

GAHC010016142018



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

Case No. : WP(C)/781/2018

AMUDUL HOQUE LASKAR
S/O. ABDUL MANNAN LASKAR, SENIOR MOST ASSISTANT TEACHER,
CUM I/C ASSISTANT HEADMASTER, ACADEMIC B.A., B.ED., SERVING AT
EAST GOBINDAPUR HIGH MADRASSA, CACHAR, R/O. VILL. EAST
GOBINDAPUR PART-III, AND P.O. EAST GOBINDAPUR, VIA BASKANDI,
DIST. CACHAR, ASSAM, PIN-788101

VERSUS

THE STATE OF ASSAM AND 7 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY, TO THE GOVT.
OF ASSAM, DEPARTMENT OF SECONDARY EDUCATION, DISPUR,
GUWAHATI, ASSAM, PIN-781006

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

3:THE DIRECTOR OF ELEMENTARY EDUCATION ASSAM
KAHILIPARA GUWAHATI ASSAM PIN-781019

4:THE INSPECTOR OF SCHOOLS CDC SILCHAR
CACHAR ASSAM PIN-788001

5:THE DISTRICT ELEMENTARY EDUCATION OFFICER CACHAR
SILCHAR ASSAM PIN-788003

6:THE BLOCK ELEMENTARY EDUCATION OFFICER
LAKHIPUR EDUCATIONAL BLOCK CACHAR ASSAM.

7:THE HEADMASTER EAST GOBINDAPUR HIGH SCHOOL
VILL. AND P.O. EAST GOBINDAPUR VIA BASKANDI
DIST. CACHAR ASSAM PIN-788101

8:MD. MANJUR AHMED LASKAR
SCIENCE TEACHER EAST GOBINDAPUR HIGH SCHOOL

VILL. AND P.O. EAST GOBINDAPUR VIA BASKANDI
DIST. CACHAR ASSAM PIN-78810

Advocate for the Petitioner : MR. A K DUTTA

Advocate for the Respondent : SC, SEC. EDU.

Linked Case : I.A.(Civil)/532/2020

MD. MANJUR AHMED LASKAR
SCIENCE TEACHER EAST GOVINDPUR HIGH MADRASSA CACHAR
VILL AND P.O.-EAST GOVINDPUR VIA BASKANDI
DIST-CACHAR ASSAM PIN-788101

VERSUS

THE STATE OF ASSAM AND 7 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM
EDUCATION (SECONDARY) DEPARTMENT DISPUR GUWAHATI-781006

2:THE DIRECTOR SECONDARY EDUCATION ASSAM
KAHILIPARA GUWAHATI-781019

3:THE DIRECTOR ELEMENTARY EDUCATION
ASSAM KAHILIPARA GUWAHATI-781019

4:THE INSPECTOR OF SCHOOLS CDCCACHAR
SILCHAR DIST-CACHAR ASSAM
PIN-788001

5:THE DISTRICT ELEMENTARY EDUCATION OFFICER
CACHAR
P.O. AND P.S.-SILCHAR
DIST-CACHAR
ASSAM
PIN-788003

6:THE BLOCK ELEMENTARY EDUCATION OFFICER
LAKHIPUR EDUCATION BLOCK
LAKHIPUR
DIST-CACHAR
ASSAM
PIN-788003

7:THE HEADMASTER
EAST GOVINDPUR HIGH MADRASSA
VILL AND P.O.-EAST GOVINDPUR VIA BASKANDI
CACHAR
DIST-CACHAR

ASSAM
PIN-788101
8:AMUDUL HOQUE LASKAR
S/O ABDUL MANNAN LASKAR
SENIOR MOST ASSISTANT TEACHER CUM I/C ASSISTANT HEADMASTER
ACADEMIC
B.A.
B.ED.
SERVING AS EAST GOVINDPUR HIGH MADRASSA
CACHAR
R/O VILL-EAST GOVINDPUR PT-III
P.O.-EAST GOVINDPUR VIA BASKANDI
DIST-CACHAR
ASSAM
PIN-788101

Advocate for : MR. P K ROYCHOUDHURY
Advocate for : SC
SEC. EDU. appearing for THE STATE OF ASSAM AND 7 ORS.

