

GAHC010066892022



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

**Case No. : WA/124/2022**

SAMIR MAZUMDAR  
S/O LT. SONTOSH CHANDRA MAJUMDAR, M.SC. B.ED VICE PRINCIPAL ,  
GOVT. GIRLS HIGHER SECONDARY SCHOOL, HAFLONG, DIMAHASAO,  
788819

VERSUS

THE STATE OF ASSAM AND 5 ORS.  
THROUGH THE COMMISSIONER AND SECRETARY TO THE GOVT. OF  
ASSAM, EDUCATION DEPTT. (SECONDARY), DISPUR, GUWAHATI-6

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

3:NORTH CACHAR HILLS AUTONOMOUS COUNCIL  
REP. BY PRINCIPAL SECRETARY DIMA HASAO  
HAFLONG ASSAM

4:THE ADDITIONAL DIRECTOR OF EDUCATION (H)  
ASSAM  
HAFLONG  
DIMAHASAO  
ASSAM

5:THE INSPECTOR OF SCHOOLS  
DIMAHASAO DISTRICT CIRCLE  
HAFLONG

ASSAM

6:BOBITA ENGTIPI  
SUBJECT TEACHER  
GOVT. GIRLS HIGHER SEC. SCHOOL  
HAFLONG  
W/O DR. MENSING ENGHI  
R/O R.K. MISSION ROAD  
DSA COMPLEX  
KARBI RONGPANGTUI HAFLONG  
DIMA HASAO  
DIST. DIMA HASAO 78881

**Advocate for the Appellant : Mr. B. Purkayashtha, Advocate.**

**Advocate for the Respondents :** Mr. R. Mazumdar,  
SC, Secondary Education Dept., Assam.  
Mr. R. M. Das, SC, Dima Hasao Autonomous Council.  
Mr. A. R. Sikdar, Advocate for respondent No.6.

**BEFORE**  
**HONOURABLE MR. JUSTICE SUMAN SHYAM**  
**HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

Date of hearing : **13.06.2024.**

Date of judgment : **13.06.2024.**

**JUDGMENT & ORDER (Oral)**

**(Suman Shyam,J)**

Heard Mr. B. Purkayashtha, learned counsel appearing for the appellant. Also heard Mr. R. Mazumdar, learned Standing Counsel, Secondary Education Department, Assam appearing for the respondent Nos.1 and 2 and Mr. R. M. Das,

learned Standing Counsel, Dima Hasao Autonomous Council appearing for the respondent Nos.3 to 5. Mr. A. R. Sikdar, learned counsel is present on behalf of the respondent No.6.

2. This intra-court appeal is directed against the judgment and order dated 23.03.2022 passed by the learned Single Judge in WP(C) No.3099/2020 setting aside the order dated 30.06.2020, by means of which, the writ appellant herein was appointed as the In-charge Principal of the Government Girls Higher Secondary School, Haflong.

3. The facts and circumstances of the case, in a nutshell, are that the writ appellant herein was appointed as an Assistant Teacher vide order dated 28.01.1992 and his services were regularized as Assistant Teacher on 24.11.1994. The respondent No.6 was appointed as Subject Teacher on 31.12.1999 and her services were regularized on 12.01.2006. On superannuation of the erstwhile In-charge Principal of the aforesaid school the respondent No.6 herein was temporarily appointed as the In-charge Principal of the aforementioned school by the order dated 10.10.2017 issued by the respondent No.2. Thereafter, the writ appellant was appointed as Vice Principal of the school vide order dated 17.01.2020. The appointments of the respondent No.6 as In-charge Principal of the school and that of the writ appellant as the Vice Principal were admittedly made under the provisions of the Assam School Service (Govt. Secondary School) Rules, 2009 (herein after referred to as "the Rules of 2009") which was holding the field at the relevant point of time. However, the Rules of 2009 were subsequently replaced by the Assam Secondary Education (Government

Schools) Services Rules, 2020 (herein after referred to as "the Rules of 2020") which was published in the official gazette on 03.06.2020. Subsequent thereto, the authorities had passed the impugned order dated 30.06.2020 replacing the respondent No.6 by the writ appellant as the In-charge Principal of the school.

4. Assailing the order dated 30.06.2020 the respondent No.6 herein as writ petitioner had instituted WP(C) No.3099/2020 *inter-alia* contending that the writ appellant did not possess the requisite qualification either under the Rules of 2009 or the Rules of 2020 inasmuch as the B.Ed. degree obtained by him from an "off campus" mode that too, without obtaining the prior permission of the authorities, was invalid. It was also the case of the writ petitioner that the writ appellant did not fulfill the requisite qualification for being appointed as In-charge Principal of the Schools under the Rules of 2009. On the contrary, the writ petitioner fulfilled the requirements of the Rules both under the Rules of 2009 as well the Rules of 2020 for being appointed as the In-charge Principal of the School. Under such circumstances, the respondent authority was wholly unjustified in issuing the impugned order dated 30.06.2020 replacing the writ petitioner by the writ appellant, who was impleaded as respondent No.6 in the writ petition.

