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**(2008) 03 GAU CK 0055**  
**In the Gauhati High Court**

Dimbeswari Saikia

APPELLANT

Vs

State of Assam and Others

RESPONDENT

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**Date of Decision :** 18-03-2008

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2009) 6 GLR 875 : (2008) 2 GLT 513

**Hon'ble Judges :** Iqbal Ahmed Ansari, J

**Bench :** Single Bench

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## Judgement

I.A. Ansari, J.—The petitioner as well as respondent No. 3 are presently serving as teachers, in Madhab Dev High School, in the district of Lakhimpur. The petitioner joined the said school, on 02.06.1982, as an Assistant Teacher. When the school was provincialised with effect from 19.11.91, the petitioner was the second senior-most teacher in the said school, the senior-most teacher, in the said school, being, at that point of time, Golap Chandra Hazarika, who was the headmaster of the school. By virtue of an order of transfer passed on 04.05.2004 respondent No. 4 came to the said school as an Assistant Teacher on being transferred from Sankardev Collegiate High School, where she had been serving as an Assistant Teacher. The relevant portion of this order is reproduced hereinbelow:

Mutual transfer on their own request are hereby made in between the following Assistant Teachers with their own pay, grade and service and posted at the schools as shown against each in the interest of public service with immediate effect.

1. Smt. Nivarani Dutta, BA, Assistant teacher, Madhabdev High School: Transferred and posted at Sankardev Collegiate High School vice Smt. Dharmeswari Dutta, BA-transferred.

2. Smt. Dharmeswari Dutta, BA, Assistant Teacher, Sankardev Collegiate High School vice Smt. Nivarani Dutta, Assistant teacher transferred.

Smt. Dharmeswari Dutta will move first. No TA/DA will be admissible for the journey on transfer.

Sd/- D.K.Mazee, Inspector of Schools, Lakhimpur District Circle, North Lakhimpur.

2. When Golap Chandra Hazarika, the then Headmaster, retired, on superannuation, with effect from the afternoon of 28.02.2006, the petitioner was allowed to function as the In-charge headmistress of the Madhab Dev High School. With the help of the orders, dated 10.04.2006 and 18.08.2006, issued by the Inspector of Schools, the petitioner continued to function as In-charge, Headmistress of Madhab Dev High School. Claiming that she was senior to the petitioner, respondent No. 4 made a representation. Consequent upon the representation so made, an order was passed, on 18.04.2007, by the respondent No. 2, namely, Director of Secondary Education, Assam. This order forms the subject matter of controversy in this writ petition and is, therefore, quoted hereinbelow:

#### ORDER

Read the documents furnished by the Inspector of Schools, Lakhimpur, vide letter No. PROV/Estt/01/6559 dtd., 05.04.2007 for seniority among the teachers of Madhabdev High School, Lakhimpur District.

Read also the seniority list furnished by the same Inspector of Schools, Lakhimpur, by the above mentioned letter.

Read also the transfer order of Smti Dharmeswari Dutta, BA, who was transferred in the interest of public services by the Inspector of Schools, Lakhimpur, vide letter No. Prov/AT/2/A/92-93/29668-72 dtd. 04.05.94 from Sankardev Collegiate High School to Madhabdev High School, is the seniormost graduate teacher in Madhabdev High School, Lakhimpur. This is in consideration of the fact that Smti. Dharmeswari Dutta joined as graduate teacher on 01.02.82, whereas Smti. Dimbeswari Saikia and Sri Pratul Chandra Saikia joined as graduate teacher on 02.06.82 and 30.08.82 respectively. Madhabdev High School was provincialized w.e.f. 13.11.21.

Findings: It is found that Smt. Dharmeswari Dutta is the seniormost Assistant Teacher of Madhabdev High School to other graduate teachers of the same school. As such Smt. Dharmeswari Dutta is entitled to all consequential benefits.

Sd/- Md. Mohsin Ali, Director of Secondary Education, Assam, Kahilipara, Guwahati-19.

3. Acting upon the order, dated 18.04.2007, whereby respondent No. 4 was treated to be senior to the petitioner, another order was made on 18.04.2007, itself (Annexure 9 to the writ petition), whereby respondent No. 4 was allowed to hold the charge of the office of the Headmistress of Madhab Dev High School. Dissatisfied by the order, dated 18.04.2007, whereby respondent No. 4 has been treated as senior to the present petitioner, and also aggrieved by the order, dated

18.04.2007, whereby respondent No. 4 has been allowed to hold the charge of the office of the Headmistress of the said school, the petitioner has, with the help of this writ application, made under Article 226 of the Constitution of India, sought for issuance of appropriate writ(s) setting aside and quashing the two orders, dated 18.04.2007, aforementioned and also to allow the petitioner to continue as In-charge Headmistress of the said school.

