

GAHC010005102024



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

Case No. : WP(C)/337/2024

MD. ABDUR REZZAK
S/O MD. JINNAT ALI, MA, B.ED, GRADUATE ASSISTANT TEACHER, DR.
ZAKIR HUSSAIN HIGHER SECONDARY SCHOOL , R/O VILL AND P.O.-
TAPAR PATHAR, P.S.-CHHAYGAON, DIST-KAMRUP, ASSAM, PIN-781137

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM,
SECONDARY EDUCATION DEPARTMENT, ASSAM CIVIL SECRETARIAT,
DISPUR, GUWAHATI, ASSAM, PIN-781006

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

3:THE INSPECTOR OF SCHOOLS
KAMRUP DISTRICT CIRCLE
AMINGAON
DIST-KAMRUP
ASSA

Advocate for the Petitioner : MR. A K DUTTA, MR. B ZAMAN,MR. B PURKAYASTHA

Advocate for the Respondent : SC, SEC. EDU.,

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

ORDER

Date : 29.07.2024

Heard Mr. B. Purkayastha, learned counsel for the petitioner. Also heard Mr. U. Sarma, learned standing counsel, Secondary Education Department.

2. The petitioner by way of instituting a present proceeding, has presented a challenge to an order, dated 04.12.2023, passed by the Director, Secondary Education Department, Assam, rejecting his claim for holding the charge of the post of Principal, Dr. Zakir Hussain Higher Secondary School, Kamrup.

3. The petitioner, herein, was initially appointed as a Hindi Teacher by the District Elementary Education Officer (DEEO), Kamrup, vide order, dated 15.09.1993, at Dr. Zakir Hussain M.E. Madrassa. The said school was thereafter amalgamated with Dr. Zakir Hussain High School, Kamrup, under the Shiksha Shetra Scheme vide order, dated 16.06.2017. The petitioner, accordingly, was included as a teaching staff in the said High School. Thereafter, the said school was upgraded to a Higher Secondary School and named Dr. Zakir Hussain Higher Secondary School, Kamrup, and the petitioner continued to figure in the list of teachers working in the said school, even pursuant to its upgradation.

4. It is to be noted here that the petitioner claims that in the year 1992, he had acquired the B.A. Degree from Gauhati University and thereafter, had also acquired the B.Ed. Degree from the said University. The petitioner, thereafter, pursued his MA Degree in Education from K K Handique State Open University (KKHSOU) and completed the same in the distance education mode in the

year 2022.

5. The petitioner further contends that the authorities of the Elementary Education Department, Government of Assam, in consideration of the Madhyama Visarad Degree possessed by him; had declared him to be a Trained Graduate Teacher and accordingly, his grade pay was also enhanced.

6. In the said High School, one Siddique Ali Ahmed was senior to the petitioner, herein, and on upgradation of the said school to that of a Higher Secondary School; said Sri Ahmed was allowed to function as the Principal in-charge of Dr. Zakir Hussain Higher Secondary School, Kamrup. Said Sri Ahmed had retired from his service on 31.03.2023, on attaining the age of superannuation.

7. The petitioner, given the fact that said Sri Ahmed was slated to retire from his services on attaining the age of superannuation; approached this Court by way of instituting a writ petition being WP(c)5077/2022 claiming that he be allowed to function as the Principal, in-charge of Dr. Zakir Hussain Higher Secondary School, Kamrup, on retirement of said Sri Ahmed. This Court vide order, dated 17.02.2023, on considering the issues arising before it; was pleased to hold that the said writ petition was pre-mature, in-as-much as, the post of Principal in the said school had not fallen vacant on the said date.

8. The Director, Secondary Education Department, Assam, vide order, dated 10.04.2023, on examining the educational and teaching experience of the teachers working in the said school, having found none of them to be eligible

for being posted as the in-charge Principal of the said school, proceeded to direct the jurisdictional Inspector of Schools to hold the charge of Principal of the said school.

