

GAHC010229472024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5620/2024

NOZRUL ISLAM
S/O LATE KASIM UDDIN BEPARI
R/O VILL- JHOWDANGA,P.O. JHOWDANGA, P.S. MANKACHAR, IN THE
DISTRICT OF SOUTH SALMARA MANKACHAR, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,
DEPARTMENT OF SCHOOL EDUCATION, DISPUR, GUWAHATI-781006

2:THE DIRECTOR

ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI- 781019.

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER

SOUTH SALMARA MANKACHAR
P.O. HATSINGIMARI IN THE DISTRICT OF SOUTH SALMARA
MANKACHAR
ASSAM
PIN-783136.

4:THE BLOCK ELEMENTARY EDUCATION OFFICER

MANKACHAR
P.O. HATSINGIMARI
IN THE DISTRICT OF SOUTH SALMARA MANKACHAR
ASSAM

PIN-783136

5:MD. SHAHERUL AMEEN
(I/C HEAD MASTER)
SON OF AZIZUR RAHMAN
R/O VILL- BAGHARCHAR
P.O. JHOWDANGA
P.S. MANKACHAR

IN THE DISTRICT OF SOUTH SALMARA MANKACHAR
ASSAM
PIN-783131

Advocate for the Petitioner : MR N SARMA, MR G U AHMED,MR. R ISLAM

Advocate for the Respondent : SC, ELEM. EDU, MR J ABEDIN (R5),FOR CAVEATOR,MR. S C BISWAS

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

ORDER

20.06.2025

Heard Mr. N. Sarma, learned counsel for the petitioner; Mr. P.N. Sarma, learned standing counsel for the respondent Nos. 1 – 4; and Mr. J. Abedin and Mr. S. Biswas, learned counsel for the respondent No. 5.

2. In this petition, under Article 226 of the Constitution of India, the petitioner has challenged the order, vide Memo No. DEEO/SSM/HM/Selection-Promotion/Pt-II/2004/274, dated 22.10.2024, issued by the District Elementary Education Officer (DEEO hereinafter), South Salmara Mankachar, whereby the respondent No. 5 was allowed to act as In-Charge Head Master cum Member Secretary of Jhowdanga M.E. School, under Block Elementary Education Officer (BEEO hereinafter), Mankachar to withdraw and disburse the monthly salary of the teaching and non-teaching staffs and other financial works of the said

school, in addition to his normal duties, until further order, due to transfer of earlier Headmaster of the said school.

2.1 The petitioner has also challenged joining report of the respondent No. 5 as In-Charge Headmaster cum Member Secretary of the said school in pursuance of the impugned order, dated 22.10.2024 and also challenged the Seniority List of teaching and non-teaching staffs of the said school, prepared by the earlier Headmaster of the said school illegally, to deprive him from holding the post of In-Charge Headmaster cum Member Secretary of the said school.

2.2. The petitioner has also prayed for issuing direction to the respondent authorities, particularly the respondent Nos. 3 & 4, for allowing him to act as In-Charge Headmaster cum Member Secretary of the said school with all financial powers.

3. Mr. N. Sarma, learned counsel for the petitioner submits that on 10.02.1994, the petitioner was appointed as Science Graduate Teacher in the Jhowdanga M.E. School, under BEEO, Mankachar and he joined in his duty in the said school on 11.02.1994. Mr. Sarma further submits that in the years 2000, 2003 and 2004, the petitioner was transferred from the said school to another school and thereafter, from that school to another school and again, from that school to another school, in the interest of public service.

3.1. Mr. Sarma further submits that the respondent No. 5 was initially appointed as Hindi Teacher in the Jhowdanga M.E. School on 10.02.1994 and he joined in his duty as Hindi Teacher of the said school on 11.02.1994, on which date the petitioner had also joined his duty.

3.2. Mr. Sarma further submits that it is well settled proposition of law that when two persons joined in a particular department on the same day, then the

seniority between them would be decided on the basis of date of birth and as per date of birth of the petitioner, i.e. 24.01.1968, the present petitioner is 4 years 10 months and 3 days senior than the age of the respondent No. 5, whose date of birth is 27.11.1972.

3.3. It is the further submission of Mr. Sarma that in preparing the seniority list, which is annexed with the petition, as Annexure – K, the name of the respondent No. 5 was shown above the present petitioner and that the respondent No. 3, vide impugned order dated 22.10.2024, has allowed the respondent No. 5 to act as In-Charge Headmaster cum Member Secretary to the said school with all financial benefits and other powers by illegally depriving the present petitioner ignoring his seniority. Being aggrieved, the petitioner has approached this court by challenging the order dated 22.10.2024.