4. I have heard Dr. Y.K. Phookan, learned Senior counsel, for the petitioner, and Mr. M.K. Misra, learned Standing Counsel, Education Department, appearing on behalf of the respondent Nos. 1 to 3. I have also heard Mr. R. Hazarika, learned Counsel, appearing for the respondent No. 4.

5. In view of the fact that it is the order, dated 18.04.2007, whereby the inter-se seniority between the two contesting persons, namely, the petitioner and the respondent No. 4, has been determined, an examination of the order, dated 18.04.2007, aforementioned, is imperative. This order reflects that respondent No. 4 has been treated as senior to the petitioner on two grounds, namely, that the respondent No. 4 joined the service as a graduate teacher on 01.02.1982; whereas the petitioner was appointed as a graduate teacher on 02.06.1982, though both of them started receiving the pay scale of a graduate teacher with effect from 13.11.91. The other reason, assigned by the order, dated 18.04.2007, aforementioned, is that respondent No. 4 was transferred from Sankardev Collegiate High School to Madhab Dev High School in public interest.

6. In the backdrop of the reasons assigned in the order, dated 18.04.2007, for treating the respondent No. 4 as senior to the petitioner, when one considers the order, dated 04.05.2004, whereby respondent No. 4 was transferred to Madhab Dev High School, what attracts the attention is that the order, dated 04.05.2004, speaks that the transfer, in question, was a result of mutual requests made by respondent No. 4 and one Smt. Nivarani Dutta. In such circumstances, respondent No. 4 should, ordinarily, be treated as junior to those teachers, who were, at the relevant point of time, serving as Assistant Teachers in Madhab Dev High School. Viewed thus, it is clear that unless, otherwise, permitted by law, the petitioner would be regarded as senior to the respondent No. 4 in the post of Assistant Teacher of Madhab Dev High School. Though the order of transfer, dated 04.05.2004, speaks that the transfer has been made in public interest, the fact remains that when the transfer had been ordered due to request made by the respondent No. 4, it logically follows that unless some materials are brought on record to show otherwise, the order of transfer, dated 04.05.2004, would have to be treated as an order of transfer made on mutual request of the parties concerned. The order, dated 18.04.2007, whereby inter-se seniority between the petitioner and respondent No. 4 has been fixed, gives no indication that respondent No. 3 had taken into account the fact that the transfer, in question, took place, according to the order, dated 05.04.2004, on the request made by the respondent No. 4. An administrative order must reflect that while passing the order, the authority concerned has taken into account all such facts, which are

relevant, and eschewed from considering all such facts, which are irrelevant. In the present case, respondent No. 4 appears to have not taken into consideration that the said order of transfer reflects that transfer had been made on the mutual request of the parties concerned. Thus, while determining the inter se seniority, respondent No. 3 has not taken into account a relevant factor. Such an order is ex facie illegal, for, the order suffers from non-application of mind.

7. Coupled with the above, it is also worth noticing that the determination of the question of seniority was obviously going to adversely affect either the petitioner or the respondent No. 4. No order as regards their seniority, in the facts and circumstances of the present case, could have been made without giving both of them any opportunity of having their say in the matter. Looked at from this angle also, the impugned order, dated 18.04.2007, whereby respondent No. 4 has been treated as senior to the petitioner cannot be sustained in law.

8. Considering the matter in its entirety and in the interest of justice, the order, dated 18.04.2007, whereby respondent No. 4 has been treated as senior to the petitioner, is hereby set aside and quashed and the matter is remitted to the respondent No. 3 with direction to decide the question of inter-se-seniority of the petitioner vis-a-vis respondent No. 4 within a period of six weeks from the date of receipt of a certified copy of this order by the respondent No. 3. Before finalizing the question of inter se seniority, respondent No. 3 shall accord opportunity of hearing to the petitioner as well as respondent No. 4.

9. In view of the fact that the order, dated 18.04.2007, whereby respondent No. 4 has been allowed to function as In-charge Headmistress, is based on the order, dated 18.04.2007, whereby respondent No. 4 has been treated as senior to the petitioner, it logically follows that when the order, dated 18.04.2007, whereby seniority stands determined, is set aside, the order, dated 18.04.2007, whereby respondent No. 4 has been allowed to hold the charge of the office of the Headmistress, cannot be allowed to survive. The order, dated 18.04.2007, whereby respondent No. 4 has been allowed to function as Headmistress of the said school, is, therefore, set aside and the petitioner is hereby allowed to hold the charge of the office of Headmistress of Madhab Dev High School until the time the question of seniority between the parties concerned is decided by the respondent No. 3 and appropriate order is passed thereon.

10. The parties to the writ petition are allowed to submit a copy of this order to the respondent No. 3 if they are so advised. With the above observations and directions, this writ petition shall stand disposed of. However, there shall be no order as to costs.