



GAHC010036972021

Page No.# 1/9



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

Case No. : WP(C)/1343/2021

GAJEN CH SWARGIARY
S/O. BOSUNDHAR SWARGIARY, VILL. BAGARIBARI, P.O. BARANGABARI,
PIN-784552, DIST. UDALGURI, ASSAM.

VERSUS

THE STATE OF ASSAM AND 6 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, EDUCATION
(SECONDARY) DEPTT., DISPUR, GUWAHATI-06

2:THE ADDL. SECRETARY
TO THE GOVT. OF ASSAM
SECONDARY EDUCATION DEPTT.
DISPUR
GUWAHATI-06.

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

4:THE BODOLAND TERRITORIAL COUNCIL (BTC)
REP. BY THE PRINCIPAL SECRETARY
BTC
KOKRAJHAR
PIN-783370.

5:THE DIRECTOR OF SECONDARY EDUCATION
BTC
KOKRAJHAR
ASSAM
PIN-783370.



6:THE INSPECTOR OF SCHOOLS
UDALGURI DISTRICT CIRCLE
UDALGURI
DIST. UDALGURI
ASSAM
PIN-784509.

7:JITEN KALITA
S/O. LT. G.K. KALITA
ASSTT. HEADMASTER
CHINAKONA HIGH SCHOOL
VILL. KHAGRA
P.O. BARANGABARI
P.S. KHAIRABARI
DIST. UDALGURI (BTAD)
ASSAM
PIN-784522

Advocate for the Petitioner : MR. B J GHOSH
Advocate for the Respondent : SC, SEC. EDU.

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

Date : 03-03-2021

JUDGMENT & ORDER (ORAL)

Heard Mr. BJ Ghosh, learned counsel for the petitioner, Mr. R Mazumdar, learned counsel for the Secondary Education Department of the Government of Assam, Mr. B Choudhury, learned counsel for the authorities under the BTC and Mr. R Islam, learned counsel for the respondent No.7.

2. The facts in brief are that the writ petitioner Sri Gajen Chandra Swargiary was appointed as an Assistant Teacher in the Chinakona High School on a graduate scale of pay on 01.10.1998. The respondent No.7 Sri Jiten Chandra Kalita on the other hand was appointed as an Assistant Teacher in the Chinakona ME School and he received his graduate scale of pay from 04.06.1992. The Chinakona ME School was amalgamated with the Chinakona High School as per the order of amalgamation dated 03.04.2017. We further take note that the respondent No.7 Sri Jiten Chandra Kalita was also the Headmaster of Chinakona



ME School at the time when the school was amalgamated. As per the terms of amalgamation, the Headmaster of the ME School becomes Assistant Headmaster of the amalgamated High School after such amalgamation. Admittedly, after the amalgamation of the ME School and the High School on 03.04.2017, the respondent No.7 Sri Jiten Chandra Kalita was the Headmaster of the School.

3. It had been clarified that as per Rule 14(2) of the Assam Secondary Education (Provincialised Schools) Service Rules, 2018, the Assistant Headmaster of a High School would also be construed to be a Graduate Teacher of the School and has all the rights that may accrue to a Graduate Teacher.

4. Both the petitioner Sri Gajen Ch Swargiary and the respondent No.7 Sri Jiten Chandra Kalita are claiming to be the Headmaster of Chinakona High School after its amalgamation. A process for a regular promotion to the post of Headmaster of the Chinakona High School was initiated as per the advertisement dated 27.05.2015. The writ petitioner Sri Gajen Chandra Swargiary offered his candidature for the post of Headmaster pursuant to the said advertisement.

5. The selection process for promotion as a regular Headmaster culminated in the order dated 16.08.2017 of the Director of Education, BTC by which the writ petitioner Sri Gajen Chandra Swargiary was promoted to the post of Headmaster. The order dated 16.08.2017 of the Director of Education, BTC promoting the petitioner Sri Gajen Chandra Swargiary as the Headmaster of Chinakona High School was assailed by the respondent No.7 Sri Jiten Chandra Kalita in WP(C) No.4368/2020 and by the order dated 17.11.2020, the Commissioner and Secretary to the Government of Assam in the Secondary Education Department was directed to entertain a representation dated 06.12.2019 submitted by the respondent No.7 Sri Jiten Chandra Kalita and thereafter to pass a reasoned order thereon by giving a personal hearing to both the petitioner as well as the respondent No.7. Consequent thereof, the order dated 10.02.2021 has been passed by the Commissioner and Secretary to the Government of Assam in the Secondary Education Department.

