

GAHC010036732018



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

Case No. : WP(C)/1084/2018

PARAN CHANDRA DEKA
S/O. LT. BANESWAR DEKA, R/O. BIHPURIA WARD NO. 5, P.O. AND P.S.
BIHPURIA, DIST. LAKHIMPUR, PIN-784161, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE COMMISSIONER AND SECRETARY, SECONDARY EDUCATION
DEPTT., GUWAHATI-781005

2:THE DIRECTOR OF SECONDARY EDUCATION
KAHILIPARA GUWAHATI-781019

3:STATE SELECITON COMMITTEE ASSAM
KAHILIPARA MAIN ROAD JATIA KAHILIPARA GUWAHATI-781019

4:THE PRINCIPAL CUM MEMBER SECRETARY
LOHIT DIKONG HIGHER SECONDARY SCHOOL
BIHPURIA-784161 DIST. LAKHIMPUR ASSAM.

5:SATYAJIT BORA S/O. LT. PADMA BORA
R/O. BIHPURIA WARD NO. 9
P.O. AND P.S. BIHPURIA
DIST. LAKHIMPUR
PIN-784161 ASSAM.

6:NATIONAL COUNCIL FOR TEACHER EDUCATION EASTERN REGIONAL
COMMITTEE
REPRESENTED BY REGIONAL DIRECTOR
NEELAKANTHA NAGAR
NAYAPALLII
BHUBANESWAR-75101

Advocate for the Petitioner : MS. S G BARUAH
Advocate for the Respondent : SC, SEC. EDU.

Linked Case : I.A.(Civil)/3378/2018

SATYAJIT BORA
S/O LATE PADMA BORA
R/O BIHPURIA WARD NO. 4
PO AND PS-BIHUPURIA
DIST-LAKHIMPUR
ASSAM-784161

VERSUS

PARAN CHANDRA DEKA AND 4 ORS.
S/O LATE BANESWAR DEKA
R/O BIHUPURIA WARD NO 5
PO AND PS-BIHUPURIA
DIST-LAKHIMPUR
ASSAM-784161

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY
SECONDARY EDUCATION DEPARTMENT
DISPUR
GUWAHATI-6

3:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19

4:THE STATE SELECTION BOARD
ASSAM
KAHILIPARA MAIN ROAD
JATIA

KAHILIPARA
GUWAHATI-19
5:THE PRINCIPAL-CUM-MEMBER SECRETARY
LOHIT DIKONG HIGHER SECONDARY SCHOOL
BIHUPURIA-784161
DIST-LAKHIMPUR
ASSAM

Advocate for : MR. B CHAKRAVARTY
Advocate for : MS. S G BARUAH appearing for PARAN CHANDRA DEKA AND 4
ORS.

Linked Case : I.A.(Civil)/3477/2018

PARAN CHANDRA DEKA
S/O LATE BANESWAR DEKA
R/O BIHPOURIA WARD NO. 5
PO AND PS-BIHPURIA
DIST-LAKHIMPUR
PIN-784161
ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY
EDUCATION DEPARTMENT
GUWAHATI-781006

Advocate for : MS. S G BARUAH
Advocate for : SC ELEM. EDU appearing for THE STATE OF ASSAM AND 4 ORS

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date : Date of hearing : 04.06.2024
Date of Judgment : 04.06.2024

Judgment & order(Oral)

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Heard Ms. Sumita Gohain Baruah, learned counsel, appearing on behalf of the petitioner. Also heard Mr. Bedanta Kaushik, learned standing counsel, Secondary Education Department, appearing on behalf of respondents No. 1, 2 & 3; Mr. B. Chakrabarty, learned counsel, appearing on behalf of private respondent No. 5; and Mr. I. Alom, learned standing counsel, National Council for Teacher Education(NCTE), appearing on behalf of respondent No. 6. None has appeared on behalf of respondent No. 4.

2. The grievance raised by the petitioner in the present proceeding, pertains to the manner in which the respondent No. 5, herein, was selected for appointment against the post of Principal in Lohit Dikrong Higher Secondary School, Bihpuria, Lakhimpur, in pursuance of a selection process held in the matter in terms of the Advertisement, dated 07.12.2017.

3. As projected in the writ petition, the respondent authorities proceeded to issue an Advertisement, dated 07.12.2017, inviting applications for filling up of a post of Principal in Lohit Dikrong Higher Secondary School, Bihpuria, Lakhimpur.

