



GAHC010214532023



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

WP(C) No.4657 of 2023

Shri Humen Gogoi,
Son of Shri Jitumoni Gogoi,
Resident of Village: Deogharia, PO: Bengenagarh, PS:
Dhemaji, District: Dhemaji, Assam, PIN – 787058.

....Petitioner

-Versus-

1. The State of Assam, represented by the Secretary to the Government of Assam, Department of School Education, Dispur, Guwahati-781006.
2. The Director of Elementary Education, Assam, Kahilipara, Guwahati – 781019.
3. The Inspector of Schools, Lakhimpur District Circle, District: Lakhimpur, Assam, PIN – 787001.
4. Shri Dilip Kumar Bharalua, Ex-Officio Headmaster of Tamargaon Tribal High School, District: Lakhimpur, PIN – 787001.

....Respondents

- B E F O R E -

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

For the Petitioner : Mr. A. Deka, Advocate.

For the Respondents : Ms. B. Chowdhury, Advocate for respondent No.4.

Date of Judgment : 12.12.2023.

JUDGMENT & ORDER (ORAL)

Heard Mr. A. Deka, learned counsel for the petitioner. Also heard Ms. B. Chowdhury, learned counsel representing the respondent No.4.

2. The petitioner, by way of instituting the present proceeding, has assailed an order dated 05.08.2023 issued by the Director of Secondary Education, Assam, by which the temporary arrangement made in his case to hold the charge of Headmaster of Tamar Gaon Tribal High School in the district of Lakhimpur was altered and the respondent No.4 was allowed to hold the charge of the said post.

The facts requisite for deciding the issues arising in the present proceeding is noted hereinbelow.

3. The petitioner was recruited as a Graduate Teacher in Tamar Gaon Tribal High School vide order dated 05.09.2013. While serving as such, the petitioner vide order dated 12.09.2022 (Annexure-1 to the writ petition) was allowed to hold the charge of the post of Headmaster of the said School on a vacancy arising therein. The petitioner accordingly took over the charge of the post of Headmaster and was continuing as such.

4. The respondent No.4 was initially appointed as Headmaster of Na-Vanga High School on 08.04.1992 when the said School was at the venture stage. The cases of the employees of the said School including that of the respondent No.4 was taken up for provincialisation and vide an order dated 18.11.2013, the services of the employees of the said School were provincialised and the respondent No.4 came to be provincialised as the Headmaster of the said School, i.e. Na-Vanga High School.



5. Thereafter, the respondent authorities in terms of the Scheme in place, i.e. "*Siksha Khetra Scheme*", decided to amalgamate Na-Vanga High School with Tamar Gaon Tribal High School and accordingly, the said amalgamation was effected vide order dated 17.06.2023.

6. The respondent No.4, in the joint list of employees in the amalgamated School, was shown to be holding the post of Headmaster and drawing the scale thereof while the petitioner was shown to be holding the post of Graduate Teacher drawing the scale authorized to the said post. The respondent No.4 on joining the amalgamated School, i.e. Tamar Gaon Tribal High School, submitted an application praying that he be permitted to hold the charge of the post of Headmaster. The said application was duly considered and vide order dated 05.08.2023, the Director of Secondary Education, Assam, i.e. the respondent No.2, allowed the respondent No.4 to hold the charge of Headmaster of Tamar Gaon Tribal High School along with financial power as per provisions of FR-49(c). It is this order dated 05.08.2023, which has been put to challenge by the petitioner before this Court in the present proceeding.

7. Mr. A. Deka, learned counsel for the petitioner submits that the respondent No.4 is not eligible to hold the charge of the post of Headmaster of the said School in view of the fact that he does not possess the educational qualifications mandated under the provisions of the Assam Secondary Education (Provincialised Schools) Service Rules, 2018, more particularly, Rule 14(2)(a) thereof inasmuch as the respondent No.4 admittedly does not possess a B.Ed. qualification. The learned counsel for the petitioner contends that the petitioner having not satisfied the eligibility conditions requisite for recruitment to the post of Headmaster of a High School as mandated under Rule 14(2)(a), he is also

not entitled to be permitted to hold the charge of the said post and in this connection relies upon the case of ***Jagannath Pegu -Vs- State of Assam & Ors.***, reported in ***2007 (3) GLT 389***, wherein it has been held by this Court that even for holding a post on in-charge basis, the incumbent must satisfy the eligibility conditions mandated for recruitment to the post in question on regular basis.

