
(2020) 11 GAU CK 0016
In the Gauhati High Court
Case No : Writ Petition (C) No. 4368 Of 2020

Jiten Ch Kalita, M.Sc., B.Ed.

APPELLANT

Vs

State Of Assam And 8 Ors

RESPONDENT

Date of Decision : 17-11-2020

Acts Referred:

Citation : (2020) 11 GAU CK 0016

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : Md R Islam

Final Decision : Disposed Off

Judgement

1. Heard Mr. R Islam, learned counsel for the petitioner. Also heard Ms. RB Bora, learned counsel for the authorities under the BTC and Mr. R

Mazumdar, learned counsel for the Secondary Education, Assam.

2. The petitioner who claims to be the senior-most teacher in the amalgamated Chinakona High School in Udalguri is aggrieved by the order dated

16.08.2017 of the Director of Education, BTC Kokrajhar by which the respondent No.9 Sri Gajen Ch. Swargiary was promoted as the Headmaster in

the School concerned on a regular basis on the recommendation of the Council Level Selection Board, BTC. The petitioner claims that in service he is

senior to the respondent No.9 and, therefore, his claim for being promoted to the post of Headmaster was a better claim than the respondent No.9.

3. Being aggrieved, the petitioner preferred an appeal/representation before the Director of Education, BTC on 15.05.2017 raising his claim that it is

the petitioner who ought to have been promoted as the Headmaster. The said application of the petitioner was forwarded by the Inspector of Schools,

Udalguri to the Director of Education, BTC Kokrajhar by Memo No.IS/UDC/Genl/48/dated 12.06.2017. As the representation was forwarded through

an official communication, we are to understand that it was duly received by the Director of BTC. The Director of BTC is sitting over the matter and

the same has not been given its consideration. But we have taken note of that the representation is unfortunately dated prior to the order impugned

and therefore it cannot be construed to be a duly submitted representation for the said grievance.

4. Subsequently, the petitioner has submitted another representation before the Commissioner and Secretary to the Government of Assam in the

Secondary Education Department, Government of Assam on 06.12.2019 raising the grievance that as per the service conditions and his seniority, it is

the petitioner who ought to have been promoted as the Headmaster of Chinakona High School. A statement has been made that the said

representation is still pending before the Commissioner and Secretary and a consideration has not been given.

5. In the above circumstance, this writ petition has been filed assailing the order dated 16.08.2017 by which the respondent No.9 was promoted as the

Headmaster of Chinakona High School. From a reading of the prayer in the writ petition, it is discernible that the petitioner is also seeking a writ in the

nature of mandamus that he be promoted as the Headmaster of Chinakona High School by setting aside the order of promotion made in favour of the

respondent No.9.

6. The requirement of issuing a writ in the nature of mandamus is that the claimant must have a legal right and that right must be violated and there

must be a corresponding duty on the respondent authorities to do a particular act which was not done in the required manner and against such violation

there must be a request by the person concerned to restore his legal right. A writ would be maintainable only at a stage when such request has been

refused. We have taken note of that the stage is yet to come in this writ petition, inasmuch as, the representation of the petitioner before the

Commissioner and Secretary to the Government of Assam in the Secondary Education Department, Government of Assam filed on 06.12.2019 has

not been given its consideration. As the petitioner is claiming a violation of his legal right and he had made a request to the concerned authority for

restoring his legal right, we are of the view that the Commissioner and Secretary to the Government of Assam in the Secondary Education

Department, Government of Assam has a corresponding legal duty to attend to the grievance raised by the petitioner.

7. It is to be deprecated that inspite of almost an year being over, the Commissioner and Secretary is sitting over the matter. In the circumstance, we direct the Commissioner and Secretary to the Government of Assam in the Secondary Education Department, Government of Assam to entertain the

representation dated 06.12.2019 of the petitioner and upon giving it a consideration to pass a reasoned order thereon. If the Commissioner and

Secretary is of the view that the petitioner is required to be given any personal hearing or as a matter of fact, if he is of the view that the respondent

No.9 is also required to be given a personal hearing for arriving at a decision, the same may be done by the Commissioner and Secretary by informing

the parties about the date, time and place of hearing and after making the above exercise, a reasoned order be passed within a period of 1(one) month

from the date of receipt of the certified copy of this order.

8. It is expected that the Commissioner and Secretary would do the needful without any further delay, otherwise, the matter would be dealt with

strictly.

9. Writ petition stands disposed of in the above terms.