9. The petitioner, being aggrieved, by the said order, dated 10.04.2023, approached this Court by way of instituting a writ petition being WP(c)3152/2023, and this Court vide order, dated 06.10.2023, after noticing the claims so made by the petitioner, herein, disposed of the said writ petition directing the Director of Secondary Education Department, Assam, to consider the claim of the petitioner and pass appropriate orders thereon. The Director, Secondary Education Department, Assam, in terms of the direction passed by this Court vide order, dated 06.10.2023, proceeded to issue the order, dated 01.11.2023, and therein, by assigning the reasons; proceeded to reject the claim of the petitioner for being allowed to hold the charge of Principal of Dr. Zakir Hussain Higher Secondary School, Kamrup.

10. Being aggrieved; the petitioner has approached this Court by way of instituting the present proceeding.

11. Mr. Purkayastha, learned counsel for the petitioner, by referring to the seniority list, dated 20.07.2022, as brought on record in the writ petition, has contended that after said Sri Ahmed, the petitioner is the only eligible teacher having the requisite educational qualifications for being appointed as the regular Principal of Dr. Zakir Hussain Higher Secondary School, Kamrup, and accordingly, a vacancy having arisen in the post of the Principal in the said school, he should be permitted to hold the charge of the Principal of the said school.

12. Mr. Purkayastha, learned counsel, has further submitted that the Director, Secondary Education Department, Assam, vide order, dated 01.11.2023, had not considered the matter in its proper perspective and accordingly, the said order, dated 01.11.2023, requires an interference from this Court.

13. Per contra, Mr. Sarma, learned standing counsel, Secondary Education Department, by placing reliance on the instructions as received by him in the matter, has submitted that the post of Principal of Dr. Zakir Hussain Higher Secondary School, Kamrup, having not been so created till date; the right of the petitioner to hold the charge of the post of Principal of the said school, thereof; cannot be determined by this Court at this juncture. It was further submitted that the petitioner did not possess the requisite teaching experience prescribed under the provisions of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, for appointment against the post of Principal and accordingly, he would also not be entitled to hold the charge of the said post.

14. Mr. Sarma, learned standing counsel, Secondary Education Department, has further, basing on the said instructions, raised a dispute with regard to the date, on which the petitioner, herein, was authorized the graduate scale of pay. Mr. Sarma, basing on the said premise; has submitted that the claim of the petitioner for holding the charge of the post of in-charge Principal of Dr. Zakir Hussain Higher Secondary School, Kamrup ought not to be allowed by this Court.

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

16. The petitioner, herein, claims that he is serving as a Trained Graduate Teacher since the time when he was under the Elementary Education Department, Government of Assam, and accordingly, contends that his seniority in the said school as a Graduate Teacher has to be reckoned with effect from the year 2011.

17. Mr. Purkayastha, learned counsel for the petitioner, has relied on the seniority list, dated 20.07.2022, brought on record in the writ petition to contend that he was the only teacher having the requisite educational qualification for holding the charge of Principal of Dr. Zakir Hussain Higher Secondary School, Kamrup, after the retirement of said Sri Ahmed.

18. A perusal of the said seniority list would go to reveal therein, that the receipt of the graduate scale of pay by the petitioner has been denoted to be "04.08.2016".

19. The above being the position; the relevant Rules holding the field, is now required to be examined.

20. The manner and method in which the recruitment rules for the post of Principal is to be undertaken, is provided for under the provisions of Rule 12 of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, and therein, under Rule 12(3) lays down the minimum qualification for appointment to the said post in a Higher Secondary School. The same being relevant, is extracted hereinbelow:

"12. Recruitment to Principal and procedure thereof:- (1) The posts of the Principal in provincialised Higher Secondary Schools shall be filled up by direct recruitment from the candidates amongst the cadre of Post Graduate Teachers of Senior Secondary and Higher Secondary School and Graduate Teachers of Higher Secondary School as per

procedure under sub-rule (5).