Linked Case : I.A.(Civil)/2670/2018

MD. MANJUR AHMED LASKAR
SCIENCE TEACHER EAST GOVINDPUR HIGH MADRASSA
CACHAR
VILL. AND P.O. EAST GOVINDPUR
VIA BASKANDI
DIST. CACHAR
ASSAM
PIN-788101

VERSUS

THE STATE OF ASSAM AND 7 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM
EDUCATION (SECONDARY) DEPARTMENT
DISPUR
GUWAHATI
ASSAM
PIN-781006

2:THE DIRECTOR SECONDARY EDUCATION ASSAM
KAHILIPARA GUWAHATI-19

3:THE DIRECTOR ELEMENTARY EDUCATION ASSAM
KAHILIPARA GUWAHATI-19

4:THE INSPECTOR OF SCHOOLS CDC CACHAR
SILCHAR ASSAM PIN-788001

5:THE DISTRICT ELEMENTARY EDUCATION OFFICER CACHAR
SILCHAR DIST-CACHAR ASSAM PIN-788001

6:THE BLOCK ELEMENTARY EDUCATION OFFICER
LAKHIPUR EDUCATION BLOCK
DIST-CACHAR ASSAM PIN-788001

7:THE HEADMASTER
EAST GOVINDPUR HIGH MADRASSA
VILL. AND P.O. EAST GOVINDPUR
VIA BASKANDI
DIST. CACHAR ASSAM PIN-788101

8:AMUDUL HOQUE LASKAR
S/O. ABDUL MANNAN LASKAR
SENIOR MOST ASSISTANT TEACHER CUM I/C ASSISTANT HEADMASTER
ACADEMIC B.A. B.ED. SERVING AT EAST GOVINDPUR HIGH MADRASSA
CACHAR R/O. VILL. EAST GOVINDPUR PART-III
AND P.O. EAST GOVINDPUR
VIA BASKANDI
DIST. CACHAR
ASSAM
PIN-788101

Advocate for : MR. A M BARBHUIYA
Advocate for : SC ELEM. EDU appearing for THE STATE OF ASSAM AND 7 ORS

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 22.01.2024

Heard Mr. B. Purkayastha, learned counsel for the petitioner. Also heard Mr. U. Sarma, learned standing counsel, Secondary Education Department, appearing on behalf of Respondents No. 1 to 6. None appears on behalf of the Respondents No. 7 & 8.

2. The present proceedings was instituted by the petitioner, *inter alia*, assailing the promotion of private Respondent No. 8 as the Headmaster of Silghat M.E. Madrassa/School, Cachar, on 19.08.2017 on the ground that such promotion was so effected against a non-existent post in-as-much as the said school was amalgamated with the school of the petitioner i.e. East Gobindapur High School, Cachar, on 03.08.2017. The petitioner has also prayed for a declaration that the Respondent No. 8 is not the ex-officio Assistant Headmaster of the Silghat M.E. Madrassa/School.

3. The facts requisite to be noticed for adjudication of the issues arising in the present proceedings, is noticed hereinbelow:

The petitioner had joined the services of East Gobindapur High School, Cachar, on 04.01.1992, and was promoted by the School Managing Committee(SMC) of the school as the Assistant Headmaster of the school on 22.06.2005. The said school at the relevant point of time, was a venture school. The services of the petitioner and other serving teachers of East Gobindapur High School, Cachar, came to be provincialized under the provisions of the Assam Venture Educational Institutions(Provincialization of Services) Act, 2011, w.e.f. 01.01.2013, vide issuance of an order, dated 20.08.2013. Thereafter, in terms of the provisions of an Office Memorandum, dated 22.09.2016, a Scheme for amalgamation and merger of different schools called Siksha Khetra Scheme, was introduced. The Silghat M.E. Madrassa/School was amalgamated with the East Gobindapur High School, Cachar, vide a communication, dated 03.08.2017, under the said Siksha Khetra Scheme. In the said communication, dated

03.08.2017, issued towards amalgamation of the said schools; it was reflected that one Nurul Islam Laskar was functioning as the Headmaster of the said school and the Respondent No. 8, herein, was working therein as an Assistant Teacher(Science Graduate teacher).

It is the case of the petitioner that after amalgamation of Silghat M.E. Madrassa/School with East Gobindapur High School, Cachar, wherein the petitioner was serving as a teacher on 03.08.2017; the Director of Elementary Education, Assam, had proceeded to issue an order, dated 19.08.2017, by which the Respondent No. 8 came to be promoted as the Headmaster of Silghat M.E. Madrassa/School on retirement of the incumbent therein. On the amalgamation finally occasioning; the Respondent No. 8 was construed to be the Headmaster of Silghat M.E. Madrassa/School and accordingly, he was, in terms of the provisions of Clause 7 of the Siksha Khetra Scheme as introduced vide Office Memorandum, dated 22.09.2016, allowed to function as the Assistant Headmaster of the amalgamated school. Subsequently, on a vacancy arising in the post of Headmaster in the said school, the Respondent No. 8 being the Assistant Headmaster therein, was allowed to hold the charge of the said post of Headmaster. Being aggrieved, the petitioner has instituted the present proceedings.