3.4. Mr. Sarma also submits that while this court is in seisin of the matter, the respondent authorities have transferred the petitioner, vide Memo No. DEEO/SSM/Transfer-Posting/2024/287, dated 11.11.2024, to Urar Bhui M.E. School and he was temporarily allowed to act as In-Charge Headmaster cum Member Secretary of the said school, as the earlier incumbent had resigned from the said post and that the aforementioned transfer is mala-fide and arbitrary and the petitioner had challenged the same in I.A.(Civil) No. 3515/2024 and this court, vide order dated 18.11.2024, was pleased to stay the said impugned order.

3.5. It is also the submission of Mr. Sarma that the aforementioned order is illegal and arbitrary as the respondents have filed their affidavit-in-opposition, wherein a stand has been taken that lot of complaints had been received against the petitioner and he himself had filed one representation for his transfer from that school to another school and said grounds are untenable as

the same assumed the character of punishment and the petitioner was not given an opportunity of being heard and therefore, Mr. Sarma has contended to set it aside.

3.6. Mr. Sarma, in support of his submission has referred to a decision of Hon'ble Supreme Court in the case of **D.P. Das vs. Union of India and Others**, reported in **(2011) 8 SCC 115**.

4. Per-contra, Mr. P.N. Sarma, learned standing counsel for the respondent Nos. 1 – 4 submits that the respondent No. 2 has filed its affidavit-in-opposition, wherein a stand has been taken that since the date of joining of the petitioner as Science Graduate Teacher in the Jhowdanga M.E. School, several complaints were received against him and one of such complaint was filed on 21.02.2024, by the School Management Committee along with the guardians of the students of the school and considering all these aspects, the petitioner was transferred vide order dated 14.03.2024 and he was released from the said school as per order dated 14.03.2024.

4.1. It is also stated that there were three separate seniority lists of teaching and non-teaching staffs, which were forwarded by the Headmaster of the said school to the office of the DEEO, South Salmara Mankachar on different occasions and in all the lists the name of the petitioner appears after the present In-Charge Headmaster and as per the seniority lists one of the teachers, namely, Mosihur Rahman was senior than the present In-Charge Headmaster, who had submitted No Objection Certificate along with a prayer to handover the charge of In-Charge Headmaster of the said School to Shaherul Hussain (respondent No. 5). Thereafter, on 01.03.2024, the petitioner had filed an application before the office of the DEEO, South Salmara Mankachar stating that

he is willingly seeking his transfer from the said school to any other school in view of the public complaint against him.

4.2. It is the further submission of Mr. Sarma that the present petitioner has mislead this court by filing this petition and that in view of the public complaints received against him, the charge of In-Charge Headmaster was given to the respondent No. 5 and that because of the aforesaid reasons and as because the name of the present In-Charge Headmaster (respondent No. 5) appears above the name of the present petitioner, the respondent authorities had given the post of In-Charge Headmaster to the respondent No. 5 and this is an adhoc arrangement made till appointment of regular Headmaster of the school.

5. On the other hand, Mr. Abedin, learned counsel for the respondent No. 5 submits that the respondent No. 5 is senior to the present petitioner as per seniority list and though they have joined on the same date, i.e. 11.02.1994, yet the petitioner joined in the Jhowdanga M.E. School at 01:45 p.m. and the respondent No. 5 joined in the morning, at 09:45 a.m. and as such, he is senior to the petitioner.

5.1. Mr. Abedin further submits that while the petitioner was posted at Chirakhowa M.V. School, there was allegation against him made by the student and guardian of the said school due to his non teaching attitude and accordingly, he was engaged as Cluster Resource Centre Coordinator (CRCC hereinafter) at Kuchnimara Cluster and other clusters of South Salmara Mankachar, therein also various allegations were leveled against him and therefore, he was transferred to Jhowdanga M.E. Madrassa, vide order dated 09.08.2023 and he joined the said school on 19.09.2023.

5.2. Further submission of Mr. Abedin is that the School Management Committee as well as the guardians and students of the said school filed public complaint against the petitioner before the District Commissioner of South Salmara Mankachar and prayed for not allowing him to join in the said school. Under such circumstances, Mr. Abedin has contended to dismiss the petition.