5. After hearing the submissions of the parties and by interpreting the provisions of Rule 12 of the Rules of 2020 the learned Single Judge had arrived at the conclusion that the writ appellant/respondent No.6 (in the writ petition) did not fulfill the essential criteria as laid down under Rule 12(3)(a)and (b) of the Rules of 2020 for being appointed as the Principal of the school. It was further observed that nothing has

been shown to conclude that the writ appellant/respondent No.6, who was working as Vice Principal, was entitled to be considered for promotion to the post of Principal. Not only that, it was also observed that the private respondent in the writ petition had also failed to demonstrate that the writ petitioner lacked the qualification to be appointed in the post of Principal of the concerned school. The learned Single Judge had further observed that it was a case of one ad-hoc appointee being replaced by another which was clearly impermissible in the eyes of law. Consequently, by the impugned judgment and order dated 23.03.2022, the order dated 30.06.2020 issued by the Principal Secretary, N. C. Hills Autonomous Council permitting the writ appellant/respondent No.6 to hold the charge of the Principal of Government Girls Higher Secondary School, Haflong was set aside.

6. Assailing the impugned judgment and order dated 23.03.2022 Mr. B. Purkayastha has argued that the writ appellant is admittedly senior to the respondent No.6 in service and he possesses all the requisite qualification prescribed by the Rules of 2020 for holding the post of Principal. Notwithstanding the same, the learned Single Judge, on an erroneous interpretation of the Rules of 2020, has set aside the order of appointment of his client to the post of In-charge Principal. Contending that it was not a case of replacement of one ad-hoc appointee by another, Mr. Purkayastha has argued that the respondents had to issue the impugned order dated 30.06.2020 so as to comply with the provisions of the Rules of 2020 and therefore, there was no justifiable ground for the learned Single Judge to interfere with the order dated 30.06.2020.

7. Mr. R. Mazumdar, learned Standing Counsel for the Secondary Education Department, Assam has supported the arguments of the appellant's counsel and has further argued that earlier, in view of the provisions contained in the Rules of 2009, the respondent No.6/writ petitioner had to be appointed as the In-charge Principal of the school. However, in view of the Rules of 2020, the writ appellant, who was senior in service and had the requisite qualification under the Rules, had to be appointed as the In-charge Principal by following the decision of this Court rendered in the case of **Jagannath Pegu Vs. State of Assam and others [MANU/GH/0290/2007]** has expressed the opinion that seniority and other eligibility of a candidate cannot be overlooked even for the purpose of temporary engagement in the post of Principal.

8. Mr. A. R. Sikdar, learned counsel for the private respondent has submitted in his usual fairness that pursuant to the publication of the Rules of 2020, the writ appellant as well as the respondent No.6 had both become eligible for being appointed in the post of Principal of the school and to that extent, he is not in agreement with the findings and conclusions recorded by the learned Single Judge to the effect that the writ appellant was not qualified to be appointed as Principal under Rule 12(3)(a) and (b) of the Rules of 2020. Mr. Sikdar, however, submits that since his client is discharging the duties of In-charge Principal and she is eligible under the Rules for being considered for promotion to the post of Principal, the respondents had committed manifest illegality in replacing her by appointing the writ appellant as In-charge Principal. According to Mr. Sikdar, since In-charge Principal is a temporary appointment, until such time the post of Principal was filled up on regular basis, the respondents ought not to have replaced one ad-hoc appointee by another.

9. We have considered the submissions made at the Bar and have also carefully gone through the materials available on record.

10. The basic facts of the case are by and large admitted. It is not in dispute that the writ appellant is senior to the respondent No.6/writ petitioner in service and the said fact is also duly established from the seniority list of the teaching staff of the Government Girls Higher Secondary School, Haflong circulated vide forwarding letter dated 22.10.2020 issued by the respondent No.5.

11. In so far as the validity of the B.Ed. degree obtained by the writ appellant is concerned, here also, we find that the Commissioner and Secretary to the Government of Assam, Secondary Education Department had issued a communication dated 06.01.2021 addressed to the respondent No.2 herein thus clarifying that the B.Ed. degree obtained by the writ appellant was valid and can be accepted for promotion of the candidate to the post of Vice Principal/Principal of the Government Girls Higher Secondary School, Haflong, as per Rules. The said communication issued by the Government of Assam is not under challenge. Therefore, this Court would have to accept that the B.Ed. degree obtained by the appellant is valid in the eyes of law.