8. Mr. Deka by referring to the provisions of the order of amalgamation dated 17.06.2023, more particularly, Clause 8 thereof, submits that the petitioner being the senior-most Headmaster of the School, should be permitted to continue to hold the charge of the said post and the respondent No.4, in addition to being not eligible to hold the post on regular basis, is also junior to him. Mr. Deka further submits that the order dated 05.08.2023 has the effect of replacing an *ad-hoc* by another *ad-hoc* inasmuch as the petitioner in the first instance was permitted to hold the charge of the post of Headmaster vide order dated 12.09.2022 and the same was an *ad-hoc* measure and he having been appointed on *ad-hoc* basis, he could not have been appointed by another *ad-hoc* appointee. Mr. Deka prays that the post of Headmaster of Tamar Gaon Tribal High School be filled up on regular basis and till such time, he be permitted to hold the post on In-charge basis.

9. Per contra, Ms. B. Chowdhury, learned counsel representing the respondent No.4 in a short and concise argument has submitted that the respondent No.4 is the regular Headmaster of Na-Vanga High School and his services were provincialised as the Headmaster of the said School. The respondent No.4 was also authorized the scale of pay of the post of Headmaster. Pursuant to the amalgamation of the School, i.e. Na-Vanga High



School with Tamar Gaon Tribal High School, the status of the respondent No.4 as an incumbent in the cadre of Headmaster was not altered and he was inducted into the amalgamated School as a Headmaster with the authorized scale of pay of the post of Headmaster. Referring to Clause 8 of the order dated 17.06.2023, i.e. the order of amalgamation, it is the contention of Ms. B. Chowdhury that the respondent No.4 being in the cadre of Headmaster, the case of the respondent No.4 cannot be compared with that of the petitioner, who continued to be in the cadre of a Graduate Teacher. It is the contention of Ms. B. Chowdhury that the provisions of Clause 8 of the said order dated 17.06.2023 and also similar provisions in the Scheme, i.e. the Siksha Khetra Scheme, would take place only in the event the 2(two) incumbents involved are both holding the post of Headmaster and/or Principal on regular basis. The said provisions of Clause 8, according to her, would have no application in the present case.

10. Responding to the contention of the petitioner basing on the decision of this Court in ***Jagannath Pegu*** (supra), it is the contention of Ms. B. Chowdhury that the ratio laid down in the said case would have no application to the facts involved in the present case inasmuch as the petitioner before the amalgamation of the Schools in question was the Headmaster of Na-Vanga High School on regular basis and he continued in such capacity even after provincialisation of his services. It is the case of the respondent No.4 that the order of his provincialisation as Headmaster was never questioned by any person and the same still continues to hold the field.

11. I have heard the learned counsel for the parties and have also perused the materials available on record.



12. It is an admitted position that the respondent No.4 had been appointed initially in Na-Vanga High School as a Headmaster during the period when the said School was in the venture stage. Thereafter, the respondent authorities upon consideration of all material particulars had provincialised the services of the respondent No.4 vide an order dated 18.11.2013 w.e.f. 01.01.2013 and therein the petitioner's services were provincialised as Headmaster and he was authorized the scale of pay authorized to the post of Headmaster. In other words, the respondent No.4 was a regular Headmaster in Na-Vanga High School. Upon amalgamation of Na-Vanga High School with Tamar Gaon Tribal High School (the base School) in the amalgamated list of teachers and Grade-IV staff, it is reflected that the petitioner was inducted in the amalgamated School against a post of Headmaster and was also given the scale of pay authorized to the post of Headmaster. It is relevant to note here that the petitioner in terms of the Revision of Pay Rules coming into operation was also authorized the revised scale of pay authorized to the post of Headmaster. The said admitted position has been noted inasmuch as the same would have a bearing in the adjudication of the issue arising in this present petition.

13. On the other hand, the petitioner was recruited as a Graduate Teacher in Tamar Gaon Tribal High School on 05.09.2013. Thereafter, a vacancy arisen in the post of Headmaster of the said School. The petitioner vide order dated 12.09.2022 was allowed to hold the charge of the post of Headmaster. The amalgamation of the Schools having come into operation and Na-Vanga High School having been merged with Tamar Gaon Tribal High School, there arose a situation wherein one incumbent, i.e. the respondent No.4, was an incumbent in the cadre of Headmaster, while the petitioner was holding the charge of the post of Headmaster.