4. In terms of the said Advertisement, dated 07.12.2017, the petitioner, herein, the respondent No. 5 and 2(two) others; submitted their respective applications for recruitment against the said post of Principal in Lohit Dikrong Higher Secondary School, Bihpuria, Lakhimpur. On conclusion of the selection process as involved and the results thereof, not being declared; the petitioner contends that he had approached the authorities by invoking the provisions of the Right to Information Act, 2005, seeking information with regard to such selection process. In terms of the application made by the petitioner seeking information; the Principal of Lohit Dikrong Higher Secondary School, Bihpuria, Lakhimpur, vide his communication, dated 22.01.2018, furnished to the petitioner the consolidated statement of marks as prepared by the Selection Committee members of the school pertaining to the candidates appearing before them in pursuance of the Advertisement, dated 07.12.2017. On perusal of the marks as awarded to the candidates; the petitioner found that the respondent No. 5, herein, who is a Demonstrator which post is equivalent to that of a Graduate Teacher, was given marks against the heading "Leadership

Skills” by reckoning the results of his school in the Higher Secondary Examination and further, that under the heading “Administrative Ability”; the respondent No. 5 was given 1.5 marks and resultantly, the respondent No. 5 by scoring 18.5 marks in the selection process, came to be placed above the petitioner, herein, who had scored 18 marks. Armed with the said information as furnished to the petitioner and also on getting the intimation that the State Selection Committee had already processed the matter pertaining to the selection undertaken in pursuance to the said Advertisement, dated 07.12.2017; the petitioner has instituted the present proceeding.

5. Ms. Baruah, learned counsel for the petitioner, by taking this Court through the materials on record, has made the following contentions:

(i). The post of Demonstrator held by the respondent No. 5, herein, having been determined both under the Rules holding the field and the decisions of the Court to be equivalent to that of a Graduate Teacher, he should be marked in the said selection process against the results of the High School Leaving Certificate Examination(HSLC) of his school and he could not have been awarded marks, reckoning the results of the Higher Secondary School Examination of the said school.

(ii). It was further contended by the learned counsel for the petitioner that the respondent No. 5, herein, was awarded 1.5 marks against the heading “Administrative Ability” which was impermissible. By referring to the Office Memorandum, holding the field, more particularly, the Office

Memorandum, dated 01.08.2017, which allocates 3(three) marks under the heading "Administrative Ability" and the break-up of the same, having been shown to be 1(one) mark for State awards and 2(two) marks for National awards or both State and National awards together, further, 1(one) mark being allocated for awards, honours, begotten by the school, its students, teachers in academics, etc.; it was contended that only whole marks were permissible to be awarded under the heading "Administrative Ability".

(iii). By referring to the said allocation so made in the Office Memorandum, dated 01.08.2017, under the heading "Administrative Ability", it is the contention of the learned counsel for the petitioner that fraction of marks could not have been awarded in the matter and has also submitted that the respondents in the pleadings brought on record, have not justified the award of 1.5 marks i.e. awarding of marks with fraction to the respondent No. 5, herein.

(iv). It is also the specific contention of the learned counsel for the petitioner that 0.5 marks awarded in excess to the respondent No. 5 was so allocated only with the view to facilitate his selection against the post of Principal of Lohit Dikrong Higher Secondary School, Bihpuria, Lakhimpur, and the same is not supported by any legal backing.

6. Per contra, Mr. Kaushik, learned standing counsel, Secondary Education Department, by referring to the affidavit-in-opposition filed in the matter by the

Director, Secondary Education Department, Assam, has contended, at the outset that on the matter being recommended by the State Selection Committee; the Government in the Secondary Education Department, had granted approval to the selection of the private respondent No. 5, vide communication, dated 19.06.2018. However, on account of the interim directions passed by this Court in the present proceeding, the appointment of respondent No. 5, in pursuance to such approval, was not effected.

7. With regard to the grant of fraction i.e. 0.5 marks to the respondent No. 5 against the heading "Administrative Ability"; it was contended that the same was so done by the experts in the School Selection Committee and in the absence of any *mala fide* being alleged, this Court would be pleased not to interfere with the selection of respondent No. 5 on the said ground.

8. It was further contended that in terms of the provisions of Rule 2(n) and 2(v) of the Assam Secondary Education (Provincialized) Service Rules, 2003, a Demonstrator belong to the same cadre as of Graduate Teacher and accordingly, a Demonstrator is entitled to have his case considered for appointment against the post of Principal of a Higher Secondary School.

