



GAHC010204982019

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

**Case No. : WP(C)/6338/2019**

MAHESWAR DAS  
S/O- LT UPEN CHANDRA DAS, VILL- BAHAMA, P.O. MANAHKUCHI, DIST-  
KAMRUP (R), ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS.  
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, EDUCATION  
(SECONDARY) DEPTT., DISPUR

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

3:HARA KANTA KUMAR DEKA  
PRESENTLY  
ASSTT. HEAD MASTER  
BAGTA  
BS HIGH SCHOOL  
P.O. BAGTA  
DIST- KAMRUP (R)  
PIN- 78110

**Advocate for the Petitioner : MR. S K TALUKDAR**

**Advocate for the Respondent : SC, SEC. EDU.**

**B E F O R E**

**HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI**

Advocates for the petitioner : Shri ABT Haque

Advocates for the respondents : Shri J. Khataniar, SC-Secondary Edu. Deptt.  
Shri A. Gogoi, R-3.

**JUDGMENT & ORDER (ORAL)****14.06.2023**

The petitioner, who is a Hindi Teacher of Bagta BS High School has put to challenge the action of the respondent authorities in appointing the respondent no. 3 in the post of Assistant Head Master of the said School. The petitioner alleges that there is violation of an Office Memorandum dated 22.09.2016. The petitioner has based his claim to the said post of Assistant Head Master on the strength of being the senior most Assistant Teacher in the said High School.

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

3. The petitioner is a Hindi Teacher of the School in question. Pursuant to a policy decision published by an Office Memorandum dated 22.09.2016, an exercise of amalgamation was taken in the year 2017, the Bagta BS ME School and Bagta BS MV School were amalgamated with the Bagta BS High School. It is the case of the petitioner that on such amalgamation, by following the relevant provisions of the aforesaid Office Memorandum, the Head Master of the MV School was made the Assistant Head Master of the amalgamated School. The said incumbent was one Shri Sarat Ch. Kalita. However, vide a corrigendum published on 19.07.2019, the respondent no. 3 was appointed as the Assistant Head Master of the School. The petitioner claims that there is no provision for accommodation of a Head Master of an



MV School in an amalgamated School as Assistant Head Master and the said post is required to be filled up by direct recruitment, in which case, the petitioner would have a chance.

4. I have heard Shri ABT Hoque, learned counsel for the petitioner. I have also heard Shri J. Khataniar, learned Standing Counsel, Secondary Education Department whereas the private respondent no. 3 is represented by Shri Amarendra Gogoi, learned counsel. The records placed before this Court by the respective parties have been carefully examined.

5. Shri Haque, learned counsel for the petitioner has submitted that there is no provision either in the Office Memorandum or the Statutory Rules for accommodation of the Head Master of MV School when such School is merged with a High School. The learned counsel has drawn the attention of this Court to the order dated 16.06.2017 whereby the ME School as well as MV School were amalgamated with the High School. In the said amalgamation, the incumbent, Shri Sharat Ch. Kalita, who was holding the post of Head Master of the MV School was made the Assistant Head Master. However, vide the impugned corrigendum dated 19.07.2019, the respondent no. 3 has been appointed in the said post of Assistant Head Master. The learned counsel for the petitioner submits that vide such impugned Corrigendum, the scope and opportunity of the petitioner to apply for and be considered for appointment to the post of Assistant Head Master has been jeopardized.

6. On the other hand, Shri Khataniar, learned Standing Counsel of the Department has defended the action. He clarifies that at the time of amalgamation, there was no Head Master in the ME School and the respondent no. 3 is the available Head Master of the ME School. He further clarifies that under the Rules holding the field, ME School and MV School is at par. It is further submitted that the Corrigendum had to be issued as before the order of amalgamation could be published, the incumbent holding the post of Head Master of the MV School, Shri Sharat Ch. Kalita had retired on attaining

the age of superannuation on 30.04.2017. He accordingly submits that the writ petition be dismissed.

7. Shri Gogoi, learned counsel for the respondent no. 3, while endorsing the submissions made by the Department has submitted that the projection made by the petitioner is fallacious both factually and legally.

8. Shri Gogoi has referred to the Assam Elementary Education (Provincialisation) Rules, 1977. The definition of Upper Primary School appearing in Rule 2(xii) has been referred to which reads as follows:

*“2.(xii) "Upper Primary School" means the Institution imparting education upto Class VIII including ME School or MV School or ME Madrassa or Senior Basic School individually or a combination of any two or three of or all the four categories of these institutions.”*

9. The learned counsel submits that as per the said definition, both ME School and MV School are treated at par and falls within the definition of Upper Primary School. Shri Gogoi, the learned counsel clarifies that the responsibility of an MV School is even more as it consists of Classes from I to VIII whereas an ME School consist of Classes VI to VIII. The learned counsel further submits that the recruitment process for the post of Head Master of ME School and MV School is the same and even the pay scales are same.

