



GAHC010040402017

Page No.# 1/9



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

Case No. : WP(C)/5717/2017

IBRAHIM ALI
S/O LT. WAHED R/O VILL- KASOKHAITY P.O. MAGURMAIR, P.S.
RUPAHIHAT DIST. NAGAON, ASSAM, PIN - 782140.

VERSUS

THE STATE OF ASSAM and 6 ORS.
REP. BY THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM,
EDUCATION SECONDARY DEPARTMENT, DISPUR, GUWAHATI - 781006.

2:THE DIRECTOR SECONDARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI - 781019.

3:THE INSPECTOR OF SCHOOLS

NAGAON DISTRICT CIRCLE NDC
NAGOAN
DIST. NAGAON
ASSAM
PIN - 782001.

4:THE SCHOOL SELECTION COMMITTEE

REP. BY THE MEMBER SECRETARY
SINGIMARI MD. ALI HIGHER SECONDARY SCHOOL
P.O. SINGIMARI
DIST.NAGAON
A SSAM
PIN - 782125.



5:STATE SELECTION BOARD

HEDDED BY THE CHAIRMAN OF THE STATE SELECTION BOARD
KAHILIPARA
GUWAHATI - 781019.

6:SHRI DILIP KUMAR SARMA
S/O NAGENDRA NATH SARMA
R/O VILL- LAILURI DIST. NAGAON
C/O SCHOOL SELECTION COMMITTEE
SINGIMARI MD. ALI HIGHER SECONDARY SCHOOL
P.O. SINGIMARI
DIST. NAGAON
ASSAM
PIN - 782125.

7:MD. ZAKIR HUSSAIN
S/O LT. MD. ABU HUSSAIN
R/O RRB ROAD
SOUTH HOIBORGAON P.O. and P.S. NAGAON
DIST. NAGAON
ASSAM
PIN - 782002

Advocate for the Petitioner : MR.M KHATANIAR

Advocate for the Respondent : MRS.K M TALUKDAR(R-7)

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

Date of hearing : **10.03.2022**

Date of Judgment : **23.03.2022**

JUDGMENT & ORDER

The writ jurisdiction of this Court has been sought to be invoked by the petitioner by questioning the legality and validity of an order dated 22.06.2017 issued in favour of the respondent no. 6 appointing him as the Principal of the Singimari Md. Ali Higher Secondary School (hereinafter, School). The principal ground of challenge is that the said respondent no.

6 was not eligible for such appointment on the relevant date and therefore, could not have been appointed. On the other hand, the petitioner had fulfilled all the requisite qualification and eligibility and therefore, was liable to be offered the said appointment.

2. Before going to the issue which has arisen for determination in this case, it would be convenient to state the facts of the case in brief.

3. The petitioner is a Post Graduate subject teacher of the School. Pursuant to an advertisement dated 22.06.2016 for filling up of the post of regular Principal of the School, the petitioner, respondent no. 6 and few other persons had offered their candidature. The said respondent no. 6 is however a Graduate Teacher. Though, the Rules holding the field namely, the Assam Secondary Education (Provincialisation) Service Rule, 2003 (as amended in 2012) (hereinafter called the Rules), allows both Graduate and Post Graduate Teachers to be considered for appointment as Principal in a Higher Secondary School, different eligibility criteria are prescribed. To be more specific, whereas a Graduate Teacher is required to have a teaching experience of 17 years as qualifying service, a Post Graduate Teacher is required to have a teaching experience of 15 years as qualifying service. The aforesaid Rules is also reiterated in an Office Memorandum dated 06.06.2014. It is the specific plea of the petitioner that on the date of submission of application for the aforesaid post of Principal pursuant to the advertisement dated 22.06.2016, the respondent no. 6 did not have the qualifying service of 17 service. However, the said respondent no. 6 has been considered and appointed as Principal of the School, vide impugned order dated 22.06.2017. The petitioner contends that the crucial date for meeting the eligibility criteria is the last date of application as stipulated in the advertisement and in the instant case, on such date, the respondent no. 6 have completed only 16 years 7 months and 7 days.

4. I have heard Shri D.K. Das, learned counsel for the petitioner. I have also heard Shri U. Sarma, learned Standing Counsel, Secondary Education Department and Shri K. Sarma, learned counsel for the respondent no. 6. This Court is informed that Ms. KM Talukdar, learned counsel had earlier represented the respondent no. 7 (Zakir Hussain), who however has expired during the present proceedings. The materials available on record have been carefully examined.