9. Mr. Kaushik, learned standing counsel, Secondary Education Department, has further submitted that although the equivalence of the post of Demonstrator was so maintained with that of a Graduate Teacher for the purpose of determining seniority of such Demonstrator; it was contended that given the marking pattern as laid down in the Office Memorandum notified in this

connection; a Demonstrator who is involved in teaching of Higher Secondary School students; the marks against the heading "Leadership Skills" has to be so awarded to a Demonstrator by reckoning the Higher Secondary School results of the school and not the matriculation results in-as-much as a Demonstrator is not involved in teaching the students of High School Leaving Certificate Examination.

10. Mr. Chakrabarty, learned counsel appearing on behalf of respondent No. 5; by reiterating the submissions of Mr. Kaushik, learned standing counsel, Secondary Education Department, has submitted that the Demonstrator of a Higher Secondary School being required to take classes only of the Higher Secondary section, it is the Higher Secondary School Examination results which would be relevant to be taken into consideration while allocating marks to such Demonstrator in the selection process for the post of Principal of a Higher Secondary School against the heading "Leadership Skills".

11. By referring to the pass percentage of the students in the Higher Secondary School section of the said school during the preceding years; it has been submitted by the learned counsel for respondent No. 5 that the results being 100 percent pass from the year 2015 to the year 2017, awarding of 4(four) marks against the heading "Leadership Skills" to the respondent No. 5, cannot be permitted to be questioned by the petitioner, herein.

12. The learned counsel for respondent No. 5 has also raised an objection with regard to the B.Ed. Degree as acquired by the petitioner, herein, and has

contended that the same was so acquired by pursuing the course of study in the matter from an institution not recognized by the National Council for Teacher Education(NCTE) and on that count, it was held that the petitioner, herein, was not eligible for having his case considered for appointment against the post of Principal of Lohit Dikrong Higher Secondary School, Bihpuria, Lakhimpur.

13. Mr. Alom, learned standing counsel, National Council for Teacher Education(NCTE), by referring to the affidavit-in-opposition filed on behalf of the said respondent, has contended that the B.Ed. Degree was obtained by the petitioner, herein, in the year 1996 after pursuing a course of study during the session 1995-96 and the said institution i.e. Deormornoi B.Ed. College, Darrang, under Dibrugarh University, has to be deemed to be a recognized institution in terms of the provisions of Section 14(1) of the National Council for Teacher Education Act, 1993.

14. I have heard the learned counsels appearing for the parties and also perused the materials available on record.

15. At the outset, the objection raised by the respondent No. 5 with regard to the B.Ed. Degree possessed by the petitioner, is being considered.

16. The National Council for Teacher Education (NCTE) authorities by way of filing an affidavit-in-opposition in the matter, has brought on record the fact that the said B.Ed. Degree was obtained by the petitioner, herein, in the year 1996, from Deormornoi B.Ed. College, Darrang. It was contended that the said College

had applied for recognition on 23.12.1996 and thereafter, further representation was submitted in this connection before the Eastern Regional Committee of the National Council for Teacher Education (NCTE), on 04.04.1998. The said College was permitted by the Eastern Regional Committee of the National Council for Teacher Education (NCTE), to continue to offer B.Ed. course in its institution for the session 1998-99 and accordingly, it was contended that the application for recognition as submitted by the said institution on 23.12.1996, was under consideration of the Eastern Regional Committee of the National Council for Teacher Education (NCTE), till 1998.

17. In view of the said development and that the said College i.e. Deormoroi B.Ed. College, Darrang, having submitted their application for recognition of the said institution before the authorities of the National Council for Teacher Education(NCTE) on 23.12.1996 i.e. within the extended period as was permitted in the matter by the authorities of the National Council for Teacher Education (NCTE); the B.Ed. Degree as obtained by the petitioner in the year 1996 from Dibrugarh University after undergoing the course during the session 1995-96, is to be held to be a degree so pursued from a recognized institution in terms of the provisions of Section 14(1) of the National Council for Teacher Education Act, 1993, and accordingly, the objection as raised by the respondent No. 5 with regard to the B.Ed. Degree possessed by the petitioner, herein, stands rejected.

18. The objection of the respondent No. 5 with regard to the eligibility of the petitioner, herein, having been considered; this Court would now examine the contentions raised by the petitioner with regard to the selection of the

respondent No. 5, herein.

19. It is not in dispute that both the petitioner as well as the respondent No. 5, herein, are entitled to have their respective cases considered for appointment as Principal of a Higher Secondary School. The grievance raised by the petitioner in the present proceeding is with regard to the markings as given to the respondent No. 5 against the headings "Leadership Skills" and "Administrative Ability". In terms of the Office Memorandum, dated 01.08.2017, holding the field when the Advertisement, dated 07.12.2017, was issued in the matter under the heading "Leadership Skills", 4(four) marks have been so allocated. The said Office Memorandum further provides that insofar as a Graduate Teacher is concerned; the results of the High School Leaving Certificate Examination shall be so reckoned for the purpose of awarding marks to him/her against the heading "Leadership Skills". Insofar as a Post Graduate Teacher is concerned; the Higher Secondary School Final Year Examination of the school wherein he is teaching, shall be so reckoned for awarding the marks under the heading "Leadership Skills".