10. Shri Gogoi, the learned counsel has also relied upon the Assam Elementary Education (Provincialisation) Service and Conduct Rules, 1981, wherein in Schedule II, Pay Scales of Head Master of ME / MV Schools have been given which is the same.

11. The learned counsel for the respondent no. 3 further submits that the contention advanced by him that ME and MV Schools are at par is also fortified by the Clause 3(11) of the OM dated 22.09.2016 in which the expression “UP” (Upper Primary) has been used. Reference has further been made to the Assam Secondary Education (Provincialised Schools) Service Rules, 2018. In Rule 28, the Scheme for

amalgamation of Schools under Siksha Khetra has been laid down. Under Rule 28(2) the expressions "LP" has been used analogously for ME / MV Schools. Further, in Rule 28(3), ME / MV has been used interchangeably. He submits that the OM dated 22.09.2016 has been given a statutory colour in the Rules of 2018 through the provision of Rule 28. Further, Clause 4(1) of the OM provides that the senior most Head Master shall be the Head Master of the School after the merger.

12. Shri Gogoi, learned counsel for the respondent no. 3 submits that in fact his client was initially appointed as a Graduate Teacher in the ME School and was promoted as Head Master of the MV School in the year 2004. Further, vide order dated 31.12.2021, the respondent no. 3 has been given Grade Pay from the date of amalgamation and the said order would reveal that such conferment was both for incumbents who was earlier working in either ME School or MV School prior to such amalgamation.

13. The rival contentions advanced by learned counsel for the parties have been duly considered and the materials placed before this Court have been carefully perused.

14. The challenge, as would appear from the writ petition is with regard to a Corrigendum dated 19.07.2019 by which the name of one Shri Sharat Ch. Kalita has been deleted and in his place, the name of the respondent no. 3 has been substituted. The challenge is based on the primary ground that in the event of amalgamation, as per the OM dated 22.09.2016, the Head Master of the ME School becomes the Assistant Head Master of the High School. However, the School in which the respondent no. 3 was serving prior to the amalgamation was not an ME School but an MV School and therefore, the Impugned Corrigendum is not sustainable in law.

15. The question which therefore is required to be answered is when the OM dated 22.09.2016 does not contain the expression MV School whether the provisions made for ME School can be applied. To answer the said question, the objective of the OM

which was issued with regard to the policy of the Government to amalgamate and merge difference School under Siksha Kshetra has to be examined.

16. The definition of Upper Primary Schools appearing in Rule 2(xii) of the Rules of 1977 includes ME as well as MV Schools. It is further admitted that while an ME School consists of Classes from VI to VIII, an MV School consists of Classes I to VIII. The recruitment process for the post of Head Master of both the Schools and the Pay Scales are the same. In fact, it appears that the duties and responsibilities discharged by a Head Master of an MV School is more than that of a Head Master of an ME School. Further, Schedule II of the Rules of 1981 lays down the Pay Scales of Head Master which would reveal that such Pay Scales are same for ME and MV Schools. Under Rule 28(2) of the Rules of 2018, LP, ME and MV have been used interchangeably in case of merger with a High School. In Rule 28(3), ME and MV have been used in case of merger with a Higher Secondary School.

17. It is seen that the relevant provisions of the OM dated 22.09.2016 has been given a statutory colour by incorporation of provision in Rule 28 of the Rules of 2018 mutatis mutandis. Moreover, while incorporating such provisions of the OM under the heading Scheme for amalgamation of Schools under the Siksha Kshetra, the expressions ME and MV has been used interchangeably.

18. This Court has also noted that in the order dated 31.12.2021 pertaining to the grant of Grade Pay to the respondent no. 3, incumbents who had worked prior to amalgamation both in ME Schools and MV Schools have been treated at par.

19. Under those facts and circumstances, this Court is unable to accept the contention made on behalf of the petitioner that the Head Master of an MV School cannot be considered for appointment as Assistant Head Master after its amalgamation with a High School.

20. Moreover, a close scrutiny of the challenge made would also disclose that the same pertains to only the Corrigendum dated 19.07.2019. However, it is seen that the



principal order dated 16.06.2017 by which the amalgamation had already mentioned that the Assistant Head Master of the amalgamated High Scholl would be Sharat Ch. Kalita who was the Head Master of the MV School. However, the said order dated 16.06.2017 is not under challenge and therefore, only because a Corrigendum had to be issued as in the meantime, the incumbent Sharat Ch. Kalita had retired on 30.04.2017 on attaining the age of superannuation prior to issuance of the Notification dated 16.06.2017, a challenge to the said Corrigendum cannot be maintained.

21. In view of the aforesaid facts and circumstances, this Court is of the unhesitant opinion that no case for interference is made out and accordingly the writ petition stands dismissed.

22. No order as to cost.

**JUDGE**

**Comparing Assistant**