6. The petitioner has submitted his reply to the affidavit-in-opposition filed by the State respondents and also by the respondent No. 5, wherein, he denied the statements and averments made by the respondents and stated that the allegations leveled against him are baseless and frivolous and that no allegation could be established against him. He further stated that he is senior to the respondent No. 5 and on such count, he is entitled to hold the post of In-Charge Headmaster of Jhowdanga M.E. School.

6.1. The petitioner has also referred to a notification, dated 02.03.2010, wherein the procedure was laid for promotion to the Head Master of M.E./M.E.M./M.V. and Senior Basic Schools, wherein it is stated that the selection for the posts of Headmasters in the middle schools shall be made on the basis of seniority cum efficiency. He also stated that he is senior to the respondent No. 5 by 4 years 10 months 3 days and he has also completed the D.El.Ed in the year 2019. He also stated that it is well settled proposition of law that even he was transferred to other schools in the public interest, his seniority would never be lost.

6.2. Another stand, which he has taken that the transfer order was issued on 11.11.2024, when this court was in seisin and that there was no public interest involved in his transfer. He also stated that his transfer order was passed by the ADC (Edu.) cum In-Charge DEEO, South Salmara Mankachar, who has no authority to issue the inter-school transfer on any ground in view of the

provision of the Sections 5(5)(6) and 6(d) of the Assam Elementary and Secondary School Teachers' (Regulation of Posting and Transfer) Act, 2020 and the relevant Government Office Memorandum, dated 23.06.2021. Under such circumstances, the petitioner has contended to allow the petition.

7. Having heard the submissions of learned counsel for both the parties, I have carefully gone through the petition as well as the documents placed on record and also the order dated 22.10.2024, and the decision referred by Mr. N. Sarma, learned counsel for the petitioner.

8. The basic facts herein this case is not in dispute. The petitioner was initially appointed as Science Graduate Teacher, under BEEO Mankachar, by the DEEO, Dhubri, on 10.02.1994, in Jhowdanga M.E. School and on 11.02.1994 and he joined in the said school and his time of joining is shown in the joining report (Annexure – B) as 09:45 a.m. Thereafter, he was transferred to different schools on different occasions. First he was transferred to Charbari M.E. Madrassa, vide order dated 21.08.2000. Thereafter, he was transferred from that School to Chirakhowa (2) M.V. School, vide order dated 08.10.2003. Thereafter, he was again transferred from that School to Jhowdanga M.E.M. School, vide order dated 10.02.2004. He was also attached as CRCC of Kuchnimara Cluster and vide order dated 09.08.2023, he was released from that attachment and transferred to Jhowdanga M.E.M. School and he joined in the said school on 19.09.2023. Thereafter, vide order dated 14.03.2024, he was transferred and posted as In-Charge Headmaster of Kuchnimara Jordanga M.E. School. Thereafter, vide order dated 31.05.2024, pursuant to order of this court, passed in W.P.(C) No. 2285/2024, dated 03.05.2024, his transfer order was kept in abeyance until further orders and he was directed to join in his earlier school.

9. There is a Notification, dated 2nd of March 2010, No. AEE.199/2009/42, governing the procedures for promotion to the post of Head Master of M.E. School/MEM/MV and Sr. Basic Schools. Clause 1 of the said Notification provides that the post of Head Master of M.E. School/MEM/MV Senior Basic School shall be promotional posts. Appointment to the post shall be made on the basis of seniority-cum-efficiency and recommendation of District Level Selection Committee to be constituted by the District Elementary Education of Assam. Clause 3 provides that selection to the post of Head Masters in such Middle Schools shall be made strictly on the basis of seniority - cum-efficiency.

9.1. However, this Notification is silent regarding appointment of In-Charge Head Master. But, since selection to the post of regular Head Master, as per Clause 3 of the said Notification shall be made strictly on the basis of seniority-cum-efficiency, then the logical corollary, that flows from the aforesaid proposition, is that In-Charge Head Master has also to be made on the principle of seniority- cum-efficiency. This proposition also stands fortified from a decision of this court in **Ashok Kumar Roy vs. State of Assam and Ors**, reported in **MANU/GH/0044/2008**, wherein it has been held that the prime consideration for choosing an incumbent to be in-charge Headmaster/Headmistress of a school is the school seniority.

10. Now it has to be seen who amongst the petitioner and respondent No.5 is senior. It also appears that the petitioner has enclosed the seniority list of the school as Annexure – K and perusal of the same, indicates that that the name of the petitioner is at serial No. 4, whereas the respondent No. 5 is shown at serial No. 3. It also appears that they had joined on the same date, i.e. 11.02.1994. But, nowhere in the said seniority list, their time of joining was mentioned. But, in the said annexure, i.e. Annexure – K, the date of birth of the petitioner is

shown as 24.01.1968, whereas the date of birth of the respondent No. 5 is shown as 27.11.1972.

