

(2022) 01 GAU CK 0052

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 3392 Of 2021

Moinul Hoque

APPELLANT

Vs

State Of Assam And 3 Ors

RESPONDENT

Date of Decision : 20-01-2022

Acts Referred:

Citation : (2022) 01 GAU CK 0052

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : N Ahmed

Final Decision : Allowed

Judgement

1. Heard Mr. N. Ahmed, learned counsel for the petitioner. Also heard Mr. R. Mazumder, learned counsel for the respondents No.1, 2, 3 and 4 being the authorities in the Secondary Education Department and Elementary Education Department of the Govt. of Assam.
2. The petitioner Moinul Hoque who was the science graduate teacher of Jogirmahal M.E. School in the Dhubri district was promoted as the Headmaster of Jogirmahal M.E. School on being selected by the District Level Selection Committee, Dhubri as per the order dated 20.01.2018 of the Director of Elementary Education, Assam. In other words, we have to understand that on and from 20.01.2018 onwards the petitioner was the Headmaster of Jogirmahal M.E. School.
3. The communication dated 30.01.2018 of the District Elementary Education Officer, Dhubri requires the Headmaster of Jogirmahal M.E. School to handover the assets both movable and immovable of the Jogirmahal M.E. School to the Headmaster of the Jogirmahal High School inasmuch as,

Jogirmahal M.E. School stood amalgamated with Jogirmahal High School. The amalgamation admittedly is as per the office memorandum dated

22.09.2016. It is stated that upon the amalgamation, the petitioner was continued as a teacher of the amalgamated Jogirmahal High School. Clause-7

of the office memorandum dated 22.09.2016 under which the Jogirmahal M.E. School got amalgamated with the Jogirmahal High School provides as

extracted under:-

“In the event the highest school is High School, the Headmaster of the High School shall continue after amalgamation. The post of

Headmaster of ME School shall be re-designated as Assistant Headmaster with same pay scale whatever they are drawing and the post

shall be held by the existing Headmaster of the ME School without requiring the qualification for the post of Assistant Headmaster.

However, after cessation of the services of such Assistant Headmaster, the vacancy shall be filled up from the candidates having requisite

qualification as per procedure stipulated in the Service Rules in force.”

4. A reading of the Clause-7 of the office memorandum dated 22.09.2016 would go to show that upon the Jogirmahal M.E. School being amalgamated

with the Jogirmahal High School, the Headmaster of the Jogirmahal M.E. School post amalgamation would be the Assistant Headmaster of the

amalgamated Jogirmahal High School.

5. In view of Clause-7, the petitioner being the Headmaster of Jogirmahal M.E. School on being promoted by the order dated 20.01.2018 would have a

legal right to be recognized and continued as the Assistant Headmaster of the amalgamated Jogirmahal High School post amalgamation.

6. This petition is instituted on the grievance that the writ petitioner is not being declared and recognized as the Assistant Headmaster of the

amalgamated Jogirmahal High School and on the other hand he is continued in the status of a teacher in the amalgamated Jogirmahal High School.

7. It is stated that the petitioner would retire from service on 31.01.2022. Although notice was issued on 20.09.2021, no affidavit has been filed by the

respondents in the Education Secondary and Elementary Department. By our earlier order dated 23.12.2021, we required the Education Department

to provide the full information as regards the claim of the petitioner or else to file affidavit.

8. Considering the aspect that the petitioner would retire from service on 31.01.2022, we deem it appropriate that the matter requires an adjudication today itself. As the materials available on record are indicative enough and provide the Court with the complete information required to adjudicate the matter, we proceed with the adjudication and determine the claim of the petitioner as, as already noticed, the petitioner was the Headmaster of the Jogirmahal M.E. School which stood amalgamated with the Jogirmahal High School, and as per Clause-7 of the office memorandum dated 22.09.2016, the petitioner has a legal right to be recognized designated and be given all the benefits as the Assistant Headmaster of the amalgamated Jogirmahal High School. Further considering the aspect that the petitioner would retire on 31.01.2022, we direct the Director of Secondary Education, Assam to pass necessary order recognizing and designating the petitioner as the Assistant Headmaster of the school on or before 25.01.2022 so that the petitioner before his superannuation can avail the benefit of being the Assistant Headmaster of the Jogirmahal High School. The Director of Secondary Education, Assam to pass a reasoned order on such claim.

9. Mr. R. Mazumder, learned counsel for the respondents states that another writ petition WP(C) 1685/2021 is also instituted by the present petitioner assailing the findings of a disciplinary proceeding which was initiated against the petitioner. The claim of the petitioner to be recognized and designated as an Assistant Headmaster and the consequence of such disciplinary proceeding are two separate issues and both are unconnected. But however we also provide that any observation made in this order shall not in any manner have influenced in the other writ petition being WP(C) 1685/2021.

10. The petitioner to provide the copy of this order to the Director along with the application by 21.01.2022 and the Director shall do the needful on or before 25.01.2022.

11. Writ petition stands allowed as indicated above.