12. The next issue arising for consideration in this case is as to whether the appellant had the requisite qualification under the 2020 Rules for being appointed as Principal of the school. By referring to Rules 12(3)(a) and (b) the learned Single Judge has held that the writ appellant did not fulfill the requirement of the Rules. However, it is not in dispute that the writ appellant had completed more than 17 years of service

as graduate teacher in Government Higher Secondary School and therefore, he did meet the eligibility criteria as prescribed by Rule 12(3)(c). So as to appreciate the above position it would be necessary for this Court to reproduce Rule 12 of the Rules of 2020 which is quoted herein below :-

“12.(1). *The posts of the Principal in Government Higher Secondary Schools shall be filled up by promotion from the candidates amongst the cadre of Post Graduate Teachers, Vice-Principal, Head Master and the Graduate Teacher having educational and professional qualification as under sub-rule (2).*

(2) *The candidate must have possessed M.A./M.Sc./M.Com with B.T/B.Ed degree from any recognized University having uniform good academic career for being eligible for selection to the post of Principal in Government Higher Secondary Schools.*

(3) *The candidate must have rendered--*

(a) *at least 5 years of service as Vice-Principal in any Government Higher Secondary School; or*

(b) *at least 15 years of service as Post Graduate Teachers in any Government Higher Secondary School; or*

(c) *17 years of service as Graduate Teacher in any Government Higher Secondary School; or*

(d) *10 years of experience as Headmaster of Government High School; or 17 years of service both as Headmaster and Graduate Teacher.*

(4) *The age must not be less than 40 years as on the first day of January of the year of recruitment. However, the incumbent must have one year of service left on the day of selection.*

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

13. A plain reading of Rule 12(3) goes to show that the clauses (a) to (d) contained therein are all alternate conditions and a candidate who fulfills any one of these conditions would fulfill the requirement of Rule 12(3) of the Rules of 2020. Since it is not in dispute that the writ appellant does meet the requirement of Rule 12(3)(c), hence, we are of the opinion that the learned Single Judge was not correct in arriving at the conclusion that the writ appellant did not fulfill the requirement of Rule 12(3)(a) and (b) of the Rules of 2020 and hence, he was not eligible for being appointed as Principal of the School.

14. In the case of **Jagannath Pegu** (*supra*) this Court had made the following observations :-

“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.”

15. While endorsing the views expressed by the learned Single Judge in the case of **Jagannath Pegu** (*supra*) we further hold that while appointing the In-charge Principal of the School the authorities must, as far as practicable, adhere to the same principles as would be applicable while filling up the post of Principal on regular basis.

16. The learned departmental counsel has submitted that in view of the law laid down by this Court in the case of **Jagannath Pegu** (*supra*) and pursuant to the publication of the Rules of 2020 the department was duty bound to comply with the decisions of this Court and issue the notification dated 30.06.2020 in view of the fact that the writ appellant was senior to the private respondent/writ petitioner and he also fulfilled all the requirements of the Rules of 2020 for being appointed as Principal of the Higher Secondary School. After going through the materials available on record, we do not find any ground to discard the above argument advanced by the learned departmental counsel. If that be so, the present is clearly not the case of replacement of one ad-hoc appointee by another but it is a case where, pursuant to the change in the Rules, the department had initiated corrective measures so as to comply with the Rules. In that view of the matter, the decision of the Supreme Court rendered in the case of **State of Haryana and others Vs. Piara Singh and others** reported in **(1992) 4 SCC 118** relied upon by Mr. Sikdar, in our opinion, would not

have any relevance in the facts and circumstances of the present case. We are of the opinion that this is not simple case of replacement of one ad-hoc appointee by another but it is a case where the Government has initiated corrective measures so as to comply with the Rules in force as well as the earlier decision of this Court rendered in the case of **Jagannath Pegu** (*supra*).

17. Since the appellant is senior to the respondent No.6/writ petitioner and he fulfilled the requisite criteria laid down by the Rules of 2020 for being appointed as Principal of the School, the authorities were duty-bound to appoint the writ appellant as In-charge Principal even if it is a temporary appointment. The core question in this proceeding is not as to whether, the writ petitioner/respondent No.6 fulfills the requirement of the Rules of 2020 for being appointed as Principal but as to whether, the impugned order dated 30.06.2020 suffers from any infirmity warranting interference by this Court. For the reasons stated herein above, the answer to the said question has to be in favour of the writ appellant. We are, therefore, of the view that the order dated 30.06.2020 does not suffer from any infirmity warranting interference by the Court.

18. Consequently, this writ appeal succeeds and the same is accordingly allowed. The impugned judgment and order dated 23.03.2022 passed by the learned Single Judge stands set aside.

19. Taking note of the submission of Mr. Mazumdar that the department is now processing the relevant file for filling up the post of Principals in High Schools/Higher Secondary Schools falling within Dima Hasao Autonomous Council area, this Court

hopes and trusts that the aforesaid exercise would be carried out and completed as expeditiously as possible so as to avoid any prejudice being caused to any of the prospective candidates.

Writ Appeal stands disposed of.

There would be no order as to cost.

**JUDGE**

**JUDGE**

T U Choudhury/Sr.PS

**Comparing Assistant**