

GAHC010060402024



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

Case No. : WP(C)/1676/2024

MD. MUSTAQUE AHMED
S/O- MD. MUTABBIR HUSSAIN,
VILL. AND P.O.- ALITANGANI,
DIST.- NAGAON, ASSAM.

VERSUS

THE STATE OF ASSAM AND 3 ORS
TO BE REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM,
SCHOOL EDUCATION DEPARTMENT (SECONDARY),
DISPUR, GUWAHATI-06.

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

3:THE INSPECTOR OF SCHOOLS
NAGAON DISTRICT CIRCLE
DISTRICT- NAGAON
ASSAM.

4:THE PRINCIPAL
ALITANGANI OSMANIA HIGHER SECONDARY SCHOOL
P.O.- ALITANGANI
PIN CODE- 782124

DIST.- NAGAON
ASSAM

Advocate for the Petitioner : MR A R BHUYAN

Advocate for the Respondent : SC, SEC. EDU.

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

Judgment & Order (Oral)

Date : 28.03.2024

Heard Mr. A. R. Bhuyan, learned counsel for the petitioner. Also heard Mr. S. M. T. Chistie, learned Standing Counsel for the Secondary Education Department appearing for the respondents no. 1, 2, & 3.

None has appeared for the respondent no. 4.

3. As consented to by the learned counsels for the contesting parties, this writ petition is taken up for final disposal.

4. The petitioner has by way of instituting the present proceeding has assailed a Speaking Order dated 13.02.2024, issued by the Director of Secondary Education, Assam, rejecting his purported claim for regularization of his honorary engagement in the post of Grade-IV in Alitangani Osmania Higher Secondary School, Nagaon.

5. The facts requisite for adjudication of the issue arising in the present proceeding is noticed herein below:-

The petitioner was appointed by the Managing Committee of Alitangani Osmania Higher Secondary School on 12.10.1994 on the basis of a resolution adopted in this connection by the Managing Committee of the said school. It is to be noted that at the time of the appointment of the petitioner in the said school, the school was already a provincialized school. After the appointment of the petitioner, the school authorities initiated a process for having a post sanctioned for the purpose of accommodating the services of the petitioner inasmuch as he was appointed against a non-sanctioned post. Although, it is projected that a Grade-IV post was sanctioned to the said school, but, the same was placed thereafter to some other school to accommodate a person working therein. In the year 2002, a post of Grade-IV employee fell vacant in a nearby school at Kandulimari Sherajia Higher Secondary School. The petitioner approached the respondent authorities for regularization of his services against the Grade-IV post existing in the said school. Having not received any response from the authorities, the petitioner had approached this Court by filing WP(C)/4448/2002 with a prayer for regularizing his services against any vacancies including the vacancy available at Kandulimari Sherajia Higher Secondary School.

This Court, basing on the stand taken by the respondent authorities in their affidavit-in-opposition that the case of the petitioner would be considered for absorption against the vacant Grade-IV post available at Kandulimari Sherajia Higher Secondary School, vide order dated 08.04.2003, proceeded to dispose of the said writ petition with a direction to the Director of Secondary School Department to consider the case of

the petitioner for permanent absorption/ regularization against the said identified post. It was further provided that the said Grade-IV post available in the said school shall not be filled up, till, the case of the petitioner is finally considered. It is also contended by the petitioner that the vacant Grade-IV post available at the Kandulimari Sherajia Higher Secondary School was filled up inspite of directions from this Court not to fill up the said post by appointing another person against the said post.

6. At this stage, the School authorities of Alitangani Osmania Higher Secondary School published an advertisement, inviting applications from eligible candidates for filling up of two vacant Grade-IV posts available in the said school. The petitioner submitted his application and appeared in the said selection process; however, the same was not finalized. A move being initiated by the school authorities to fill up the vacant posts by appointing an incumbent against the same, ignoring the merit of the petitioner herein, the petitioner had instituted WP(C)/5796/2013 before this Court, praying for setting aside and quashing the impugned selection process initiated by the school authorities for filling up the posts of Grade-IV employee in the said school.

7. It is to be noted that one Abdul Kasem Foreji also instituted WP(C)/7288/2015 before this Court, assailing the said selection process and accordingly, this Court, analogously, heard both WP(C)/5796/2013 and WP(C)/7288/2015 and vide order dated 19.11.2019, proceeded to direct the respondent authorities to consider the recommendation made by the

Managing Committee of Alitangani Osmania Higher Secondary School and pass appropriate orders for appointment for two Grade-IV posts, for which recruitment process has been initiated. This Court required the recruitment process as initiated in the year 2012 to be brought to its logical end, by passing appropriate order in this connection.

8. It is seen that in pursuance to the said directions passed by this Court vide order dated 19.11.2019, the respondent authorities had not taken any steps for compliance of such directions and accordingly, the petitioner was again required to approach this Court by way of instituting WP(C)/4270/2022.