5. Shri Das, the learned counsel for the petitioner has drawn the attention of this Court to the relevant Rules which lay down the eligibility criteria for filling up of the post of Principal of the Higher Secondary School. For ready reference, the relevant Rules, namely, Rule 12(2) is extracted hereinbelow-

“12(2). The minimum qualifications for appointment to the post of Principal in Higher Secondary School or Higher Secondary and Multipurpose 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;*
- (ii) The candidate must have rendered at least 15 years of service as Post Graduate Teachers or Vice-Principal or both in any of the provincialized Higher Secondary School; or*
- (iii) The candidate must have 17 years of teaching experience as Graduate Teacher in any Higher Secondary / Higher Secondary & Multipurpose School;*
- (iv) The age must not be less than 40 years as on the first January of the year of recruitment.”*

6. The learned counsel for the petitioner also draws the attention of this Court to an Office Memorandum dated 06.06.2014 issued by the Govt. of Assam, Secondary Education Department. The said OM is with regard to the guidelines for selection of Principals in provincialized Higher Secondary Schools. The relevant Clause is extracted hereinbelow-

“2. The minimum qualifications for appointment to the post of Principal in Higher 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.*
- (ii) The candidate must have rendered at least 15 years of service as Post Graduate Teacher or Vice-Principal or both in any of the provincialized Higher Secondary School; or*
- (iii) The candidate must have 17 years of teaching experience as Graduate*

Teacher in any Higher Secondary School.”

7. To bring home the contention that the eligibility has to be met on the last date of the advertisement, Shri Das, the learned counsel for the petitioner has placed reliance upon the following case laws-

i) 1993 Supp (3) SCC 168, Rekha Chaturvedi Vs. University of Rajasthan and Others;

ii) (1997) 4 SCC 18, Ashok Kumar Sharma and Others Vs. Chander Shekhar and Another;

8. In the case of **Rekha Chaturvedi (Supra)**, the Hon'ble Supreme Court was dealing with a matter on similar issue regarding the crucial date when the eligibility criteria is to be reckoned. The Hon'ble Court in no uncertain terms has rejected the contention that the required qualification of the candidates should be examined with reference to the date of selection and not with reference to the last date for making applications. For ready reference paragraph 10 is extracted hereinbelow-

“10. The contention that the required qualifications of the candidates should be examined with reference to the date of selection and not with reference to the last date for making applications has only to be stated to be rejected. The date of selection is invariably uncertain. In the absence of knowledge of such date the candidates who apply for the posts would be unable to state whether they are qualified for the posts in question or not, if they are yet to acquire the qualifications. Unless the advertisement mentions a fixed date with reference to which the qualifications are to be judged, whether the said date is of selection or otherwise, it would not be possible for the candidates who do not possess the requisite qualifications in praesenti even to make applications for the posts. The uncertainty of the date may also lead to a contrary consequence, viz., even those candidates who do not have the qualifications in praesenti and are likely to acquire them at an uncertain future date, may apply for the posts thus swelling the number of applications. But a still worse consequence may follow, in that it may leave open a scope for malpractices. The date of selection may be so fixed or manipulated as to entertain some applicants

and reject others, arbitrarily. Hence, in the absence of a fixed date indicated in the advertisement/notification inviting applications with reference to which the requisite qualifications should be judged, the only certain date for the scrutiny of the qualifications will be the last date for making the applications. We have, therefore, no hesitation in holding that when the Selection Committee in the present case, as argued by Shri Manoj Swarup, took into consideration the requisite qualifications as on the date of selection rather than on the last date of preferring applications, it acted with patent illegality, and on this ground itself the selections in question are liable to be quashed. Reference in this connection may also be made to two recent decisions of this court in A.P. public service commission, Hyderabad v. B. Sarat Chandra' and District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram v. M. Tripura Sundari Devi."

9. In the case of **Ashok Kumar Sharma (Supra)**, the Hon'ble Supreme Court has held that the crucial date is the last date of filling the applications when the eligibility of the candidates are to be judged. It has further been held that a person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all.

10. Shri U. Sarma, learned Standing Counsel, Secondary Education Department submits that it is no longer *res integra* that all eligibility criteria are to be possessed by a candidate on the last date of filling of the application, pursuant to the selection process.

11. Shri K. Sarma, learned counsel for the respondent no. 6 however, vehemently opposes the case projected by the petitioner and the relief claimed. By defending the selection and appointment of the respondent no. 6, Shri Sarma, the learned counsel submits that the crucial date is the date of consideration of the application and not the date of submission of the same and in the instant case, the respondent no. 6 had duly fulfilled the requisite eligibility on the date of consideration of his application. It is further submitted that as on the date of consideration of the candidatures of the candidates, the said respondent no. 6 was duly qualified and therefore, no interference is called for.