6. In the order of 10.02.2021, the Commissioner and Secretary took note of the provisions of Rule 14(2)(b) of the Assam Secondary Education (Provincialised Schools)



Service Rules, 2018 (in short Rules of 2018), which came into force from 18.09.2019 and took note that under the said provision, in order to be eligible for promotion to the post of Headmaster in a High School, a candidate must be a graduate with B.Ed degree and should have at least 10 years of teaching experience as a Graduate Teacher, where a Graduate Teacher would also include the cadre of Assistant Headmaster. It further provided that the seniority of the Assistant Headmaster shall be counted from the date of joining as Graduate Teacher with graduate scale of pay. It was also provided that in case of an amalgamated High School where the ME/MV School had been amalgamated, the Assistant Headmaster would be eligible for selection as Headmaster subject to the condition that the incumbent should have at least 15 years of teaching experience as Graduate Teacher. Accordingly, by invoking the provisions of Rule 14(2)(a)(b) of the Rules of 2018, the Commissioner and Secretary held that the respondent No.7 Sri Jiten Chandra Kalita, who was the Assistant Headmaster of Chinakona ME School would be eligible for promotion as Headmaster of the amalgamated Chinakona High School. Having held that the respondent No.7 Sri Jiten Chandra Kalita would be eligible for promotion as Headmaster of the amalgamated Chinakona High School, the Commissioner and Secretary had also cancelled the earlier orders of the Director of Education, BTC and the Inspector of Schools, Udalguri by which the writ petitioner Sri Gajen Chandra Swargiary was appointed as the Headmaster of Chinakona High School, meaning thereby the order dated 16.08.2017 of the Director of Education, BTC stood cancelled. Being aggrieved, the present writ petition is instituted by Sri Gajen Chandra Swargiary.

7. Mr. BJ Ghosh, learned counsel for the petitioner Sri Gajen Chandra Swargiary raises a contention that the promotion of the petitioner as the regular Headmaster of the school was pursuant to a selection process, which was initiated as per the advertisement dated 27.05.2015 and the order of promotion is a culmination of the said selection process. Further, according to Mr. BJ Ghosh, learned counsel for the petitioner, the respondent No.7 Sri Jiten Chandra Kalita became eligible to be promoted as a Headmaster of the school on the basis of his seniority as a Graduate Teacher only after the Chinakona ME School was amalgamated with the Chinakona High School as per the order dated 03.04.2017. As his right to be considered for promotion had arisen only on 03.04.2017, therefore, the respondent No.7 Sri Jiten Chandra Kalita would not be eligible to participate in the selection process for the



regular Headmaster pursuant to the advertisement dated 27.05.2015, inasmuch as, on the date of advertisement, the respondent No.7 Sri Jiten Chandra Kalita was the Assistant Headmaster of the Chinakona ME School and therefore, ineligible to participate in any such selection process for the post of Headmaster of Chinakona High School.

8. Mr. R Islam, learned counsel for the respondent No.7 Sri Jiten Chandra Kalita on the other hand strenuously argues that both under the facts and circumstance of the present case as well as under the prevailing law, it is the respondent No.7 Sri Jiten Chandra Kalita who would be senior to the writ petitioner Sri Gajen Chandra Swargiary as a Graduate Teacher in the amalgamated Chinakona High School. For the purpose, several decisions are being relied upon including the decision of this Court in ***Kripa Sindhu Das –vs- State of Assam and others***, reported in ***2020 (1) GLT 545***.

9. In ***Kripa Sindhu Das (supra)***, the legality and validity of the provisions of Rule 3, Rule 14(2), Rule 14(3), Rule 24 and Rule 25 of the Assam Secondary Education (Provincialised) Service Rules, 2003 was assailed on the ground of being unconstitutional. A further prayer was made in the said writ petition, as recorded in paragraph 2 of the judgment in ***Kripa Sindhu Das (supra)***, seeking a direction to the State respondents to insert an appropriate provision in the Assam Secondary Education (Provincialised) Service Rules, 2003 that promotion to the post of Headmaster in a High School can be made only from the feeder post of Assistant Headmaster of such High School to the exclusion of the Graduate Teachers.

