

GAHC010018052022



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

Case No. : WP(C)/712/2022

MINA GOSWAMI
W/O-SRI PRASANTA SARMA, R/O- VILL.- BHEREKI, P.O. AND P.S.
PANIGAON, DIST.- LAKHIMPUR, ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMMISSIONER AND SECRETARY, GOVT. OF ASSAM,
EDUCATION (SECONDARY DEPARTMENT), DISPUR, GUWAHATI-6.

2:THE DIRECTOR
SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19.

3:THE DISTRICT LEVEL SCRUTINY COMMITTEE
REP. BY THE DEPUTY COMMISSIONER
LAKHIMPUR
DIST.- LAKHIMPUR
ASSAM

4:THE INSPECTOR OF SCHOOL

LAKHIMPUR DISTRICT CIRCLE
LAKHIMPUR
DIST. LAKHIMPUR
ASSAM

5:THE SCHOOL MANAGING COMMITEE
REP. BY THE PRESIDENT
THE AMTOLA HIGH SCHOOL

DIST.- LAKHIMPUR
ASSAM

6:DAMBARU DAS
S/O- LATE NIRAN DAS
R/O- VILL.- KUMARKATA
P.O. NARAGAON
P.S. PANIGAON
DIST. LAKHIMPUR
ASSA

Advocate for the Petitioner : MR. P J SAIKIA

Advocate for the Respondent : GA, ASSAM

Linked Case : WP(C)/202/2022

DAMBARU DAS
S/O LATE NIRAN DAS
RESIDENT OF VILLAGE KUMAR KATA PO NARAGOAN
PS PANIGAON
DIST LAKHIMPUR ASSAM 787052

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM
DEPARTMENT OF SECONDARY EDUCATION
DISPUR GUWAHATI 06

2:THE DIRECTOR OF SECONDARY EDUCATION

KAHILIPARA
GUWAHATI 19
3:THE INSPECTOR OF SCHOOLS

LDC
NORTH LAKHIMPUR
PO
PS AND DIST LAKHIMPUR ASSAM 787001
4:SMTI MINA GOSWAMI

W/O PRASANTA SARMA
RESIDENT OF VILLAGE BHEREKI
PO AND PS PANIGAON
DIST LAKHIMPUR
ASSAM 787052

Advocate for :
Advocate for : SC
SEC. EDU. appearing for THE STATE OF ASSAM AND 3 ORS.

**BEFORE
HONOURABLE MR. JUSTICE KARDAK ETE**

JUDGMENT

Date : 22-02-2024

Heard Ms. B. Choudhury, learned counsel for the petitioner in WP(C) 202/2022 and for the respondent No.6 in WP(C) 712/2022. Also heard Mr. P.J. Saikia, learned counsel for the petitioner in WP(C) 712/2022 and for the respondent No.4 in WP(C) 202/2022 and Mr. U. Sarma, learned standing counsel, Secondary Education Department.

2. Issue involved in both the writ petitions pertains to appointment of In-charge Headmaster/Headmistress of Amtola High School, Lakhimpur under FR-49(C) on purely temporary arrangement.

3. The writ petitioner in WP(C) 202/2022, namely Sri Dambaru Das was appointed as an Assistant Teacher and joined his service on 25.12.2000 at Amtola High School, Lakhimpur. The school was provincialised in the year 2013 and the service of the petitioner and respondent No.4 namely Smti Mina Goswami and other staff of the school were provincialised on 20.08.2013 w.e.f. 01.01.2013. The petitioner was deputed to undergo B.Ed course and he

completed his B.E.d course on 29.09.2020. Vide dated 24.08.2021, the then Headmaster of the school submitted seniority list of the Amtola High School before the respondent No.3, wherein, the name of the petitioner appeared at Serial No.7 having B.Ed degree and the name of the respondent No.4 appeared at Serial No.5, who did not have the B.Ed degree as on 24.08.2021. The Director of Secondary Education, Assam vide order No.GB-EST/Apptt/FP/22/2016/150 dated 09.09.2021 allowed the petitioner to hold the charge of Headmaster In-Charge of Amtola High School, Lakhimpur along with financial power to draw and disburse the salary etc., of the staff of the said school in addition to his normal duty as an Assistant Teacher under FR-49(C) vice Sri Paramananda Das, Headmaster, on his retirement on 30.09.2021. It provides that the order is purely temporary arrangement and will come into force w.e.f. 01.10.2021. Thereafter, on the retirement of Sri Paramananda Das on attaining the age of superannuation, he was released from the government service w.e.f. 30.09.2021. Accordingly, in terms of the order dated 09.09.2021, the petitioner joined his service as Headmaster In-Charge on 30.09.2021.