(2) The posts of the Principal in provincialised Senior Secondary Schools shall be filled up by direct recruitment from the candidates amongst the cadre of Post Graduate Teachers of Senior Secondary and Higher Secondary School as per procedure under sub-rule (5).

Explanation: The Senior Secondary and Higher Secondary School shall include any Senior Secondary and Higher Secondary School in the State.

(3) The minimum qualifications for appointment to the post of Principal in Higher Secondary School and Senior Secondary School shall be as follows:-

(i) The candidate must be M.A./M.Sc./M.Com with B.T/B.Ed degree from any recognized University having uniform good academic career. In respect of Hindi Teacher having degree qualification, the Hindi 'Parangat' and 'Nishanat' shall be considered instead of B.T/B.Ed;

(ii) The candidate must have rendered at least 15 years of service as Post Graduate Teachers in any of the provincialised Higher Secondary/Senior Secondary School; or

(iii) The candidate must have rendered at least 5 years of service as Vice-Principal in any of the provincialised Higher Secondary School; or

(iv) The candidate must have 17 years of teaching experience as Graduate Teacher in any Higher Secondary School;

(v) The age of the candidates must not be more than 57 years as on the first January of the year of recruitment: Provided that the service and teaching experience acquired in a School during provincialised period shall be counted. The period rendered prior to provincialisation of the School shall not be counted;

(vi) The candidate must possess commanding personality, administrative ability, leadership skills and integrity.

(4) The Government in the Secondary Education Department shall issue Office Memorandum with detail recruitment procedure for the post of Principal. There shall be also detail guidelines for assessment of merits of the candidate such as leadership, administrative ability, integrity academic career etc.

(5)(i) Before the end of each year, the Inspector of School who is the Member-Secretary of the District Selection Committee constituted under Rule 16(2), shall make an assessment of the number of vacancies to be occurred in the cadres of Principal and to be filled up in the next year within the district;

(ii) The Inspector of Schools shall invite applications from the intending eligible candidates through an advertisement to be published at least in two widely circulated local news papers including School Notice Board;

(iii) On receipt of applications from the eligible candidates the District Selection Committee after scrutiny of the applications, shall hold an interview and prepare a panel of names of three candidates against each vacancy for the district on the basis of qualities such as leadership skills, administrative ability, integrity and commanding personality;

(iv) The panel of names so prepared by the District Selection Committee shall be forwarded to the State Selection Board constituted under Rule 16(3), for preparation of a select list;

(v) After receipt of the panel under sub-clause (iv), the State Selection Board shall prepare a district-wise select list equal to the number of vacancies and publish the same in the office notice Board or in such other places as the Director may consider fit and proper;

(vi) After approval and publication of the select list under sub-clause (v), the Appointing Authority shall appoint the candidates in order of preference in the select list by observing all formalities;

(vii) No appointment in any manner shall be made by any authority except in accordance with the procedure prescribed above;

(viii) The Select list so prepared and approved shall be in force for one year from the date of its approval by the State Selection Board.”

21. A perusal of the provisions of the said Rules goes to show that the candidate for recruitment to the post of Principal in a Higher Secondary School must have a Master Degree along with B.T./B.Ed. Degree. Further, a graduate teacher is required to have a minimum of 17 years of teaching experience as a graduate teacher in any Higher Secondary School for being eligible to be considered for appointment as Principal of a Higher Secondary School. The above being the position emanating from the said Rules; this Court would now like to rely upon a decision in the case of **Jagannath Pegu v. State of Assam & ors.**, reported in **(2007) 3 GLT 389**. The relevant conclusions as drawn

therein, is extracted hereinbelow:

"9. The petitioner has maintained that he had obtained B.ED degree in the year 1999. He is also a graduate in Science. On the date of the impugned order, he had acquired ten years teaching experience as a graduate teacher. Therefore on the touchstone of the Rules the petitioner was eligible to be considered for promotion for the post of Head Master of the School on regular basis. Needless to say, from that point of view he was unmistakably eligible to be considered to be permitted to hold the charge of the said office.