4. This Court while issuing notice in the matter, vide an order, dated 12.03.2018, was pleased to stay the effect and operation of the said order, dated 19.08.2017, by which the Respondent No. 8 was promoted as the Headmaster of Silghat M.E. Madrassa/School holding that as on 19.08.2017, the

Silghat M.E. Madrassa/School on account of its amalgamation with the East Gobindapur High School, Cachar, was a non-existing school. The Respondent No. 8, thereafter, approached this Court by way of instituting an interlocutory application being IA(c)2670/2018, praying for vacation and/or modification of the order, dated 12.03.2018. This Court upon considering the issues as arising in the said interlocutory application, was pleased vide judgment & order, dated 22.09.2020, to dispose of the said interlocutory application being IA(c)2670/2018, vacating the interim directions as passed by this Court vide order, dated 12.03.2018. This Court while passing the judgment & order, dated 22.09.2020, recorded a tentative conclusion that although the said schools were directed to be amalgamated on 03.08.2017, however, the amalgamation of the said schools did not take place on the 03.08.2017 and the process of amalgamation was completed only on 15.11.2017, on which date, the Respondent No. 8 as the Headmaster of Silghat M.E. Madrassa/School, had handed over all requisite documents including records of the movable and immovable properties of the Silghat M.E. Madrassa/School to the Headmaster of East Gobindapur High School, Cachar. It was concluded that the process of amalgamation of the said schools in terms of the said Office Memorandum, dated 22.09.2016, is to be completed within a period of 90 days from the date of issuance of the order of amalgamation. Accordingly, it was held that the process of amalgamation of the said schools having been completed only on 15.11.2017, the order of promotion effected in respect of the Respondent No. 8 as the Headmaster of Silghat M.E. Madrassa/School could not have been stayed holding the said school to have ceased to exist, in-as-much as, the said school continued with its existence till 15.11.2017.

5. The conclusions as reached by this Court vide judgment & order, dated 22.09.2020, passed in IA(c)2670/2018, being relevant to the issues arising in the present proceedings, is extracted hereinbelow for ready reference:

“10) In the order of amalgamation of Silghat M.E. Madrassa with East Gobindapur High School bearing Memo No. ASE.666/2017/190 dated 03.08.2017 issued by the Commissioner & Secretary to the Govt. of Assam, Secondary Education Department, the said authority has referred Silghat M.E. Madrassa as "Silghat M.E. School". Moreover, reference has been made as if Anuwarul Islam Laskar was the Headmaster of Silghat M.E. School, and that his post was re- designated as Assistant Headmaster. But this is ex facie erroneous, because the said person had already superannuated on 31.07.2017. Thus, the only conclusion that can be drawn that when the proposal was mooted and/or moved, the said Anuwarul Islam Laskar was the Headmaster of Silghat M.E. Madrassa/ School, but by the time the order was issued and published, the said person had already superannuated on 31.07.2017. Therefore, the Director, Elementary Education, Assam had issued order under Memo no. EHA/B/24/2016/341 dated 19.08.2017, thereby promoting the applicant to the vacant post of Headmaster of Silghat M.E. Madrassa vice Anuwarul Islam Laskar, Retired Headmaster.

11) Vide order under Memo No. DEO-149/Amalgamation/ 2016/6769-837 dated 20.09.2017, the District Elementary Education Officer, Cachar issued a direction to the Headmaster/ Head Teacher of all 71 amalgamated schools of Elementary Education Department within his jurisdiction to hand over school's documents including records related to movable and immovable properties of the school. Accordingly, on 15.11.2017, the applicant, acting as Headmaster of Silghat M.E. Madrassa had handed over the documents to the Headmaster of Gobindapur High School.