4. While the petitioner was serving as Headmaster In-Charge of the said school, on 20.09.2021 the respondent No.4 submitted an application before the respondent No.3 stating that she had completed her graduation in 1995, Master

degree in 2017 and B.Ed on 10.09.2021, thereby, claiming that the appointment of Headmaster be strictly on seniority basis, who has the B.Ed degree. According to the respondent No.4, the petitioner is junior to her despite having the B.Ed degree and the respondent No.4 has better claim than the petitioner. The respondent No.3 directed the then Headmaster of the school to look into the matter pursuant to which, the then Headmaster has informed the respondent No.3 that at the time of submission of seniority list dated 24.08.2021 the respondent No.4 did not have the B.Ed degree although by now she has obtained the B.Ed degree.

5. The respondent No.2 vide order No.GB-EST/Apptt/FP/22/2016/178 dated 03.01.2022 allowed the respondent No.4 to hold the charge of Headmistress In-charge of Amtola High School, Lakhimpur with all financial power to draw and disburse the salary etc., of the staff of the said school in addition to her normal duty as an Assistant Teacher under FR-49(C) vice the petitioner Sri Dambaru Das by way of temporary arrangement. Being aggrieved by the impugned order dated 03.01.2022, the petitioner has filed the instant writ petition WP(C) 202/2022.

6. Ms. B. Choudhury, learned counsel for the petitioner submits that the petitioner was allowed to hold the charge of Headmaster In-Charge vide order

dated 09.09.2021 as he was having B.Ed degree which is the requirement under Rule 14 of the Assam Secondary Education (Provincialised) Service Rules, 2003 (in short, 'Service Rules 2003'). In the seniority list, the name of the petitioner appear at Serial No.7 and the respondent No.4 appeared at Serial No.5. The respondent No.4 was not having the B.Ed degree at that relevant point of time, therefore, the petitioner being eligible and qualified was allowed to hold the charge of Headmaster In-Charge purely on temporary basis and as stop-gap arrangement. Since the respondent No.4 did not possess the requisite qualification of B.Ed degree, the petitioner was allowed to hold the post of Headmaster In-Charge. Ms. B. Choudhury, learned counsel further submits that as per Service Rule 2003, the process of appointment to the post of Headmaster/Headmistress by way of promotion on regular basis has to be started well in advance. Therefore, since the then Headmaster was to retire on 30.09.2021, the authority has rightly allowed the petitioner to hold the Headmaster In-Charge on purely temporary basis by way of stop gap arrangement having been found that the petitioner Sri Dambaru Das was having all requisite eligibility/qualification for the post of Headmaster.

7. Ms. B. Choudhury, learned counsel submits that by issuing the impugned order dated 03.01.2022, the respondent authority replaced an adhoc employee

by another adhoc employee, which is not permissible under the law, inasmuch as, it is settled position of law that an adhoc employee cannot be replaced by another adhoc employee. He can be replaced only by another candidate, who is regularly appointed by following procedure prescribed. She further submits that Rule 14 of the Service Rules, 2003 provides for appointment to the post of Headmaster/Headmistress from the school wise seniority on the recommendation of the State Selection Board. The seniority shall be determined from the date of receiving graduate scale as per Rule 24(2). Rule 14(4)(i) provides that for the qualification for the post of Headmaster/Headmistress one must have graduate in Arts, Science or Commerce with B.T/B.Ed degree. She further submits that the respondent No.4 has obtained her B.Ed degree on 10.09.2021 after the appointment of petitioner as Headmaster In-Charge on 09.09.2021. Since the respondent No.4 was not eligible when the order dated 09.09.2021 was issued allowing the petitioner to hold Headmaster In-Charge, the issuance of the order dated 03.01.2022 by way of another temporary arrangement by replacing the petitioner as an adhoc employee by another adhoc employee without resorting to the provision of Service Rule 2003, is illegal and not sustainable.

8. The writ petitioner, Mina Goswami by filing WP(C) 712/2022 has challenged

the order dated 09.09.2021, whereby the respondent No.6 (petitioner in WP(C) 202/2022) was allowed to hold the Headmaster In-Charge of Amtola High School, Lakhimpur, on the ground of being non-est having no force as the same is superseded by order dated 03.01.2022, whereby the petitioner Smti Mina Goswami has been allowed to hold the charge of Headmistress In-Charge of the said school and for a direction to implement the order dated 03.01.2022.