9. This Hon'ble Court, on noticing the submission made by the learned Standing Counsel for the Secondary Education Department, on the basis of instruction received, that the Director of Secondary Education Department had already issued a communication to the Secretary to the Government of Assam, Education (Secondary) Department on 18.08.2022 for according necessary approval for filling up of the two vacant posts of Grade-IV employee available at Alitangani Osmania Higher Secondary School in Nagaon District and the matter to be pending before the Secretary to the Government of Assam, Education (Secondary) Department for the said purpose proceeded vide order dated 24.08.2022, to dispose of the writ petition requiring the petitioner herein to submit a representation before the Secretary to the Government of Assam, Education (Secondary) Department by stating his claim in the matter and it was directed that the

Secretary to the Government of Assam, Education (Secondary) Department, on receipt of such representation shall verify all relevant records and consider the representation filed by the petitioner and thereafter, pass a reasoned order also by taking into consideration the order dated 19.11.2019, passed in WP(C)/5796/2013 by this Court.

10. The petitioner, accordingly, submitted his representation and was awaiting its outcome. Poised thus, the petitioner received a copy of the order dated 13.02.2024, issued by the Director, Secondary Education Assam. On perusal of the said order dated 13.02.2024, it is seen that the same was so passed in pursuance to the directions passed by this Court vide order dated 24.08.2022 in WP(C)/4270/2022. Vide the said order dated 24.08.2022, it is seen that the consideration was made on the issue as to whether the services of the petitioner as a Grade-IV employee against the sanctioned post in the said school was liable to be regularized. By holding that the honorary services of the petitioner in a provincialised school was not liable to be regularized and by referring to a decision of a Division Bench of this Court in the case of *Dambarudhar Kalita Vs State of Assam & Others in (WA No. 252/2003)* proceeded to hold that the claims of the petitioner for regularization of his honorary engagement as a Grade-IV employee against the sanctioned post in the said school be rejected.

11. The order dated 13.02.2024, clearly reflects the non-application of mind by the Director of Secondary Education Assam to the directions passed by this Court vide order dated 24.08.2022, in WP(C)/4270/2022 and the directions as contained in the order dated 19.11.2019, passed in WP(C)/5796/2013. This Court, at no point of time, required the

respondent authorities to consider the case of the petitioner for regularization of his honorary services rendered in the said school; rather, this Court had required the respondent authorities to take the selection process as initiated in the year 2012 for recruitment against the two vacant posts of Grade-IV available in the school to its logical conclusion. It is not understood as to how the Director of Secondary Education Assam could have missed out on the issue that was required to be considered by the departmental authorities in the matter. Further, this Court had vide order dated 24.08.2022, required the Secretary to the Government of Assam, Education (Secondary) Department to consider the grievance of the petitioner and not the Director of Secondary Education Assam and it is not understood as to how the Director of Secondary Education Assam, could have passed the order dated 13.02.2024 in terms of the directions passed by this Court vide order dated 24.08.2022 in WP(C)/4270/2022.

12. The consideration as made vide the order dated 13.02.2024, being clearly perverse to the directions as passed by this Court vide the said order dated 24.08.2022, the same cannot be sustained and accordingly, the same stands set aside and quashed.

13. The directions as passed by this Court vide the order dated 24.08.2022 in WP(C)/4270/2022, being so passed basing on the instructions placed before this Court as received by the learned Standing Counsel for the Secondary Education Department and the directions issued, not being in any manner ambiguous, the respondent authorities

ought to have complied with the same in the manner strictly in accordance thereof. For the sake of convenience, the relevant part of the said order dated 24.08.2022, is extracted herein below:-

“Mr. S. M. T. Chistie, learned Standing Counsel, Secondary Education Department, on the basis of written instructions submits that the Director of Secondary Education, Assam has written a letter to the Secretary to the Government of Assam, Education (Secondary) Department, Dispur on 18.08.2022 to accord necessary approval for filling up two posts of Grade-IV posts in Alitangani Osmania Higher Secondary School in Nagaon District. He further submits that the matter is now pending before the Secretary, Education (Secondary) Department.

Considering that the matter is pending before the Secondary Education Department, the petitioner is directed to file a fresh representation before the Secretary, Education (Secondary) Department/ respondent no. 1 by annexing a copy of this writ petition along with all the annexure appended thereto within a period of ten days from today. Thereafter, on receipt of the representation, the respondent no. 1 shall verify all the relevant record and consider the representation filed by the petitioner and, thereafter, pass a reasoned order by also take into consideration the order dated 19.11.2019 passed in WP(C)/5796/2013, within a period of two months from the date of receipt of the representation.

With the aforesaid directions and observation, this writ petition stands disposed of.”

14. In view of the above position and the interference made by this Court with the order dated 13.02.2024, passed by the Director of Secondary School, Assam, the matter now stands remanded back to the Secretary to the Government of Assam, Department of School Education

to consider the case of the petitioner and also consider the recommendation made by the School Management and Development Committee of the school in question and pass appropriate orders for appointment against the two vacant Grade-IV posts available in the said school and thereby, bring in the recruitment process as initiated in the year 2012 to its logical conclusion.

15. The said exercise shall be strictly carried out in terms of the directions as passed by this Court vide order, dated 19.11.2019 in WP(C)/5796/2013 and the directions passed by this Court vide order, dated 24.08.2022 in WP(C)/4270/2022.

16. The aforesaid directions, shall now be complied with by the Secretary to the Government of Assam, Education (Secondary) Department within a period of 2(two) months from the date of receipt of a certified copy of this order.

17. The petitioner, for the purpose of compliance of the directions passed herein above shall furnish a copy of this order before the Secretary to the Government of Assam, Education (Secondary) Department as well as a copy before the Director of Secondary School, Assam along with a forwarding.

18. With the above observations and directions, the writ petition stands

disposed of.

JUDGE

Comparing Assistant