10. It is apparent that the petitioner is senior to the respondent no. 4 as graduate Assistant teacher and eligible in terms of the Rules for being promoted to the Head Master. In absence of any material on record to justify the impugned order, I am not inclined to sustain the submission made on behalf of the official respondent. Noticeably the official records pertaining to a decision preceding the issuance of the impugned order also have not been produced in support thereof. It is too fundamental to state that a candidate eligible in terms of the relevant Rules for promotion to a post on a regular basis cannot be overlooked for the purpose of any temporary arrangement concerning the post as in the instant case. In absence of any affidavit controverting the correctness or authenticity of the, statements made in the petition, it is permissible to proceed on the basis that the pleaded case of the petitioner is correct."

22. Having noticed the provisions of the Rules as well as the conclusions reached by this Court in the case of ***Jagannath Pegu***(supra); this Court would now examine the reasoning as contained in the order, dated 01.11.2023. On perusal of the said order, dated 01.11.2023, it is seen that the claim of the petitioner was rejected on 2(two) grounds.

23. The first ground on which the petitioner's claim for holding the charge of Principal of Dr. Zakir Hussain Higher Secondary School, Kamrup, was rejected was that the petitioner, herein, did not have the mandated 17 years of teaching experience as a Graduate Teacher in a Higher Secondary School. The said reasoning on being examined in the light of the materials available on record pertaining to the service of the petitioner, as well as the provisions of the Rules; it is seen that the said reasoning is so made basing on facts and also the provisions of the Rules holding the field and accordingly, the same

would not call for any interference.

24. It is to be noted that even if the claim of the petitioner that he is serving as a Graduate Teacher since 2011, is taken on the face value; still, the petitioner has not acquired the 17 years teaching experience so mandated under the provisions of the said Rules and he having not fulfilled the eligibility criteria as mandated; he would not be entitled to have his case considered for recruitment against the post of Principal of the school, in question.

25. This brings the Court to consider the second ground as assigned in the order, dated 01.11.2023, for rejecting the claim of the petitioner, herein. The MA Degree as acquired by him from K K Handique State Open University (KKHSOU), was held to be not valid, in-as-much as, the same was so pursued by the petitioner without taking due permission from the departmental authorities. The said issue has already been dealt with by this Court in the case of ***Tankeswar Nath v. State of Assam & ors.[WP(c)5419/2023 : order, dated 18.12.2013]*** and this Court has held that merely for not taking a prior permission, the Degree so obtained by the petitioner, cannot be held to be invalid and the provisions of Rule 13 of the Assam Civil Services(Conduct) Rules, 1965, is not violated.

26. Having concluded as above with regard to the order, dated 01.11.2023; this Court is of the considered view that the second ground as assigned in the said order, dated 01.11.2023, cannot be sustained and the same is interfered with and the MA Degree as obtained by the petitioner is held to be valid. However, the petitioner, herein, not having acquired the requisite teaching experience; the first ground as assigned in the said order, is not interfered with and accordingly, subject to the findings herein with regard to the second

ground i.e. the MA degree of the petitioner; the order, dated 01.11.2023, stands affirmed.

27. It is seen that the petitioner, herein, was permitted to look after the academic affairs of the said school vide order, dated 02.09.2023, issued by the jurisdictional Inspector of Schools and the same not having been demonstrated to have been so issued in violation of the provisions of the said Rules of 2018; the same would also not be required to be interfered with.

28. In view of the above conclusions; the order, dated 01.11.2023, is upheld and accordingly, the writ petition stands dismissed subject to the conclusions as recorded, hereinabove, with regard to the MA Degree as acquired by the petitioner from K K Handique State Open University (KKHSOU).

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

JUDGE

Comparing Assistant