10.1. Thus, it appears that the petitioner had joined on 11.02.1994 and from the joining letter of the petitioner; it appears that he joined at about 09:45 a.m., whereas, from the affidavit of the respondent No. 5, it appears that he had joined at about 10:00 a.m. But, he has taken a plea in his affidavit-in-opposition, at paragraph No. 4, that the petitioner had joined at 01:45 p.m. and he joined at 09:45 a.m. However, his own document, at page No. 61, Annexure No. 2, reflects that he had joined at 10:00 a.m. Thus, it appears that the petitioner had joined on 11.02.1994, at about 09:45 a.m. and he is senior to the respondent No. 5 by 4 years 10 months 3 days as per seniority list (Annexure - K).

10.2. It is well settled in the case of **D.P. Das (Supra)**, that for determination of seniority of the incumbents, who were recommended on the same date, age is the only valid and fair basis and as such, their seniority should be decided on the basis of the age of the candidates who have been recommended.

10.3. In the instant case, though both the petitioner and the respondent No. 5 joined on the same date, yet, from their time of joining and also from their date of birth, it is found that the petitioner is senior to the respondent No. 5 and as such, the seniority list, so prepared by the Headmaster and countersigned by the BEEO, at page No. 43, Annexure – K, is illegal and arbitrary and liable to be interfered with. Further, being the senior most teacher of the school, the present petitioner is entitled to hold the post of In-Charge Headmaster, even though the same is an adhoc arrangement. Admittedly no

disciplinary proceeding is pending against him, though some complaints have been received against him and nothing is placed on record to show that there is any adverse entry in his annual confidential report. As such, the petitioner is eligible to hold the post of In-Charge Headmaster of Jhowdanga M.E. School. Notably, he has been assigned the post of In-Charge Headmaster in an another school.

11. Under the given facts and circumstances, the impugned order dated 22.10.2024, issued vide Memo No. DEEO/SSM/HM/Selection-Promotion/Pt-II/2004/274, appears to be arbitrary and illegal and liable to be interfered with.

12. However, a contention is being made by the respondent No. 5 and also by the respondent Nos. 2, 3 & 4 that he was given the In-Charge Headmaster in another school and there are several public complaints against him and as such, he is not entitled to hold the post of In-Charge Headmaster in Jhowdanga M.E. School, yet, admittedly, no disciplinary proceeding was initiated against the present petitioner and no show cause notice was issued to him for the complaints being lodged against him and no opportunity of being heard was afforded to him before passing the impugned transfer order.

13. It is to be noted here that in the case of **Somesh Tiwari vs. Union of India and Others**, reported in (2009) 2 SCC 592, Hon'ble Supreme Court has held that a transfer order when passed and without giving an opportunity of being heard to the concerned officer and also on the basis of non-existence materials, is malice in law. And when an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal.

13.1. In view of the facts and circumstances and also in view of the

law laid down in the case of **Somesh Tiwari (Supra)**, the transfer order dated 11.11.2024, whereby the petitioner was transferred to Urar Bhui M.E. School is also liable to be interfered with.

14. Under the given facts and circumstance, this court is inclined to allow this petition with the following reliefs:-

- (i) The impugned order dated 22.10.2024, passed by the respondent authorities allowing the respondent No. 5 to act as In-Charge Headmaster cum Member Secretary, under BEEO, Mankachar is set aside and quashed;
- (ii) The seniority list enclosed with the petition, as Annexure – K, at page No. 43 of the petition, being irrational and illegal, is also stands set aside and quashed;
- (iii) The respondent authorities are directed to allow the present petitioner to hold the post of In-Charge Headmaster cum Member Secretary of Jhowdanga M.E. School with all financial powers of the school in addition to his normal duties till regular Headmaster is posted in the said school; and
- (iv) The impugned transfer order dated 11.11.2024, which was stayed by this court in I.A.(Civil) No. 3515/2024, is also set aside and quashed.

15. The above exercise, as indicated in point No. (iii) of paragraph No. 14, has to be carried out within a period of four weeks from the date of receipt of the certified copy of this order. The petitioner shall obtain a certified copy of this order and place the same before the respondent authorities within a week from today.

16. The parties have to bear their own costs.

JUDGE

Comparing Assistant