



GAHC010008772022

Page No.# 1/5



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

Case No. : WP(C)/481/2022

MD. ABDUL JABBER CHOWDHURY
S/O ABDUL SALAM,
RESIDENT OF VILLAGE CHENIMARI, PO DHUMKURA, DIST MORIGAON,
ASSAM, 782127

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,
EDUCATION (ELEMENTARY) DEPARTMENT, DISPUR, GUWAHATI 781006

2:THE DIRECTOR OF ELEMENTARY EDUCATION.
ASSAM
KAHILIPARA
GUWAHATI 781019

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER (DEEO)
MORIGAON
ASSAM
782015

4:THE BLOCK ELEMENTARY EDUCATION OFFICER (BEEO)
LAHARIGHAT EDUCATION BLOCK
LAHARIGHAT
DIST MORIGAON
ASSAM
782127

5:SRI SUNIL CH. MALU
S/O LATE MAKHAN CH. MALU
RESIDENT OF VILLAGE AUGURIPAM
PO PHALIHAMARI PATHER



DIST MORIGAON ASSAM 78212

Advocate for the Petitioner : MR. B RAHMAN

Advocate for the Respondent : SC. EDU.

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

For the Petitioner : Shri TJ Mahanta, Senior Advocate &
Shri B Rahman, Advocate.

For the Respondents : Shri PK Bora, SC, Elem. Education Deptt. &
Shri UK Goswami, Advocate, R-5.

Date of Hearing : 23.06.2023.

23.06.2023.

Judgment & Order

Heard Shri TJ Mahanta, learned Senior Counsel assisted by Shri B Rahman, learned counsel for the petitioner. Also heard Shri PK Bora, learned Standing Counsel, Elementary Education Department, Assam as well as Shri UK Goswami, learned counsel for the respondent no. 5.

2. The grievance raised in this writ petition pertains to an issue of acceptance or otherwise of an offer of resignation by the petitioner from the post of In-charge Head Master of the Tengaguri MV School in the district of Morigaon.

3. It is the case of the petitioner that he was appointed on substantive capacity as a



Graduate Science Teacher of the School in question on 11.06.1992 since when, he has been in continuous service. The post of the Head Master of the School had fallen vacant due to the removal of the earlier In-charge Head Master on the basis of certain allegations. Accordingly, vide an order dated 19.02.2020, the petitioner, who was the senior most Science Teacher of the School, was allowed to hold the current charge until a regular Head Master was appointed or till further orders.

4. The petitioner contends that though he had taken over the charge on the strength of the order dated 19.02.2020, due to some health issues of his father, he had submitted an application to release him from the said charge of the Head Master. The case projected by the petitioner is that even before the said offer of the petitioner to release him from the aforesaid post of In-charge Head Master was acted upon, he had submitted an application on 02.11.2021 withdrawing the said offer and expressed that he would continue in the aforesaid post of In-charge Headmaster. The respondent authorities, however, vide an impugned order dated 06.01.2022 has replaced the petitioner by one Shri Sunil Ch. Malo, Assistant Teacher. The aforesaid order has recorded that the petitioner had resigned from In-charge Head Master 08.10.2021.

5. Shri Mahanta, learned Senior Counsel for the petitioner has submitted that an offer of resignation would be effective only on its acceptance and in the instant case, before such acceptance was made, the offer was withdrawn on 02.11.2021 and therefore, the impugned order dated 06.01.2022 is unsustainable in law. The learned Senior Counsel, in support of his submission, has relied upon a decision of the Hon'ble Supreme Court in the case of **Secretary, Technical Education, U.P. & Ors. Vs. Lalit Mohan Upadhyay & Anr.**, reported in **(2007) 4 SCC 492**.

6. *Per contra*, Shri PK Bora, learned Standing Counsel of the Department has submitted that the projections of the petitioner are incorrect, both factually and



legally. By drawing the attention of this Court to the affidavit-in-opposition filed by the respondent no. 2, namely, the Director of Elementary Education on 07.04.2022, the learned Standing Counsel has submitted that the communication dated 03.11.2021, issued by the Block Elementary Education Officer, Laharighat Block, Morigaon, would show that the offer for releasing the petitioner was accepted and the private respondent was proposed to be allowed to hold the charge of the In-charge Headmaster. He further submits that there are allegations against the petitioner during his functioning as In-charge Headmaster for which show cause notices were also issued and the proceeding is pending.

7. Shri Goswami, learned counsel for the private respondent no. 5 while endorsing the submission of the learned Standing Counsel of the Department has submitted that the process has been carried out in accordance with law and only after acceptance of the resignation of the petitioner that the impugned order was issued whereby, the respondent no.5 was allowed to hold the charge of the post of Headmaster of the School in question. He further submits that there are allegations against the petitioner during his functioning as the In-charge Headmaster of the School. While the controversy and dispute raised in this petition is with regard to holding of the post of Headmaster on In-charge basis, this Court has also been apprised that in the meantime, a selection process for filling up the said post on regular basis has already been conducted.

8. In view of the aforesaid situation, this Court is of the considered opinion that no fruitful purpose would be served to adjudicate the issue which has revolving around on In-charge arrangement when the selection process has already been conducted and would be finalized. In any case, it has been the constant trend by various judicial pronouncements that ad hocism or In-charge basis should be avoided and the same should be replaced by regular appointment.



9. In view of the aforesaid facts and circumstances and the developments which this Court has been apprised of, the writ petition is disposed of by directing finalization of the selection process for filling up the post of Head Master of the Tengaguri MV School in the Morigaon district on regular basis. Since the selection has already been initiated and has progressed to a great extent, let the said selection be finalized and the appointment be made as soon as possible and in any case, within an outer limit of 2 months from today.

10. It is needless to state that such selection is required to be done strictly in accordance with law and the Rules governing the field of selection. It is further observed that till such appointment is made on regular basis, the present arrangement may continue.

JUDGE

Comparing Assistant