12. Shri K. Sarma, learned counsel for the respondent no. 6 further submits that the petitioner being an unsuccessful candidate is otherwise also not eligible to turn around and

make the present challenge. He also raised the objection of *res judicata* by submitting that in an earlier occasion, the petitioner had instituted a writ petition, which was numbered as WP(C)/4004/2017 where the issues were similar and this Court, while issuing notice had passed an interim order directing maintaining of *status quo* as obtaining today with regard to holding of duties as Principal of Singimari Md. Ali Higher Secondary School, Nagaon shall be maintained. The objection of estoppel and waiver have also been taken by the said respondent.

13. In support of his submissions, Shri Sarma, the learned counsel for the respondent no. 6 relies upon the following decisions-

i) (2013) 11 SCC 309, Ramesh Chandra Shah and Other Vs. Anil Joshi and Others;

ii) (2017) 9 SCC 478, D. Saroja Kumari Vs. R. HelenThilakom and Others.

14. In the case of ***Ramesh Chandra Shah (Supra)***, the Hon'ble Supreme Court was dealing with a matter involving a recruitment process. It has been held that a candidate having participated in the process of selection with full knowledge that the recruitment was being made under General Rules had waived their right to question the advertisement or methodology.

15. In the case of ***D. Saroja Kumari (Supra)***, the Hon'ble Supreme Court has held that a candidate having participated in a selection process and coming out unsuccessful is estopped from challenging the same and writ petition as such is not maintainable.

16. The rival submissions made by the learned counsel for the parties have been duly considered and the materials before this Court have been carefully examined.

17. The point which arises for determination is with regard to the date for which the eligibility criteria have to be met by an aspiring candidate in an ensuing selection process. In the instant case, the eligibility criteria is a statutory one namely, completion of 17 years as a Graduate Teacher or 15 years as a Post Graduate Teacher to be appointed to the post Principal of a Higher Secondary School.

18. In the instant case, the advertisement for filling up of the said post of Principal of the

School was notified with the last date for application as 25.06.2016. As indicated above, apart from the statutory requirement regarding the eligibility, the terms and conditions were also notified in the advertisement itself which includes the aforesaid criterion of minimum tenure of teaching experience either as a Post Graduate Teacher or a Graduate Teacher. Admittedly, the respondent no. 6, who is a Graduate Teacher did not have the required experience of 17 years and as on the last date of submission of application, he was about 16 years, 7 months and 7 days. The contention of the said respondent no. 6 is that by the time the applications were considered, he has completed the requisite number of 17 years.

19. The crucial issue is as to whether the eligibility has to be possessed on the date of application or on the date of consideration. The issue has been conclusively answered by the Hon'ble Supreme Court in the case of ***Rekha Chaturvedi (Supra)*** in which it has been clearly laid down that it is the last date of submission of application which should be the date on which the eligibility criteria should be met. In paragraph 10 of the said judgment which have been quoted above, the logic and reason behind such construction have also been elaborately explained which is to do away with any scope of malpractice or uncertainty. The aforesaid law laid down in ***Rekha Chaturvedi (Supra)*** has been consistently followed and in the case of ***Ashok Kumar Sharma (Supra)***, it has been reiterated that qualification / eligibility is required to be present on the date of submission of the application. The Hon'ble Court had also rejected the contention that by allowing persons to participate in the selection who had obtained the eligibility would enable the recruiting authority to get the best talent. The said contention has been held to be impermissible justification.

20. The citations relied upon by the respondent no. 6 namely, ***Ramesh Chandra Shah (Supra)*** will not have any application inasmuch, as it is not a case where there was any illegality or irregularity in the formation of the Selection Committee before whom the petitioner had consciously appeared and later put up the challenge. Similar, in the case of ***D. Saroja Kumari (Supra)***. In the opinion of this Court, the principle of estoppel or waiver will also not be attracted in the instant case as the challenge is on a ground which came to light after the recruitment process was over. In any case, the ground is with regard to violation of a statutory requirement and therefore, there cannot be estoppel in law.



21. Since, the respondent no. 6 did not fulfill the eligibility criteria for being considered for the post of Principal, there was no occasion for issuing any appointment order in his favor. In view of the above, the impugned order of appointment dated 22.06.2017 appointing the respondent no. 6 to the post of Principal of the Singimari Md. Ali Higher Secondary School cannot be sustained in law and is accordingly set aside. Consequently, the aforesaid post of Principal of the School needs to be filled up by the next eligible candidate from the panel. As indicated above, the respondent no. 7 (Zakir Hussain), who was the second nominee has already expired and therefore it is the petitioner, who is next in line, is required to be considered for appointment. The aforesaid exercise may be carried out and completed within a period of 2(two) months from today.

22. Accordingly, the writ petition stands allowed.

23. No order, as to cost.

JUDGE

Comparing Assistant