20. The petitioner, herein, admittedly, is a Post Graduate Teacher in Nehru Higher Secondary School in the district of Lakhimpur and has been since working in such capacity since December, 1999. Accordingly, insofar as it concerns the petitioner, herein, under the heading "Leadership Skills", the marks required to be allocated to him in terms of the Office Memorandum, dated 01.08.2017, would be the Higher Secondary(Science) Examination result of the students of the said Nehru Higher Secondary School, Lakhimpur. Accordingly, it is seen that the Selection Committee by reckoning the examination results of

the Higher Secondary(Science) of the said school; had proceeded to award marks to the petitioner and he was accordingly, awarded 4(four) marks in this connection.

21. Insofar as it concerns the respondent No. 5, herein, who was also awarded 4(four) marks by the Selection Committee under the heading "Leadership Skills"; a grievance is raised by the petitioner that the respondent No. 5 being a Demonstrator and the Demonstrator under the provisions of the Assam Secondary Education (Provincialized) Service Rules, 2003, having been held to be equivalent to that of a Graduate Teacher, the Selection Committee ought to have reckoned the HSLC Examination marks of the said school wherein the respondent No. 5 was so teaching for the purpose for awarding to him marks under the heading "Leadership Skills".

22. It is further contended, by referring to the materials available on record that the pass percentage of HSLC candidates in respect of the school wherein the respondent No. 5 is so teaching being below 60 percent during the period such results was reckonable for the purpose of the selection, in question; the respondent No. 5 could not have been awarded 4(four) marks under the heading "Leadership Skills" and he ought to have been awarded only 1(one) mark for the same.

23. The submission of the petitioner, herein, in this connection, is based on the fact that the equivalence of the post of a Demonstrator having been drawn with the post of a Graduate Teacher for the purpose of selection, in question, it

is only the parameters as applicable to a Graduate Teacher, can be reckoned for the post of Demonstrator also and the Graduate Teacher being awarded marks by reckoning the results of the students of the school in the HSLC Examination; a Demonstrator for the purpose of being awarded marks under the heading "Leadership Skills", it is only the HSLC Examination marks that would be permissible to be reckoned.

24. For appreciating the said contentions of the petitioner, it is required to examine the nature of duties as discharged by a Demonstrator in a Higher Secondary School. It is not disputed that a Demonstrator in a Higher Secondary School is concerned with teaching of the Higher Secondary students and is not involved with teaching the students of HSLC course if so available in the said school. The respondent No. 5, herein, who is a B.Sc. graduate with Hons. in Chemistry along with a M.Sc. in Chemistry, was so engaged as a Demonstrator in the subject of Chemistry in the said school and was all along, teaching the students of Higher Secondary(Science) section. The marking under the heading "Leadership Skills" as provided for under the provisions of the Office Memorandum, dated 01.08.2017, being for the purpose of ascertaining the teaching ability of a candidate appearing before the Selection Committee, such ability cannot be so ascertained basing on an examination result with which he/she is in not any way connected. A Demonstrator in a Higher Secondary School not being in any manner connected with the HSLC Examination result of the said school, in the event, the students so also appear in the said examination from the school, it cannot be held that the leadership quality of a Demonstrator whose service is solely utilized for the purpose of teaching the Higher Secondary(Science) students in a school, would now be assessed in a

selection for the post of Principal of a the school by reckoning the results of the HSLC Examination of the school, in question, with which, he is in no way connected.

25. In the above view of the matter; this Court is of the considered view that for the purpose of equivalence while the post of a Demonstrator has been equated with the post of a Graduate Teacher, when it comes to the question of awarding marks under the heading "Leadership Skills" for the purpose of selection, in question; such awarding of marks can only be by reckoning the actual teaching activity of a Demonstrator which admittedly is in a Higher Secondary(Science) section of the Higher Secondary School concerned.

26. Accordingly, this Court finds that the School Selection Committee in awarding 4(four) marks to the respondent No. 5 under the heading "Leadership Skills", by reckoning the pass percentage of the students in the Higher Secondary(Science) Examination for the year(s), relevant for the purpose, had not committed any error in the matter and the same does not call for any interference.

