

**(2021) 07 GAU CK 0077**

**In the Gauhati High Court**

**Case No : Writ Petition (Civil) No. 2799 Of 2021**

Md. Bilat Ali

APPELLANT

Vs

State Of Assam And 3 Ors

RESPONDENT

**Date of Decision : 15-07-2021**

**Acts Referred:**

Assam Secondary Education (Povincialised Schools) Service Rules, 2018 — Rule 2(g), 14, 14(1), 14(2)(b), 15, 15(2)(b), 24(5), 35(5)

**Citation : (2021) 07 GAU CK 0077**

**Hon'ble Judges : Kalyan Rai Surana, J**

**Bench : Single Bench**

**Advocate : A Mannaf**

**Final Decision : Dismissed**

## Judgement

1. In this writ petition, the writ petitioner is represented by Mr. A. Mannaf, the respondent nos. 1 to 3 are represented by Mr. R. Mazumdar, learned

standing counsel and Mr. M.A. Sheikh, learned counsel appears for the respondent no.4.

2) By filing this writ petition under Article 226 of the Constitution of India, the petitioner had prayed, inter alia, for (a) setting aside and quashing the

impugned order under memo no. GB-EST/Apptt/FP/13/2021/16 dated 12.04.2021 issued by the Director of Secondary Education, Assam (respondent

no.1), thereby relieving the petitioner and allowing the petitioner to hold charge as In-Charge Superintendent of Sutarpa Majorgaon High Madrasa

under Goaplara District with financial power in addition to his normal duties; and (b) for directing the respondents not to cause interruption or

disturbance in respect of the order under memo no. GB-EST/Apptt/FP/49/2017/169 dated 04.02.2020, passed by the respondent no.2), allowing the

petitioner to hold charge as In-Charge Superintendent of Sutarpara Majorgaon High Madrassa under Goaplara District with financial power in addition

to his normal duties.

3) This Court by order dated 22.04.2021 as extended by order dated 27.04.2021, had directed that status quo be maintained. On entering appearance in this case, the respondent no.4 had filed an interlocutory application, which was registered and numbered as I.A. (C) No. 1062/2021.

4) At the outset, it is required to be mentioned that making his submissions in respect of the said interlocutory application, the learned counsel for the

petitioner had extensively referred to all the materials available in the writ petition and had also extensively referred the various provisions of the

Assam Secondary Education (Povincialised Schools) Service Rules, 2018. Accordingly, such extensive submissions had not only compelled the learned

standing counsel for the respondent nos. 1 to 3 and the learned counsel for the respondent no.4 to respond to it, but it had also compelled the Court had

to deal with the various facets of determining seniority and for the said purpose to deal with the relevant provisions of the 2018 Rules. In other words,

in order to make their point, the learned counsel for the three sides, i.e. the petitioner, respondent nos. 1 to 3 and private respondent no. 4 had made

extensive submissions touching upon the merit of this writ petition. Hence, this Court is of the opinion that as common facts are involved in this writ

petition as well as the said connected I.A.(C) 1062/2021, there would be no point in keeping this writ petition pending. Thus, in light of the finding

recorded in the said I.A. (C) No. 1062/21, it is deemed appropriate that this writ petition be also disposed of as nothing more is left to be decided

therein.

5) In brief, the case of the petitioner is that he had joined service in Sutarpara Majorgaon High Madrassa School (also referred in some documents as

â??Sutarpara Majergaon High Madrassaâ?) under Goalpara District, which was provincialised w.e.f. 01.01.2013. Thereafter by virtue of order dated

31.03.2017 passed by the respondent no.1, the following schools, namely, (i) Sutarpara Majergaon M.E. School, and (2) Bhagyapur L.P. School

located in the same premises was amalgamated with Sutarpara Majorgaon High Madrassa under the scheme called Siksha Khetra Scheme, providing

thereby that the amalgamated schools would be known as Sutarpara Majergaon

High Madrassa. On and from 01.01.2020 till 31.10.2020, the regular Superintendent of the said school took earned leave and accordingly, vide order dated 04.02.2020, as a purely temporary arrangement, the respondent no.1 had allowed the petitioner to hold the charge of In-Charge Superintendent of the said school along with financial power to draw and disburse the salary, etc. of the staff along with his other duties as Assistant Teacher under F.R.49(c) vice the Superintendent, who was on earned leave.

6) Thereafter, as a temporary arrangement, vide order dated 12.04.2021 by respondent no.1, the respondent no.4 was allowed to hold the charge of

In-Charge Superintendent of the said school along with financial power to draw and disburse the salary, etc. of the staff along with his other duties as

Assistant Teacher under F.R.49(c) vice the petitioner, who was relieved of his charge. Accordingly, the aggrieved petitioner had filed this writ petition

under Article 226 of the Constitution of India. As already indicated herein before, this Court by order dated 22.04.2021, as extended by order dated

27.04.2021, had directed that status quo be maintained.

7) It is projected by the applicant that by order dated 09.01.1992 passed by the District Elementary Education Officer, Goalpara, the applicant and 48

others were appointed as Science graduate teacher and the applicant was posted at Sutarpara Majergaon ME School and the applicant joined in the

said post on 10.01.1992. Thereafter, as indicated herein before the two schools in the same premises were merged with Sutarpara Majergaon High

Madrassa. By referring to the seniority list of teachers as on 08.02.2021, the learned counsel for the applicant has submitted that the then In-charge

Superintendent Sutarpara Majergaon High Madrassa had prepared a seniority list of teachers and placed the name of the writ petitioner at serial no.1

and the name of the applicant was placed at serial no.6 by ignoring that the petitioner had joined as Graduate Teacher (Science) on 10.01.1992, and

that he had been receiving graduate scale of pay from that date, whereas the opposite party no.1 had received graduate scale of pay at a much later

date on 01.01.2013. It is submitted that on all counts the applicant was senior to the opposite party no.1 and was qualified to hold the post of

Superintendent of the said school and it is submitted that the same criteria should be applied also for the purpose of appointing an In-charge

Superintendent.

