

(2021) 07 GAU CK 0114
In the Gauhati High Court

Case No : Writ Petition (Civil) No. 3208 Of 2021

Abdul Aziz Ahmed

APPELLANT

Vs

State Of Assam And 5 Ors.

RESPONDENT

Date of Decision : 26-07-2021

Acts Referred:

Citation : (2021) 07 GAU CK 0114

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : H R A Choudhury

Final Decision : Allowed

Judgement

1. Heard Mr. HRA Choudhury, learned senior counsel for the petitioner. Also heard Mr. KP Pathak, learned counsel for the authorities under the

Secondary Education Department, Government of Assam and Mr. B Purkayastha, learned counsel for the respondent No.6 Rafik Ahmed.

2. By the earlier order dated 02.07.2021 notice was issued making it returnable by 26.07.2021 including the notice on the prayer for interim order.

3. It is stated by Mr. HRA Choudhury, learned senior counsel for the petitioner that as required by the order dated 02.07.2021 dasti service had

already been effected on the respondent No. 5 and to that effect an affidavit dated 19.07.2021 has also been filed. We have perused the said affidavit

filed by the writ petitioner Abdul Aziz Ahmed wherein the notice of dasti service has been enclosed and it shows that the respondent No.5 being the

School Selection Committee of Abbas Ali Choudhury Memorial Higher Secondary School, Barpeta has been duly served. As none has appeared on

behalf of respondent No.5, we take up the writ petition in the absence of the

respondent No.5.

4. The petitioner who is a graduate teacher having the required 17 years of experience in the Barbhitha HS School participated in the process for

selection of a regular Principal in the Abbas Ali Choudhury Memorial Higher Secondary School, Barpeta. The respondent No.6 Rafik Ahmed is a

subject teacher in the Datribari Moragari HS School Barpeta, who was subsequently adjusted in the Balikuri HS School, had also participated in the

process for selection of a regular Principal in the Abbas Ali Choudhury Memorial Higher Secondary School, Barpeta.

5. The respondent No.6 Rafik Ahmed had instituted WP(C)No.7535/2019 seeking for a direction that as he was selected by the School Selection

Committee, therefore further process be completed as regards his appointment as the Principal of the Abbas Ali Choudhury Memorial Higher

Secondary School, Barpeta. The said writ petition was given a final consideration by the order dated 03.10.2019 requiring the respondent authorities to

take a final decision on the matter.

6. The writ petitioner on the other hand had instituted WP(C)No.2657/2021 which was given a final consideration by the order dated 15.02.2021

wherein it was recorded that pursuant to the order dated 03.10.2019 in WP(C)No.7535/2019, the matter was referred back to the School Selection

Committee for a fresh selection by taking into consideration all relevant factors as the said committee had not taken into consideration all the relevant

facts at the time of making the earlier recommendation.

7. In the resultant circumstance, WP(C)No.2657/2021 was disposed of with a direction to the authorities in the Secondary Education Department,

Government of Assam to take appropriate decision at the earliest as regards the selection for the post of Principal of Abbas Ali Choudhury Memorial

Higher Secondary School, Barpeta.

8. Consequently, the order impugned in this writ petition dated 17.06.2021 was passed by the Director of Secondary Education Assam by which the

respondent No.6 Rafik Ahmed was appointed as the Principal of Abbas Ali Choudhury Memorial Higher Secondary School, Barpeta.

9. By our earlier order dated 02.07.2021, we required the authorities in the Secondary Education Department, Government of Assam to provide the

necessary information to the Court as to why the respondent No.6 Rafik Ahmed

was selected and appointed as the regular Principal of the school concerned. In response thereof, Mr. KP Pathak, learned counsel for the Secondary Education Department has produced the communication dated 23.07.2021 from the Director of Secondary Education Department. The documents included in the said communication dated 23.07.2021 also includes a report dated 16.03.2020 submitted by the President of the School Managing and Development Committee (for short, SMDC) of the Abbas Ali Choudhury Memorial Higher Secondary School, Barpeta wherein it is provided that the writ petitioner Abdul Aziz Ahmed had not produced any document to substantiate that he has an experience of 17 years as a graduate teacher. In other words, we are given to understand that the reasons for rejecting the candidature of the petitioner is that he had failed to produce any material before the SMDC to substantiate his experience of 17 years as a graduate teacher as required under the rules of selection.