27. The above conclusions having been reached with regard to the contentions of the petitioner pertaining to the award of marks under the heading "Leadership Skills" to the respondent No. 5, herein; the contention of the petitioner of awarding of 1.5 marks to the respondent No. 5 under the heading "Administrative Ability", is now being considered.

28. The premises for the contention as made in this connection by the petitioner is that in the Office Memorandum, dated 01.08.2017, while allocating 3(three) marks under the heading "Administrative Ability", the same was sub-allocated as hereinbelow:

2. Administrative ability= 3 marks	(a) Award 2 marks [State Award-1 mark, National Award or both State and National Award- 2 marks];
	(b) Awards, Honours begotten by the Schools, its students, Teacher in Academic, Sports, Social Cultural events organized in State or National level by any organization Govt. or Private. His participation in academic events/seminars, Articles contributed by him in Magazines and Journals/Newspaper/Periodicals on academic matters-1 mark

29. A perusal of the sub-allocation of the marks under the heading "Administrative Ability" as extracted hereinabove; would reveal that there exists no provision for grant of fraction of marks under the heads, either, (a), or, (b), of the sub-allocation so indicated. The provision as made for allocation of marks under the heading "Administrative Ability" only mandates allocation of whole marks and does not provide for a situation wherein a fraction of the same can also be awarded.

30. The pleadings as brought on record by the respondents in the matter also does not bring on record any material justifying the award of fraction of marks to the respondent No. 5 i.e. awarding of 1.5 marks under the heading "Administrative Ability" in the selection process.

31. The respondent No. 5 in his pleadings as available on record, has also not

brought on record any material to justify award of 1.5 marks to him under the heading "Administrative Ability". Given the prescription for award of marks under the Office Memorandum, dated 01.08.2017, by the Secondary Education Department, Government of Assam; the School Selection Committee being required to comply with the guidelines so prescribed in the said Office Memorandum; could not have without assigning any justification in the matter, proceeded to award fraction of marks to the respondent No. 5 and 1.5 marks so awarded, more particularly, 0.5 marks so added being without any justification; cannot be said to have been so awarded strictly in accordance with the stipulations as made in the said Office Memorandum, dated 01.08.2017, and accordingly, this Court is left with no other alternative but to interfere with the fraction of marks i.e. 0.5 marks so awarded to the respondent No. 5, and accordingly, the marks so awarded to the respondent No. 5 under the heading "Administrative Ability", now must be construed to be 1(one) mark.

32. Having so concluded with regard to the marks so awarded to the respondent No. 5 under the heading "Administrative Ability" as well as the marks so awarded to the said respondent No. 5 under the heading "Leadership Skills"; the marks as scored by the petitioner and the respondent No. 5, respectively, would now be reckoned as follows:

Sl. No.	Name	Marks scored
1.	Paran Chandra Deka	18 marks
2.	Satyajit Bora	18 marks

33. A tie having occasioned between the petitioner, herein, and the respondent No. 5, herein; the same must now be determined as to amongst them, who would be placed at Serial No. 1 and 2, respectively. The other criterias being equal in respect of the petitioner and the respondent No. 5, herein; the *inter se* placement on merits between the petitioner and the respondent No. 5, must now be so made by reckoning their respective dates of birth.

34. From the materials available on record; it is seen that while the date of birth of the respondent No. 5 viz. Satyajit Bora, is 01.02.1965; the date of birth of the petitioner viz. Paran Chandra Deka is 31.12.1969. Accordingly, applying the said criteria; the *inter se* placement between the petitioner and the respondent No. 5, on merits, would now be as follows:

Sl. No.	Name	Marks scored	Date of birth	Inter se seniority now fixed as per date of birth
1.	Satyajit Bora	18 marks	01.02.1965	1st
2.	Paran Chandra Deka	18 marks	31.12.1969	2nd

35. This Court having concluded that the respondent No. 5 would now be placed at the first position in the said selection above the petitioner, herein; it is the respondent No. 5 who would now be entitled to be appointed as the Principal of Lohit Dikrong Higher Secondary School, Bihpuria, Lakhimpur.

36. The Government having already approved the appointment of respondent No. 5, herein, vide communication, dated 19.06.2018; the Director, Secondary Education Department, Assam, is now directed to process the matter further and issue order of appointment in respect of the respondent No. 5, herein, as the Principal of Lohit Dikrong Higher Secondary School, Bihpuria, Lakhimpur.

37. The consequential orders as would be mandated in the matter, would now be required to be issued by the Director, Secondary Education Department, Assam, within a period of 1(one) month from the date of receipt of a certified copy of this order.

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

JUDGE

Comparing Assistant