three-fold test of constitutional validity, comprising: (i) Legality, requiring the existence of a valid law authorising the impugned measure; (ii) Legitimate Aim and Necessity, necessitating that the measure pursues a legitimate objective and is necessary to achieve the same; and (iii) Proportionality, mandating that the means adopted bear a reasonable and proportionate nexus with the object sought to be achieved. These constitutional principles are of general application to all legislative and regulatory measures that have an impact upon constitutionally guaranteed rights, including service rules and regulations.

15] Applying the aforesaid principles to the facts of the present case, we find that Rule 28 has been incorporated with the object of ensuring

continuity and protecting the service status of existing Headmasters of ME/MV Schools whose institutions are amalgamated with higher institutions under the Siksha Khetra Scheme. Such incumbents are not appointed or promoted to the post of Assistant Headmaster through the ordinary recruitment process; rather, their redesignation is a consequence of the amalgamation of their respective institutions and the resultant administrative restructuring. The provision also contains an express safeguard that, upon cessation of the services of such incumbent, the resultant vacancy shall be filled up in accordance with the normal procedure prescribed under the Service Rules, thereby preserving the operation of Rule 15 for subsequent appointments. In our estimation, the aforesaid provision is reasonable and passes the muster of Articles 14 and16 of the Constitution of India.

16] The mere fact that such redesignation may operate to the disadvantage of a qualified candidate aspiring for such post cannot, by itself, render the provision unconstitutional. The petitioner has failed to demonstrate that the classification is manifestly arbitrary, lacks any rational nexus with the object sought to be achieved, or otherwise violates Articles 14 and 16 of the Constitution of India. Accordingly, we do not find any sufficient ground to declare Rule 28 of the Service Rules, 2018 unconstitutional. The challenge to the constitutional validity of the said provision, therefore, fails.

17] Now, adverting to the impugned order dated 29.07.2022, issued by the respondent No. 3, Inspector of Schools, Morigaon, we find that the respondent No. 5, who was serving as a regular Headmaster of Bowalguri

Girls M.E. Madrassa prior to its amalgamation and was drawing salary in the pay scale admissible to the post of Headmaster, has, consequent upon the amalgamation, been redesignated as Assistant Headmaster of Bowalguri Secondary School. Such redesignation being in conformity with Rule 28 of the Service Rules, 2018, we find no illegality or infirmity in the impugned order warranting interference by this Court. The writ petition is, therefore, devoid of any merit or substance and does not warrant any interference by this Court.

18] The writ petition accordingly stands dismissed. No order as to costs.

JUDGE **CHIEF JUSTICE**

Comparing Assistant

Pranab Chandra Das

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