12) As already indicated herein before, the OM dated 22.09.2016, it was envisaged that there shall be one committee at the Block Level and District Level to find out the schools which are eligible for amalgamation/merger. After due processing, the order of amalgamation was issued by the State on 03.08.2017. The said order envisaged that after amalgamation of the two schools, the name of the school shall be East Gobindapur High School. Thereafter, the Director, Secondary Education, Assam by order dated 19.08.2017, promoted the applicant to the post of Headmaster of Silghat M.E. Madrassa. Therefore, it cannot be said that as on 19.08.2017, the process of merger was completed for all intents and purpose and that Silghat M.E. Madrassa had ceased to exist. This position is clear from the order dated 20.09.2017, wherein the Headmaster of schools under Elementary Education Departments were directed to hand over documents. Another way of looking at this is that unless documents are handed over, the amalgamation of Silghat M.E. Madrassa with East Gobindapur High School could not have been complete. Moreover, if the projection made by the learned counsel for opposite party no. 8 is accepted that 22.09.2016 was the date of amalgamation, then there was no necessity for the authorities to refer to Silghat M.E. Madrassa in any subsequent communication or order. It is in this back-ground that it must be understood that when the OM dated 22.09.2016 envisaged that the process

of amalgamation would end within 90 days, it must be construed that such 90 days time for the completion of merger would operate on and from 03.08.2017, the date of issuance of order of amalgamation by the Commissioner & Secretary to the Govt. of Assam, Secondary Education Department, wherein, the order was sent to the Headmaster of Silghat M.E. School/ Madrassa. Therefore, the Court is of the considered opinion that when the order of promotion of the applicant was passed on 19.08.2017, the process of amalgamation had not been completed and that Silghat M.E. Madrassa/ School had its existence owing to the fact that the process of amalgamation is found to have not concluded by then, and that the said school existed even as on 15.11.2017.

13) In the present case in hand, the provisions of section 24(3) of the 2003 Act is found to have no applicability because this is not a case of transfer of the applicant to East Gobindapur High School, but because of a scheme of the government, the school of the petitioner got amalgamated with East Gobindapur High School and that the OM had clearly defined the consequences thereof."

6. The said judgment & order, dated 22.09.2020, passed in IA(c)2670/2018, was carried upon an appeal by the present petitioner, by way of instituting a writ appeal being Writ Appeal No. 116/2020 and the writ appellate Court vide order, dated 07.10.2020, disposed of the said writ appeal, holding that the observations as recorded by the learned single Judge in the judgment & order, dated 22.09.2020, were tentative in nature and accordingly, the issue would now be required to be finally decided by the learned single Judge by expeditiously hearing the writ petition. Accordingly, the said writ appeal was closed with a request to the learned single Judge to decide the writ petition as expeditiously as possible. However, it was further observed that the promotion of the Respondent No. 8 as the Headmaster of Silghat M.E. Madrassa/School as effected vide the order, dated 19.08.2017, shall be treated as provisional in nature and the finality of the said order would be determined on final determination of the issues as raising in the writ petition. Accordingly, the matter is taken-up for final consideration with the consent of the parties.

7. The issues as arising in the present proceedings, is as to whether the Director, Elementary Education Department, Assam, could have issued the order, dated 19.08.2017, promoting the Respondent No. 8 as the Headmaster of Silghat M.E. Madrassa/School after issuance of the order, dated 03.08.2017 by which the said school was directed to be amalgamated with East Gobindapur High School, Cachar.

8. It is the contention of the petitioner that on the amalgamation of Silghat M.E. Madrassa/School with the East Gobindapur High School, Cachar, and the East Gobindapur High School being denoted as the base school; there was no independent existence of Silghat M.E. Madrassa/School and it stood merged with that of East Gobindapur High School, Cachar. Accordingly, the school being not in existence after 03.08.2017; the Director, Elementary Education Department, could not have issued the order, dated 19.08.2017, promoting the Respondent No. 8 as the Headmaster of Silghat M.E. Madrassa/School.

9. The respondent authorities, more particularly, the Director, Secondary Education Department, Assam, has brought its stand on record by way of filing an affidavit-in-opposition and therein, has contended that in pursuance of the amalgamation order, dated 03.08.2017; the District Elementary Education Officer, Cachar, vide the order, dated 20.09.2017, had asked all the Headmasters of the amalgamated schools of Cachar to hand over and take over the charges including the records related to movable and immovable properties of the schools. In pursuance of the said order, dated 20.09.2017, the Respondent No. 8 had handed over the charge of Headmaster of Silghat M.E. Madrassa/ School

to the Headmaster of the amalgamated High School i.e. East Gobindapur High School, Cachar, on 15.11.2017.

10. It was categorically contended that in view of the said facts, the process of amalgamation of the said schools was initiated vide letter, dated 20.09.2017, and the same was completed on 15.11.2017 and on the said date, it was the Respondent No. 8 who was continuing as the Headmaster of the said Silghat M.E. Madrassa/School.