9. Mr. P.J. Saikia, learned counsel for the petitioner submits that the petitioner joined her service as an Assistant Teacher on 22.06.1993 and the respondent No.6 (petitioner in WP(C) 202/2022) on 25.12.2000, who is admittedly junior to the petitioner Smti. Mina Goswami. The petitioner although obtained her B.Ed degree on 10.09.2021, the qualification of B.Ed was not required when she joined her service as an Assistant Teacher. On acquiring the B.Ed degree, the petitioner being senior to the respondent No.6 has the right to hold the post of Headmistress In-Charge as admittedly she is senior to him. Mr. P.J. Saikia, learned counsel submits that the order dated 09.09.2021 by which the respondent No.6 was allowed to hold the Headmaster In-charge of the said school was passed in haste as the then Headmaster was to retire on 30.09.2021 and the petitioner has obtained B.Ed degree on 10.09.2021 much before the post of Headmaster/Headmistress fell vacant. It is only on the retirement of the

then Headmaster on attaining the age of superannuation the post of Headmaster In-Charge could have been filled up. Therefore, the order dated 09.09.2021 is non-est and the order dated 03.01.2022 allowing the petitioner to hold the Headmistress In-charge is in accordance with the law as the petitioner is senior and having all the requisite eligibility and qualification before the post of Headmaster fell vacant. He further submits that it is not only the B.Ed degree which is the eligibility/qualification requirement as per Service Rule 2003, the other eligibility criteria includes the seniority and the qualifying length of service, and without considering such requirements, the order dated 09.09.2021 was issued allowing the respondent No.6 to hold the Headmaster In-Charge that too when the post of Headmaster was not vacant. Since the petitioner has obtained her B.Ed degree on 10.09.2021 much before the post fell vacant i.e. on 30.09.2021, the respondent authority has rightly issued the order dated 03.01.2022, whereby the petitioner has been allowed to hold the Headmistress In-Charge considering that the petitioner is senior and having all the eligibility and qualification requirement in terms of Service Rule, 2003.

10. Mr. U. Sarma, learned standing counsel submits that after verifying seniority list and having found the fulfillment of eligibility criteria, the authorities passed the order dated 03.01.2022 allowing the petitioner Smti. Mina Goswami,

to hold the charge of Headmistress In-Charge relieving the respondent No.6 Sri Dambaru Das purely on temporary basis. He submits that the date of receiving graduate scale of pay of Smti Mina Goswami and Sri Dambaru Das is on the same day i.e. 01.01.2013. The initial appointment of Smti Mina Goswami is 22.06.1993, whereas the date of initial appointment of Sri Dambaru Das is 25.12.2000. The date of birth of Smti Mina Goswami is 30.04.1971, whereas, Sri Dambaru Das is 01.02.1976. Considering all aspects and the petitioner Smti. Mina Goswami having been found to be senior though both the petitioner and the respondent No.6 Sri Dambaru Das (in WP(C) 712/2022) have the same B.Ed degree, the order dated 09.09.2021 was issued. He further submits that Smti Mina Goswami was senior but was not having B.Ed degree at that relevant point of time when the order dated 09.09.2021 was issued. Sri Dambaru Das was having B.Ed degree although he was junior to Smti Mina Goswami. Therefore, he submits that both the orders are not illegal as such the orders were issued in administrative exigency.

11. Mr. U. Sarma, learned standing counsel submits that by now the process of appointment of Headmaster/Headmistress of Amtola High School, Lakhimpur on regular basis has already been started, for which the respondent authorities would require some time to complete the entire process.

12. I have considered the submissions of the learned counsel for the parties and also examined the materials available on record.

13. Undisputedly Smti Mina Goswami is senior to Sri Dambaru Das (petitioner in WP(C) 202/2022) in terms of initial appointment as well as date of birth and their names have been reflected at serial No.5 and 7 respectively in the seniority list of Amtola High School, Lakhimpur. It is also not disputed that at the time of passing of the order dated 09.09.2021, by which Sri Dambaru Das was allowed to hold the Headmaster In-Charge of the said school, he was having all the eligibility /qualification requirement in terms of Service Rule 2003. It is also not disputed that at the relevant point of time on 09.09.2021, Smti Mina Goswami though senior to Sri Dambru Das was not having B.Ed degree as she admittedly obtained her B.Ed degree on 10.09.2021. It is also seen that the then Headmaster was to retire on 30.09.2021 and the order dated 09.09.2021 was passed by the respondent authorities allowing Sri Dambaru Das to hold the Headmaster In-Charge of Amtola High School, Lakhimpur w.e.f. 10.10.2021.