10. Mr. HRA Choudhury, learned senior counsel for the petitioner refers to a communication dated 07.06.2019 from the Director of Secondary Education, Assam addressed to the Commissioner and Secretary to the Government of Assam, Secondary Education Department wherein it is provided as extracted:

“However after checking the list of documents submitted by the Member Secretary, School Selection Committee, it is found that Abdul Aziz Ahmed has submitted an experience certificate but the School Selection Committee did not award him marks in experience column.”

11. A reading of the communication from the Director of Secondary Education Assam to the Commissioner and Secretary to the Government of Assam, Secondary Education Department dated 07.06.2019 goes to show that the stand of the SMDC of Abbas Ali Choudhury Memorial Higher Secondary School, Barpeta that the petitioner had not submitted the necessary documents to show his experience of 17 years as a graduate teacher appears prima facie to be an incorrect view expressed. As the selection of the respondent No.6 is based upon such incorrect view being expressed by the SMDC of Abbas Ali Choudhury Memorial Higher Secondary School, Barpeta, we are prima facie satisfied with the case being made out by the petitioner that he was illegally deprived in the selection process for the post of Principal of the school concerned.

12. As a corollary, we also have to understand that the selection and appointment of respondent No.6 Rafik Ahmed is a result of such illegal ouster of the writ petitioner from the selection process.

13. On a prima facie case being made out by the petitioner and considering the balance of convenience and irreparable loss that the petitioner may

suffer, we were inclined to pass an interim order staying the selection and appointment to the post of Principal in the Abbas Ali Choudhury Memorial

Higher Secondary School, Barpeta. However, at this stage, a common prayer is made by the writ petitioner as well as the respondents including the

respondents in the Secondary Education Department and the respondent No.6 Rafik Ahmed that instead of staying the appointment of the respondent

No.6, the interest of justice would be better served if the order impugned dated 17.06.2021 appointing the respondent No.6 as the Principal of Abbas

Ali Choudhury Memorial Higher Secondary School, Barpeta is set aside.

14. In view of such agreement between the parties, we set aside the order dated 17.06.2021 by which the respondent No.6 Rafik Ahmed was

appointed as the Principal of Abbas Ali Choudhury Memorial Higher Secondary School, Barpeta.

15. Having done so, we remand the matter back to the stage of selection by the School Selection Committee of Abbas Ali Choudhury Memorial

Higher Secondary School, Barpeta for a fresh consideration of the candidature of all the candidates and to make a selection afresh of the most

suitable candidate that may be found. In doing so, all the candidates shall be allowed to produce before the Selection Committee any document

submitted along with the application form that they may desire to produce to substantiate their respective qualification/experience etc., in support of

their candidature and the Selection Committee shall also take into consideration the existing materials on record.

16. The above requirement of consideration by the School Selection Committee be done within a period of two weeks from the date of receipt of a

certified copy of this order and any recommendation to be made by the Selection Committee be processed further by the authorities in the Secondary

Education Department and bring the same to its logical end within a period of another two weeks thereafter.

17. As the respondent No.6 Rafik Ahmed was appointed by the order dated 17.

06.2021 and as he is continuing as the Principal of Abbas Ali

Choudhury Memorial Higher Secondary School, Barpeta, as an interim measure, till a final decision is made in the de novo exercise, we allow the

respondent No.6 to continue as the Principal of the school concerned.

18. Writ petition stands allowed of in the above terms.