



GAHC010126232020

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

Case No. : WP(C)/4043/2020

CHAYANIKA DEKA
W/O. SRI HEMEN BARMAN, VILL. AND P.O. AMARI, DIST. NALBARI,
ASSAM, PIN-781306.

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, EDUCATION
(SECONDARY) DEPTT., DISPUR, GUWAHATI-781006.

2:THE DIRECTOR OF SECONDARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI-781019.

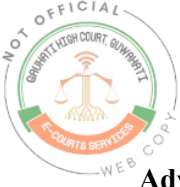
3:THE INSPECTOR OF SCHOOLS

NALBARI DISTRICT CIRCLE
NALBARI
ASSAM
PIN-781335.

4:THE MANAGING COMMITTEE OF BANGAON H.S. SCHOOL

THROUGH THE MEMBER SECRETARY CUM PRINCIPAL OF BANGAON H.S.
SCHOOL
NALBARI
ASSAM

Advocate for the Petitioner : MR. I H SAIKIA



Advocate for the Respondent : SC, SEC. EDU.

**BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA**

JUDGMENT & ORDER (ORAL)

Date : 18-11-2021

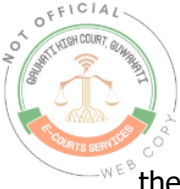
Heard Mr. I H Saikia, learned counsel for the petitioner. Also heard Mr. R Mazumdar, learned counsel for the respondents no. 1, 2 and 3 being the authorities under the Secondary Education Department, Government of Assam.

2. As per the affidavit of the respondent no. 2, the Director of Secondary Education, Assam, the learned Standing Counsel for the Department also represents the respondent no. 4.

3. The petitioner has the qualification of BA (Major in Sanskrit) in the year 2007, MA in Sanskrit in the year 2010, Shastri examination in the year 2013 and B.Ed. examination in the year 2010. The petitioner is also duly qualified in the Special TET examination of the year 2016.

4. The regular Sanskrit teacher in the Bangaon Higher Secondary School in the Nalbari district retired from service on 30.09.2016. It is stated that on the retirement of the regular teacher, there was an immediate need of having a Sanskrit Teacher in the school for the interest of students as well as in the public interest. As a regular recruitment in the vacant post was not possible immediately at that relevant point of time, the petitioner who had all the necessary qualifications, as indicated above, to be the Sanskrit teacher of the school, was allowed to discharge the duties as the Sanskrit teacher and it is stated that such arrangement was on a honorary basis.

5. There was an advertisement dated 17.08.019 by the School Selection Committee of the Bangaon Higher Secondary School inviting applications, amongst others, for the post of teacher in the Sanskrit in the school. The petitioner having all the required qualifications and experiences applied but the recruitment process could not be completed. In the circumstance,



the petitioner continued to discharge her duties in the school as the teacher in the Sanskrit on a honorary basis, as was initially appointed.

6. There is a subsequent advertisement by the School Selection Committee dated 24.02.2021 and the petitioner had participated in the selection process. The result thereof is yet to be finalized. This writ petition has been instituted prior to the advertisement dated 24.02.2021 in which the petitioner had participated with a prayer for regularizing/appointing the petitioner against the sanctioned post of Assistant Teacher in the subject Sanskrit in Bangaon Higher Secondary School by considering her long experience of teaching in the school in the subject Sanskrit or to give preference to the petitioner as a candidate when the post of Assistant Teacher in the subject Sanskrit in the Bangaon Higher Secondary School would be filled up on a regular basis.

7. As the regular selection process had been initiated during the pendency of this writ petition, there is an order dated 08.03.2021 allowing the petitioner to participate in the selection process. In the circumstance, the petitioner seeks to mould the reliefs sought for to the extent of claiming 50 (fifty) bonus marks in the selection process pursuant to the provision of Rule 10(4) of the Assam Secondary Education (Provincialised Schools) Service Rules, 2018 (in short, the Rules of 2018).

8. Mr. I H Saikia, learned counsel for the petitioner states that in the facts and circumstance under which the petitioner is rendering her services in the Bangaon Higher Secondary School, it is to be construed that she is serving on a fixed pay basis in a provincialised Higher Secondary or High School and therefore, would be entitled to a preference in the recruitment process by awarding 50 (fifty) bonus marks for her service at a fixed pay.

9. Mr. R Mazumdar, learned counsel for the Secondary Education Department raises a counter contention that the manner in which the petitioner had entered the service as a teacher in the subject Sanskrit in the Bangaon Higher Secondary School, cannot be said to be a service on a fixed pay basis in a provincialised Higher Secondary or High School. By referring to the materials on record, Mr. Mazumdar raises the contention that the petitioner was appointed as a teacher in the Bangaon Higher Secondary School in the subject Sanskrit

on an application being made by her on the retirement of the earlier teacher of Sanskrit and the School Managing Committee although did not have the jurisdiction to allow such appointment, did allow the petitioner to serve in the school as an honourary teacher. Mr. Mazumdar further contends that it is an established position of law that School Managing Committee of a provincialised Higher Secondary or High School does not have the jurisdiction to allow any person to work on a honourary basis without being subjected to the regular procedure for selection.

10. Mr. I H Saikia, learned counsel for the petitioner on the other hand raises the contention that although the petitioner may have been appointed on an application being submitted by her and the appointment was on honourary basis by the School Managing Committee of the school concerned, but it was done in the public interest and also in the interest of the students as there was an urgent need of a teacher for the subject Sanskrit in the school.