14. To appreciate the issue, I deemed it apposite to refer to Service Rule 2003, particularly Rules 14, 15, 24 which is reproduced herein below:-

“14. Recruitment to the post of Vice Principal/Head Master/Head Mistress/Superintendent/Asstt. Head Master/Asstt. Head Mistress of High/HS/HS & MP School- (1) The post of Vice-Principal shall be filled up by promotion on the basis of combined seniority in the School among the Graduate and Post-Graduate Teachers with minimum 10 (ten) years of teaching experience in case of Post Graduate teachers and 12 years

teaching experience, in case of Graduate teacher subject to satisfactory Annual Confidential Report for 3 (three) consecutive years. Selection shall made on the basis of recommendation of the State Selection Board. The seniority of teachers in the Schools shall be determined as per provision under Rule 24 (1).

(2) The post of Head Master/Head Mistress and Superintendent shall be filled up by promotion from the School-wise seniority list on the recommendation of the State Selection Board. The selection of Head Master/Head Mistress/Superintendent shall be based upon seniority and satisfactory Annual Confidential Report for 3 (three) consecutive years.

The seniority shall be determined from the date of receiving graduate scale as per Rule 24 (2).

(3) The post of Assistant Head Master/Asstt. Head Mistress/Assistant Superintendent shall be filled up by promotion from the school-wise seniority list of Assistant Teachers on recommendation of the State Selection Board. The selection shall also be based be upon satisfactory Annual Confidential Report for last 3 (three) years and seniority of service in graduate scale of pay with a minimum 7 years of teaching experience.

In case of amalgamated High School the Head Master/Head Mistress of the M.E. School is eligible for selection as Assistant Head Master/Asstt. Head Mistress subject to condition that -

(i) the incumbent should have at least 5 years of teaching experience in M.E. School if he/she is the founder Head Master/Head Mistress of the M.E. School;

(ii) the incumbent should have at least 10 years of teaching experience in M.E. School if he/she is not the founder Head Master/Head Mistress of the M.E. School.

The seniority shall be determined as per provision of Rule 24(2).

(4) Eligibility for the post of Head Master/Head Mistress/Superintendent/Assistant Head Master/Asstt. Head Mistress/Asstt. Superintendent of High/High Madrassa School as the case may be -

(i) the minimum qualification for the post of Head Master/Head Mistress/Superintendent/Assistant Head Master/Asstt. Head Mistress/Asstt. Superintendent shall be graduate in Arts, Science or Commerce with B.T. or B.Ed. degree;

(ii) He/She must possess at least 10 years of teaching experience as Graduate Teacher;

(iii)He/She must possess at least seven years of teaching experience as Graduate teacher to be an Assistant Head Master/Head Mistress/Asstt. Superintendent.

15. Procedure of Selection - (1) Before the end of each year the Director of Secondary Education, in consultation with the Inspector of School, shall make an assessment of the number of vacancies occurred in the cadres of Vice-Principal/Head Master/Head Mistress/Asstt. Head Master/Asstt. Head Mistress/Asstt. Superintendent to be filled up by promotion in the next year.

(2) The Director of Secondary Education shall call particulars in the prescribed format of the eligible candidates/teachers for filling up of the vacancies through promotion. The Member-Secretary shall hold the process of the applications and submit them to the State Selection Board.

(3) The State Selection Board shall hold interview category wise and prepare the select list schoolwise. There shall be three names against each vacancy in existence in each school to be recommended by the State Selection Board.

(4) The recommended select list shall be submitted for approval to the Government. After

Government approval the Director of Secondary Education shall issue promotion order in order of merit from the approved select list fulfilling the reservation quotas as per existing Government rules and provisions.

24. Seniority. - (1) *The seniority of a member in a cadre appointed by direct recruitment shall be determined according to the order of preference in the respective select list finally approved by the appointing authority under rule 7(7) in respect of Post Graduate Teacher and rule 8(9) in respect of Graduate teacher, if he joins the appointment within 15 days from the date of receipt of the order of appointment or within the extended period as mentioned in rule 19.*

2) If a member of the service in a cadre fails to join the appointment within the initial 15 days of receipt of the order of appointment or within the extended period as mentioned in rule 19, but joins later, his seniority shall be determined in accordance with the date of joining.

(3) The seniority of a member of the service in a cadre who joins in a School otherwise than by direct recruitment i.e. on transfer or otherwise shall be determined as per the date of joining in the School in the concerned cadre. If a member joins in the School through transfer from other School, the seniority shall be determined from the date of his joining in the School in the concerned cadre and the seniority in earlier School or in the same school in a different cadre shall not be taken into account.