10. The said prayer in the writ petition was rejected by the judgment rendered in ***Kripa Sindhu Das (supra)***. As an analogy to the said judgment rejecting the prayer to declare that the feeder post for promotion to the post of Headmaster to be only from the Assistant Headmaster, the State respondents are of the view that both the Graduate Teachers and the Assistant Headmaster would be eligible for promotion to the post of Headmaster.

11. Mr. R Islam, learned counsel for the respondent No.7 Sri Jiten Chandra Kalita by referring to Rule 14(2) of the Assam Secondary Education (Provincialised Schools) Service Rules, 2018 submits that it is clearly specified in the rule that the cadre of Graduate Teacher in a High School would also include the Assistant Headmaster, meaning thereby the Assistant Headmaster would also to be construed to be a Graduate Teacher. By referring to the said

provision, it is the submission of Mr. R Islam, learned counsel that the respondent No.7 being a Graduate Teacher in the amalgamated Chinakona High School, would by virtue of his seniority as a Graduate Teacher over the writ petitioner, be promoted as the Headmaster of the school.

12. Reference is also made to the pronouncement of the Supreme Court in ***Panchraj Tiwari –vs- Madhya Pradesh State Electricity Board and others***, reported in **(2014) 5 SCC 101**, wherein the law has been laid down as regards the service conditions of an employee after an amalgamation takes place. By referring to the provisions laid down in ***Panchraj Tiwari (supra)***, it is the submission of Mr. R Islam, learned counsel that after the amalgamation, the effect would be as if the teachers of the erstwhile ME Schools and the teachers of the erstwhile High Schools would now form a common cadre for the purpose of determining their inter-se seniority, which should again lead to a common gradation list.

13. We are in full agreement with the legal propositions relied upon by Mr. R Islam, learned counsel for the respondent No.7. Admittedly after 03.04.2017 when the amalgamation had taken effect, the Graduate Teachers of the amalgamated High School would form a common cadre and therefore, there would be a common gradation list showing the inter-se seniority. From the said point of view, if a selection process is initiated for promotion to the post of Headmaster where again seniority has its own relevance, the seniority of the respondent No.7 Sri Jiten Chandra Kalita over the writ petitioner Sri Gajen Chandra Swargiary would have its own bearing. As a Graduate Teacher in the amalgamated Chinakona High School, the respondent No.7 may have a better claim for promotion as the Headmaster. But the facts and circumstances of the present case would also require us to take note of the aspect that the selection process for the post of Headmaster of Chinakona High School was initiated as per the advertisement dated 27.05.2015. Admittedly as on 27.05.2015, the respondent No.7 Sri Jiten Chandra Kalita was not included in the cadre of Graduate Teachers of the Chinakona High School, inasmuch as, at that stage he was an Assistant Teacher in the erstwhile Chinakona ME School.

14. From the said point of view, a question would arise as to whether after amalgamation on 03.04.2017 when the respondent no.7 Sri Jiten Chandra Kalita was included in the cadre of Graduate Teacher of the amalgamated Chinakona High School, he can be allowed to



participate in the selection process for promotion as regular Headmaster of the school in a situation where the process had already been initiated as per the advertisement dated 27.05.2015.

15. Being eligible and qualified to participate in a process for promotion to the post of Headmaster and also staking a claim to be the most suitable candidate under the circumstances for such promotion is one aspect of the matter and being eligible to participate in a process for promotion which was initiated prior to the incumbent concerned being included in the feeder cadre for such promotion is another aspect. For being eligible to participate in any selection process, be it for direct recruitment or for promotion would be determined on the eligibility of the candidate concerned when the process for such direct recruitment or promotion was initiated. It will be difficult to conceive a position of law that a person who subsequently became eligible to participate would also have to be allowed to participate in a process which had already been initiated. Any acceptance to the contrary would lead to a chaotic situation. Further, it would also violate the established principles of law as has been laid down through various pronouncements of the Supreme Court that the eligibility to participate in any selection process either for direct recruitment or promotion would be determined on the qualification etc that a candidate had on the last date of submission of the application form pursuant to any such advertisement. If we now allow the respondent No.7 to participate in a selection process for promotion to the post of Headmaster, which was initiated as per the advertisement dated 27.05.2015 in a situation where the respondent No.7 became eligible for such participation on 03.04.2017 when the school was amalgamated, any such decision would be contrary to the established principles of law as indicated above.