11. If under the law, a School Managing Committee does not have the jurisdiction to appoint a person on an honourary basis in a provincialised Higher Secondary or High School, we have to accept that the circumstantial necessity of making such appointment cannot override the provision of law that the School Managing Committee would have no jurisdiction to make such appointment and circumstantial necessity alone cannot be the bestow jurisdiction to a authority which otherwise, it did not have.

12. In the aforesaid background, we take note of the provision of Rule 10(4) of the Rules of 2018 which is extracted as below:

“10(4) The teachers working continuously on Fixed pay basis (other than contractual teachers) in a provincialised Higher Secondary High School / Madrassa shall be given preference for recruitment to the post of Graduate teachers provided they have requisite qualification.”

13. Rule 10(4) of the Rules of 2018 provides for a preference in the recruitment to the post of Graduate Teachers by awarding 50 (fifty) bonus marks to such teachers who were working continuously on a fixed pay basis, other than contractual teachers in a provincialised Higher Secondary School or High School/Madrassa.

14. The very expression working continuously on a fixed pay in a provincialised Higher Secondary or High School/Madrassa would have to be interpreted to mean that the act of working continuously on a fixed pay in a provincialised Higher Secondary or High School/Madrassa would have to be by following an acceptable procedure under the law for entering into such service. A contrary interpretation to the effect that even such person who had entered the service on a fixed pay without following the due procedure of law, would also satisfy the requirement of working continuously on a fixed pay in a provincialised Higher Secondary or High School/Madrassa would firstly be contrary to the constitutional scheme and secondly, it would amount to give a legal sanction to a procedure adopted for appointment which would be without the jurisdiction of the authorities making such appointment.

15. From such point of view, we are unable to accept the contention of the petitioner for a preference by awarding 50 (fifty) bonus marks under Rule 10(4) of the Rules of 2018 in the selection process pursuant to the advertisement dated 24.02.2021 in which the petitioner had participated.

16. But at the same time, we also take note of an aspect that when the petitioner was appointed by the District Selection Committee, although it may be by an authority without the jurisdiction but there was an urgent need in the Bangaon Higher Secondary School to have a teacher in the subject Sanskrit and such need had arisen in view of the interest of the students of school. Secondly, since the year 2016, the petitioner is continuously rendering her services as a teacher in the subject Sanskrit in the school and no view has been expressed by any quarter that the quality of service rendered by the petitioner was unsatisfactory. In fact, on the other hand, indications are given that the service rendered by the petitioner in the school concerned was of the acceptable quality.

17. From such point of view, it can also be understood that there is the existence of an element of the experience that the petitioner had gained during her period of service as a teacher in Sanskrit in the school for almost five years. Again when we look into the scheme of Rules of 2018, we find that the criteria for selection is provided in Clause 2 of Schedule-II to the Rules.



18. Clause 2 of Schedule II to the Rules provides the manner and procedure to be adopted by the District Selection Committee in awarding marks for the purpose of the selection and the procedure and method prescribed is circumscribed and specific to the extent as to how much marks is to be awarded under which category.

19. A reading of the procedure and method provided in Clause 2 of the Schedule-II of the Rules of 2018 does not indicate any criteria for awarding of marks for the component of experience that a person may have had prior to participating in such recruitment. In other words, the procedure and method prescribed in the Rules do not provide for any distinction between the class of candidates who are fresh from acquiring their respective qualifications and those candidates who may have some intermediate experience as a teacher in the particular subject or category of school concerned.

20. As the Rules do not prescribed any weightage for the criteria experience, we are unable to issue any specific direction to the respondent authorities to award certain marks to the petitioner for the criteria experience in the recruitment process pursuant to the advertisement dated 24.02.2021. But at the same time, we may also observe that a class of teachers having the experience of five years in the same subject and in the same school would have an intelligible differentia with those candidates who are fresh from acquiring the qualification and had participated in the selection process straightaway.

21. In the aforesaid circumstance, we are of the view that the interest of justice would be met on an application being made by the petitioner before the Principal Secretary to the Government of Assam in the Secondary Education Department, for a relaxation under Rule 33 of the Rules of 2018.

22. Rule 33 of the Rules of 2018 provides that where the Government is satisfied that operation of any of the rules leads to undue hardship in any particular case, it may, dispense with or relax the requirement of that rule to such extent and subject to such conditions as it may consider necessary in dealing with the case in a just and equitable manner.

23. Rule 33 provides for a situation where the Government is satisfied that the operation of any of the rules leads to undue hardship in any particular case it may order the requirement of that rule to such extent and subject to such condition as it may consider necessary for



dealing with the case and further the dealing of the case would have to be in a just and equitable manner. Accordingly, on an application for relaxation being made by the petitioner under Rule 33, we require the Principal Secretary to take note of the aforesaid three elements of the Rule 33 of the Rules of 2018, and if any undue hardship is being caused to the petitioner, the same be dealt in a just and equitable manner.

24. Upon such application being made, the Principal Secretary to pass a reasoned order as to whether some weightage can be given to the petitioner in the selection process for the experience of five years which the petitioner had rendered as a subject teacher in Sanskrit in the Bangaon Higher Secondary School.

25. It is also to be taken note of that whatever relaxation may be granted would not be a general relaxation, but such relaxation would be only in respect of a given particular case.

26. The application be submitted within a period of three days from today and upon such application being submitted, the Principal Secretary to pass a reasoned order within a period of fifteen days thereafter and it is expected that the reasoned order be passed before the results are finalized by the District Selection Committee.

27. Writ petition is given the final consideration as indicated above.

JUDGE

Comparing Assistant