(4) The seniority of the Graduate Classical Teacher of Hindi, Sanskrit, Arabic, Persian, Assamese, Bodo etc having degree qualification from any recognized University shall be counted at par with other general Graduate Teachers for consideration of promotion to the next higher post;

Provided that the seniority of such Classical Teachers in the Graduate posts shall be counted from the date of his acquiring the degree qualification from recognized University.

(5) If the date of joining in the School is same between two or more member of service in a cadre, the inter-se-seniority shall be determined taking into account their date of birth”

15. On the reading of the aforesaid Rules, it is seen that the post of Headmaster/Headmistress is to be filled up by promotion on the basis of school wise seniority on the recommendation of the State Selection Board. The selection of Headmaster/Headmistress shall be based upon seniority and Annual Confidential Report for three consecutive years. The minimum qualification is graduate in Arts, Science or Commerce with BT or B.Ed degree. It also provides that one must possess atleast 10 years teaching experience as graduate

teacher. It is also noticed that before the end of each year, the Director of School Education in consultation with the Inspector of School shall make an assessment of the number of vacancies occurred in the cadre of Headmaster etc. to be filled up by promotion in the next year. Rule 24 of the Service Rule 2003 provides for determination of seniority of a member in a cadre appointed by direct recruitment and shall be determined according to the order of preference in respective select list finally approved by the appointing authority.

16. The respondent authority has issued the impugned two orders dated 09.09.2021 and 03.01.2022, whereby Sri Dambru Das was allowed to hold Headmaster In-Charge and thereafter Smti Mina Goswami was allowed to hold Headmistress In-Charge by replacing Sri Dambaru Das purportedly under FR-49(C) on purely temporary basis.

17. This Court takes note that at the relevant point of time when the order dated 09.09.2021 was passed allowing Sri Dambaru Das to hold the post of Headmaster In-Charge, Smti Mina Goswami was not having the B.Ed degree, as for promotion to the post of Headmistress In-charge one of the qualification is BT or B.Ed in terms of the Service Rule 2003. As per the procedure of selection, the Director of Secondary Education before the end of each year in consultation with the Inspector of School shall make an assessment of the

number of vacancies occurred in the cadre of Headmaster etc. to be filled up by promotion in the next year. It is also provides inter alia that the State Selection Board shall hold interview category wise and prepare the select list school wise. Having not resorted to the provision as prescribed under the Service Rule 2003, in my considered view the respondent authorities have allowed such an anomalous situation, where the parties have claimed for holding of In-charge Headmaster of the said school.

18. Having considered that at the relevant point of time on 09.09.2021, Smti Mina Goswami was not having the qualification of B.Ed degree, which is one of the qualification for consideration for promotion to the post of Headmaster, in my considered view, the order dated 09.09.2021 appears to be per se not illegal. At the same time since Smti. Mina Goswami acquired the B.Ed degree on 10.09.2021, she being the senior, the subsequent order allowing her to hold the Headmistress In-charge is equally per se not illegal. However, this Court cannot lost sight of the settled position of law that an adhoc employee cannot be replaced by another adhoc employee and he can be replaced only by another candidate who is regularly appointed by following a regular procedure prescribed.

19. This Court has carefully perused the case laws relied by the learned

counsel for the parties in support of their submissions and found that in the facts and circumstance of the present case, no useful purpose would be served to refer to the same. Thus, this Court refrains from considering the case laws as relied upon by the learned counsel for the parties.

20. In view of what has been discussed herinabove, I am of the considered view that both the orders dated 09.09.2021 as well as 03.01.2022 are not per se illegal. However, the respondent authorities ought to have filled up the post of Headmaster on regular basis as mandated by the Service Rule 2003.

21. In view of the submission of the learned standing counsel, Secondary Education Department that the process of appointment of Headmaster/Headmistress on regular basis has already been started, both the writ petitions are disposed of with a direction to the respondent authorities to complete the process as expeditiously as possible preferably within a period of four months from today. Needless to observed that the petitioners namely Sri Dambaru Das and Smti Mina Goswami and other eligible teachers be considered for promotion to the post of Headmaster on regular basis. It is provided that till the post of Headmaster/Headmistress at Amtola High School, Lakhimpur is filled up on regular basis, Sri Dambaru Das (writ petitioner in WP(C) 202/2022) and respondent No.6 (WP(C)712/2022) shall be allowed to hold the charge of

Headmaster In-charge of Amtola High School, Lakhimpur in view of the status quo order as on 11.01.2022 passed by this Court in WP(C) 202/2022 on the categorical submission at the bar that Sri Dambaru Das is presently holding the charge of Headmaster In-charge, Amtola.

22. Both the writ petitions are disposed of in terms of the above observation and direction. No order as to cost(s).

JUDGE

Comparing Assistant