8) The case of the petitioner is that he had joined the Sutarpara Majergaon High Madrassa as Assistant Teacher on 18.05.1987 and accordingly, as

the respondent no.4 had joined the Sutarpara Majergaon High Madrassa only in the year 2017, i.e. after amalgamation, he was prevented from

claiming seniority over the petitioner. Reference was made to the provisions of Rule 2(g), 14, and 15 of Assam Secondary Education (Povincialised

Schools) Service Rules, 2018 to impress upon the Court that as the respondent no.4 had joined Sutarpara Majergaon High Madrassa only in the year

2017, he did not have the requisite experience of 10 (ten) years as Assistant Teacher in the said school as per Rule 14(2)(b) of the said 2018 Rules.

By referring to the provisions of Rule 15(2)(b) of the said 2018 Rules, it was submitted by the learned counsel for the petitioner that the respondent

no.4 was not even qualified to hold the post of Assistant Headmaster/ Assistant Superintendent.

9) Accordingly, on examining the materials available on record, it was seen that by order dated 11.07.2018, issued by the respondent no.1, the

petitioner was released from Sutarpara Majergaon High Madrassa to undergo 2 year B.Ed. Course (from G.U.) from DIET, Goalpara and that after

successfully acquiring B.Ed. degree, the respondent no.4 had joined back in the said school on 01.10.2020. Therefore, at the time when the petitioner

was appointed as In-Charge Superintendent by order dated 04.02.2020, the respondent no.4 was on deputation and that during the deputation period,

the respondent no.4 was in the roll of the said school and was drawing his salary from the said Sutarpara Majergaon High Madrassa.

10) It is seen that as per proviso to Sub-Rule (1) of Rule 14 of the said 2018 Rules, it is provided that the seniority of the Graduate Teacher shall be

determined from the date of receiving Graduate Scale of pay by the respective Assistant Teacher. Therefore, by reading the proviso to Sub-Rule (5)

of Rule 35 together with Sub-Rule (1) of Rule 14 of the said 2018 Rules, the Court is of the considered opinion that as the learned counsel for the

respondent no.4 has been able to successfully demonstrate that the respondent no.4 had undergone a selection process by the Sub Divisional Level

Advisory Board for Elementary Education, Goalpara and that he was appointed as Science Graduate Teacher (Maths) and posted in the Sutarpara

Majergaon M.E. School and that the appointment order dated 09.01.1992 clearly indicates that the name of the respondent no.4 appears in serial no.

40 and that the posts where appointments were made thereunder was created vide Government sanction order dated 16.11.1992. The learned counsel for the respondent no.4 has also successfully demonstrated from the said Annexure-4 of the writ petition filed by the opposite party no.1 that while the applicant had received graduate scale on 10.01.1992, i.e. the date of his joining of the applicant, the date from when the opposite party no.1 had received graduate scale of pay was 01.01.2013. Incidentally, the seniority list dated 08.02.2021 (Annexure-4) upon which the petitioner has placed reliance to show that while his name appeared at serial no.1 and that of the respondent no. 4 appeared at serial no.6 was prepared by the petitioner.

11) On a pointed query by the Court, the learned standing counsel for the Secondary Education Department had fairly submitted that in view of the proviso to Sub-Rule (1) of Rule 14 read with Sub-Rule (5) of Rule 24 of the 2018 Rules, the date of joining is not so much material for determining seniority as is the date on which graduate scale of pay is received. Accordingly, it is seen that the learned standing counsel for the respondent nos. 1 to 3 has been able to successfully justify that part of the order dated 12.04.2021, impugned herein, where it is mentioned that "On perusal of available records, it is found that Md. Kazrul Islam, B.Sc., B.Ed., Assistant Teacher with date of receiving Graduate Scale of Pay w.e.f. 10.01.1992 is the senior most qualified teacher amongst the teaching staff of the Sutarpara Majorgaon High Madrassa."

12) The learned counsel for the petitioner had submitted the impugned order dated 12.04.2021 was bad in law by submitting that the applicant had joined the Sutarpara Majorgaon High Madrassa in the year 2017 by virtue the Government order of amalgamation dated 31.03.2017, as such, the respondent no.4 did not have the qualifying experience. In this regard, the Court is inclined to hold that the said submission by the learned counsel for the petitioner is ex facie either in ignorance of the herein before referred Sub-Rule (5) of Rule 24 of the 2018 Rules, or the said submission of the learned counsel for the opposite party is intended to mislead the Court.

13) Therefore, on both the counts of experience and seniority, the respondent no.4 is found to more eligible to be appointed to the post of In-Charge Superintendent of Sutarpara Majorgaon High Madrassa. Thus, the present challenge fails and accordingly, the writ petition stands dismissed.

14) It may be mentioned that the ad interim order of status quo as granted by order dated 22.04.2021 and extended by order dated 27.04.2021 has

been recalled, revoked and rescinded vide a separate order passed today in the connected I.A.(C) No.1062/2021.

15) The parties are left to bear their own cost.