
(2018) 05 GAU CK 0082
In the Gauhati High Court
Case No : WP(C) 383 of 2016

Sri Premeswar Thakuria

APPELLANT

Vs

State Of Assam And 4 Ors

RESPONDENT

Date of Decision : 14-05-2018

Acts Referred:

Citation : (2018) 05 GAU CK 0082

Hon'ble Judges : ACHINTYA MALLA BUJOR BARUA, J

Bench : Single Bench

Advocate : P J Saikia

Final Decision : Disposed Off

Judgement

1. Heard Mr. P.J. Saikia, learned counsel for the petitioner. Also heard Mr. N. Sarma, learned standing counsel for the Secondary Education

Department as well as Mr. A. A. Dewan, learned counsel for the respondent No.5.

2. The petitioner was appointed as an Assistant Teacher in the Dhing Public High School, Nagaon and he had joined on 22.10.1998. The respondent

No.5, on the other hand was appointed as an Assistant Teacher in the same school on 09.11.1993. Admittedly on the basis of the date of appointment,

the respondent No.5 is senior to the petitioner. It is stated by Mr. N. Sarma, learned counsel that from the point of view of receiving the graduate

scale of pay also the respondent No.5 is senior to the petitioner.

3. In the year 2011, a selection was held for the post of Assistant Headmaster in the concerned school and in the said selection, the petitioner was

selected for the post of Assistant Headmaster. The reason was that the petitioner had B.E.d degree and the respondent No.5 did not.

4. On the strength of being the Assistant Headmaster by the order dated

04.04.2013, the petitioner was allowed to be the In-Charge Headmaster of the school upon the retirement of the earlier incumbent. Subsequently when the respondent No.5 had cleared his B.E.d degree, the In-Charge Headmaster given to the petitioner was withdrawn and the respondent No.5 was made In-Charge Headmaster of the school. The said withdrawal of the petitioner was assailed by him in WP(C) No.4184/2014. The petitioner had also preferred WP(C) No.3854/2014 seeking a direction to the respondent authorities to initiate a process for regular appointment to the post of Headmaster. Both the writ petitions were given a final consideration by the order dated 02.06.2015 by which it was provided that as the post of Headmaster of the School is vacant and both the petitioner as well as the respondent No.5 are eligible, therefore, appropriate steps be taken for filling up the post on a regular basis.

5. Pursuant to the said order, a selection was held and in the said selection, the respondent No.5 was selected by the State Selection Board to be the Headmaster of the School. Pursuant to such selection by the order dated 13.01.2016 of the Director of Secondary Education, Assam, the respondent No.5 was appointed as the Headmaster of the school.

6. The order dated 13.01.2016 has been assailed in this writ petition. One of the grounds taken by Mr. Saikia, learned counsel for the petitioner is that had the selection been conducted when the vacancy had arisen, the respondent No.5 would not have been qualified to hold the post and therefore, from the said point of view, the order dated 13.01.2016 appointing the respondent No.5 is vitiated. The said submission of Mr. Saikia may have been appropriate had the proceeding been at the stage when the respondent No.5 had not acquired the qualification of B.E.d and an adjudication was required as to whether he was eligible for the post of Headmaster or not.

But as of now the situation has changed to an extent that there is a judgment and order of this Court dated 02.06.2015 in WP(C) No.3854/2014 and

WP(C) No. 4184/2014, whereupon, it is to be understood that upon considering the said issue raised, it was provided that as both the petitioners and the respondent No.5 are now eligible, therefore, steps be taken to fill up the post of Headmaster. As the question whether the respondent No.5 had the B.E.d degree or not was also involved in the judgment and order dated 02.06.2015, therefore, the issue whether the respondent No.5 was not

qualified earlier, cannot be urged by the writ petitioner again in this writ petition.

7. In such view of the matter, we do not find any reason to interfere with the order dated 13.01.2016 of the Director of Secondary Education, Assam

by which the petitioner was appointed as the Headmaster of the school on regular basis. It is more so as the said appointment was made pursuant to

the recommendation by the State Selection Board which was made in favour of the respondent No.5 Writ petition is accordingly closed.