16. Consequently, the order of the Commissioner and Secretary to the Government of Assam in the Secondary Education Department whereby the earlier orders issued by the Director of Education, BTC and the Inspector of Schools, Udalguri promoting the writ petitioner Sri Gajen Chandra Swargiary as the regular Headmaster of the Chinakona High School was cancelled cannot be sustained merely on any conclusion that on the facts and circumstances of the case and the law governing the field, the respondent No.7 Sri Jiten Chandra Kalita would be senior to the writ petitioner Sri Gajen Chandra Swargiary as a

Graduate Teacher in the amalgamated Chinakona High School.

17. From such point of view, the said provision in the order dated 10.02.2021 stands interfered and set aside while declining any conclusion on merit as regards the other findings that in the facts and circumstances of the case and under the law, it is the respondent no.7 Sri Jiten Chandra Kalita would be senior to the writ petitioner Sri Gajen Chandra Swargiary. But at the same time, a further question would remain unanswered that although the selection process for promotion of a regular Headmaster of Chinakona High School was initiated as per the advertisement dated 27.05.2015 and the said process culminated in the order of promotion in favour of the writ petitioner Sri Gajen Chandra Swargiary as per the order dated 16.08.2017 of the Director of Education, BTC, whether the selection process pursuant to the advertisement dated 27.05.2015 could have been continued in its original form after the amalgamation of the Chinakona ME School and the Chinakona High School had taken effect from 03.04.2017. Although the amalgamated school continued to be given the nomenclature Chinakona High School, but its status after 03.04.2017 had definitely undergone a change to the extent that from the said date, the school also included in itself the Chinakona ME School, which was amalgamated. The advertisement dated 27.05.2015 would have to be construed to be an advertisement, amongst others, for the post of Headmaster of the Chinakona High School at its pre-amalgamated stage and whether the same advertisement could have been continued after the status of the school had gone a change after the amalgamation by including the Chinakona ME School.

18. In our view, in the order dated 10.02.2021, the said aspect of the matter had neither been gone into by the Commissioner and Secretary nor has it been decided. An appropriate decision in the matter can only follow a decision on the said question. If the Commissioner and Secretary for reasons to be given is of the view that the process of earlier advertisement dated 27.05.2015 would continue even after the amalgamation had taken place on 03.04.2017, the earlier order of promotion dated 16.01.2017 in favour of the petitioner Sri Gajen Chandra Swargiary would be a good and valid order. On the other hand, if the Commissioner and Secretary arrives at his own reasoned conclusion that the advertisement dated 27.05.2015 could not have continued any further after the amalgamation on 03.04.2017, the law would require a fresh selection process to be initiated for the



amalgamated Chinakona High School. We have not expressed any view on the merit on the seniority of the respondent No.7 Sri Jiten Chandra Kalita over the writ petitioner Sri Gajen Chandra Swargiary as a Graduate Teacher in the amalgamated Chinakona High School in order that said decision may appropriately be taken in any such process that may pursue if a de-novo advertisement is issued.

19. In the circumstance, we remand the matter back to the Commissioner and Secretary to the Government of Assam in the Secondary Education Department for an appropriate decision as indicated above and a reasoned order be passed if necessary by giving a hearing to both the petitioner Sri Gajen Chandra Swargiary and the respondent No.7 Sri Jiten Chandra Kalita. The requirement be done within a period of three months from the date of receipt of a certified copy of this order.

20. The Commissioner shall also look into the question as to whether the issue has to be decided under the Assam Secondary Education (Provincialised Schools) Service Rules, 2018, which came into effect from 18.09.2019 or the matter would have to be decided under the provisions of the Assam Secondary Education (Provincialised) Service Rules, 2003, which was governing the field when the vacancy for the post of Headmaster of Chinakona High School had arisen and when the process for promotion had in fact been initiated earlier. In doing so, the Commissioner shall also take note of the provisions of law laid down by the Supreme Court in ***Y.V Rangaiah and others-vs- J. Sreenivasa Rao and others***, reported in ***(1983) 3 SCC 284***.

21. We clarify that by interfering with the cancellation of the promotion of the petitioner, it has to be understood that the earlier order of promotion in favour of the petitioner Sri Gajen Chandra Swargiary dated 16.08.2017 would hold the field till the Commissioner and Secretary arrives at his reasoned order.

The writ petition is disposed of in the above terms.

JUDGE

Comparing Assistant