11. Having noticed the issue as arising in the present proceedings, this Court had required the respondents to place on record, clarification as to the date till which the incumbents serving in Silghat M.E. Madrassa/School, were being paid their salaries by the Elementary Education Department, Assam, in-as-much as on amalgamation of a M.E. School with a High School; the serving teachers of the M.E. School come under the purview of the Secondary Education Department, Assam, and all their entitlements are so released by the Secondary Education Department and not by the Elementary Education Department, after effecting of such amalgamation.

12. Pursuant to such query raised, the respondents have clarified that even after the issuance of the order of amalgamation dated 03.08.2017; the serving teachers of Silghat M.E. Madrassa/School were being continued to be paid their salaries by the Elementary Education Department and it is only after 15.11.2017 that their such salaries came to be borne by the Secondary Education Department.

13. Poised thus, Mr. Purkayastha, learned counsel for the petitioner, has submitted that in view of the categorical contentions as brought on record by the respondent authorities, the promotion as effected in the case of the petitioner between the period w.e.f. 03.08.2017 till 15.11.2017 i.e. on 19.08.2017, may not be erroneous.

14. Having noticed the contentions as brought on record by the parties and also the submissions advanced by the learned counsel for the petitioner, it is held that Silghat M.E. Madrassa/School although was directed to be amalgamated with East Gobindapur High School, Cachar, vide the communication, dated 03.08.2017; the amalgamation of the said schools did not occur till 15.11.2017 i.e. the date on which the Respondent No. 8 as the Headmaster of Silghat M.E. Madrassa/School had handed-over the charge of the said school along with all its relevant records to the incumbent Headmaster of East Gobindapur High School, Cachar.

15. In the said view of the matter; the promotion as effected in the case of Respondent No. 8, by the Director, Elementary Education Department, vide order, dated 19.08.2017, has to be upheld in-as-much as on 13.08.2017, Silghat M.E. Madrassa/School continued to function under the control of the Elementary Education Department and the Respondent No. 8 was also otherwise eligible for being considered for promotion to the post of Headmaster of the said school.

16. The promotion of the Respondent No. 8 as Headmaster of Silghat M.E.

Madrassa/School, as effected on 19.08.2017, having been held to have been so effected in the manner required and the Respondent No. 8 being held to be eligible for being so promoted; now, the provisions of Siksha Khetra Scheme as brought into operation vide the Office Memorandum, dated 22.09.2016, is being examined.

17. Clause 7 of the said Office Memorandum, dated 22.09.2016, mandates that in the event of amalgamation of two schools, the higher school happens to the High School, the Headmaster of the High School shall continue to function as the Headmaster of the amalgamated school. The post of Headmaster of the M.E. School shall be re-designated as the Assistant Headmaster with the same pay scale whatever was drawn and shall be held by the existing Headmaster of the M.E. School and for the said purpose, he would not be required to possess the qualifications as mandated for the post of Headmaster of a High School. However, on the post subsequently becoming vacant, the same shall be filled up by following the procedures as mandated in the service rules holding the field.

18. The Respondent No. 8, on the date the process of amalgamation was completed i.e. 15.11.2017, being the Headmaster of Silghat M.E. Madrassa/School, would, in terms of the provisions of Clause 7 of the Office Memorandum, dated 22.09.2016, be re-designated as the Assistant Headmaster of the amalgamated school i.e. East Gobindapur High School, Cachar and accordingly, the Respondent No. 8 is entitled to continue in his services as the Assistant Headmaster of the East Gobindapur High School, Cachar.

19. In the event, a vacancy arises in the post of Headmaster in East Gobindapur High School, Cachar, it is held that the Respondent No. 8 would be entitled to hold the charge of the post of Headmaster of the said school.

20. A vacancy having arisen in the post of Headmaster of East Gobindapur High School, Cachar; the Respondent No. 8 being the Assistant Headmaster of the said school, was allowed to hold the charge of the said school. However, the interim arrangement as made in respect of holding of the charge of the post of Headmaster of the said school i.e. East Gobindapur High School, Cachar, by the Respondent No. 8; is a temporary measure and in the event, the post of Headmaster of the said school is decided to be filled-up on regular basis and a recruitment process thereon, is initiated, it is hereby directed that the cases of the petitioner; the Respondent No. 8; and all other eligible teachers serving in the said school, shall be given its due consideration strictly in accordance with the provisions of the Rules holding the field governing the recruitment against the post of Headmaster of a provincialized High School.

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

JUDGE

Comparing Assistant