14. The parties have relied upon Clause 8 of the order dated 17.06.2023, i.e. the order of amalgamation. The Clause 8 being relevant is quoted herein below:-

“8. The Senior-most Principal/Headmaster shall be the Principal/Headmaster of the School after the merger. If the date of joining happens to be the same, then the Seniority in age shall be taken into consideration of the seniority. The other Principal/Headmaster shall be the ex-official Principal/Headmaster with the post personal to him and he/she shall continue to get his pay in the existing status till retirement or till posting elsewhere.”

The provision of said Clause 8 on a close reading would indicate that the same would come into operation when there are 2(two) Principals and/or Headmasters coming into existence in an amalgamated School consequent upon amalgamation of 2(two) Schools. It is under this circumstance that the provisions of Clause 8 mandates that the senior-most amongst the Principal and/or Headmaster would be the Principal/Headmaster of the School and the other would be denoted as the *ex-officio* Principal/Headmaster with the post personal to him and he/she shall continue to get the scale in the existing status till retirement or posting elsewhere.

15. In the understanding of this Court, the said provision of Clause 8 has got no application in the fact emanating in the present proceeding inasmuch as it is only the respondent No.4, who is the regular incumbent in the cadre of Headmaster and consequent upon amalgamation of the 2(two) Schools, the petitioner was shown to be holding the post of Headmaster, with the scale of pay attached thereto in the amalgamated School.

In that view of the matter, it is the respondent No.4, who is the regular incumbent in the cadre of Headmaster in the amalgamated School.



16. This now leads me to consider the contention raised by the petitioner that the respondent No.4 is not eligible to hold the post of Headmaster in view of the fact that he does not possess the requisite educational qualification mandated under Section 14(2)(a) of the 2018 Rules for the said post. The said Rules mandate that a person to hold the post of Headmaster must have a Graduate Degree along with B.T./B.Ed. Degree. It is an admitted position that the respondent No.4 does not have a B.Ed. Degree. However, what is noticeable is that the service of the petitioner was provincialised w.e.f. 01.01.2013 by the departmental authorities vide an order dated 18.11.2023 as a Headmaster and there was no condition whatsoever attached to such Provincialisation effected in the case of the petitioner. The order dated 18.11.2013 is not under challenge in any proceeding and the same has attained finality. As such, the respondent No.4 is for all intent and purpose the only incumbent in the cadre of Headmaster in Tamar Gaon Tribal High School.

17. In that view of the matter, for a decision with regard to the case in hand pertaining to holding of the post of Headmaster of Tamar Gaon Tribal High School, it is immaterial to consider the submission of the petitioner that the respondent No.4 is not eligible to hold the charge of the post of Headmaster in view of he not possessing the B.Ed. Degree. The facts as emanating in the present proceeding also reveal that the ratio as contained in the decision of this Court in the case of **Jagannath Pegu** (supra) is in-applicable, inasmuch as the respondent No.4 is a regular incumbent in the cadre of Headmaster.

18. In view of the said conclusions, I am of the considered view that the order dated 05.08.2023 does not call for any interference and the same is accordingly maintained. The *interim* order passed earlier by this Court in the



matter stands vacated and in terms of the order dated 05.08.2023, it is the respondent No.4, who shall now function as the Headmaster of Tamar Gaon Tribal High School.

19. Before parting with the records, it is necessary to make an observation to the extent that the order dated 05.08.2023 allows the respondent No.4 to hold the charge of the post of Headmaster of the School. The said arrangement, in the view of this Court, is erroneous inasmuch as the respondent No.4 being a regular incumbent in the cadre of Headmaster, there arose no occasion to allow him to hold the charge when he was entitled to hold the post on regular basis. This aspect of the matter would be looked into by the respondent No.2 and necessary rectification as may be called for be done. The said observation will have no affect on the conclusions reached by this Court hereinabove and it would be the respondent No.4 who would continue to function as Headmaster.

20. In view of the conclusions reached hereinabove, the writ petition has got no merit and the same accordingly stands dismissed. There will be no order as to costs.

JUDGE

Comparing Assistant