

GAHC010101132024



2026:GAU-AS:1430-DB

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

Case No. : WA/170/2024

HEMEN CHANDRA DAS
S/O SRI KHARGESHWAR DAS
RESIDENT OF VILLAGE BARPHEUKANKHAT, PO BETNA(GORESWAR) PS
GORESWAR, DIST BAKSA, ASSAM 781366

VERSUS

RAMESH CHANDRA KHAKHLARI AND 5 ORS
S/O. TABIL CHARAN BARO, VILL. KHANDIKAR, P.O. DHEPARGAON, P.S.
TAMULPUR, DIST. BAKSA, ASSAM, PIN-781354.

2:THE STATE OF ASSAM
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
EDUCATION (SECONDARY) DEPTT.
DISPUR
GUWAHATI-781009.

3:THE DIRECTOR OF SECONDARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI-781019.

4:THE DIRECTOR OF EDUCATION

BODOLAND TERRITORIAL COUNCIL
KOKRAJHAR
ASSAM
PIN-783370.

5:THE INSPECTOR OF SCHOOLS
BAKSA DISTRICT CIRCLE
MUSHALPUR-781372.

6:SCHOOL MANAGEMENT AND DEVELOPMENT COMMITTEE

BARGHULI HIGHER SECONDARY SCHOOL-781354

Advocate for the appellant : Mr. P. Mahanta, Advocate
Advocate for the respondent No.1 : Mr. R.P. Sharma, Sr. Advocate
Ms. A. Deka, Advocate
Advocate for the respondent Nos.2 & 3 : Ms. R. Baruah, Advocate
Advocate for the respondent Nos.4 & 5 : Ms. B. Bhuyan, SC, BTC

:::BEFORE:::

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

Date on which judgment is reserved : 02.02.2026
Date of pronouncement of judgment : 05.02.2026
Whether the pronouncement is of the : No
operative part of the judgment ?
Whether the full judgment has been : Yes
pronounced?

JUDGMENT & ORDER (CAV)

(M. Zothankhuma, J)

Heard Mr. P. Mahanta, learned counsel for the appellant. Also heard Mr. R.P. Sharma, learned Sr. Counsel for the respondent No.1 assisted by Ms. A. Deka and Ms. R. Baruah, learned counsel for the respondent Nos.2 & 3. Ms. B.

Bhuyan, learned Standing Counsel, BTC appears for respondent Nos.4 & 5. No one appears for the respondent No.6, even though notice had been served through dasti service.

2. The issue to be decided is whether the appellant or the respondent No.1 should be made the In-charge Principal of Barghuli Nehru Higher Secondary School. The learned Single Judge, vide the impugned judgment and order dated 16.05.2024 passed in WP(C) 2809/2022, directed that the respondent No.1 should be made the In-charge Principal of the said school, in view of the fact that the respondent No.1 joined as a Senior Hindi Teacher on being appointed on 29.04.1994 in the Graduate Scale of Pay. On the other hand, the appellant had been substantively appointed as an Assistant Graduate Teacher on 06.05.1996.

3. The learned counsel for the appellant submits that prior to the respondent No.1 joining the Barghuli Nehru Higher Secondary School on 28.10.1998 on the basis of the appointment order dated 23.10.1998, the respondent No.1 initially joined another school on the basis of the appointment order dated 29.04.1994 as a Senior Hindi Teacher with Graduate Scale of Pay on ad hoc basis.

4. The respondent No.1 became a Graduate in Arts only on 27.09.1997. On the other hand, the appellant was substantively appointed as a Graduate Teacher of Barghuli Nehru Higher Secondary School on 06.05.1996. As the appellant was a Graduate Teacher prior to the respondent No.1 becoming a Graduate Teacher, the appellant had to be treated to be the more senior teacher out of the two. He also submits that though order dated 08.02.2007 had been issued by the respondent authorities, regularizing the services of the respondent

No.1 w.e.f. the date of his joining the Barghuli Nehru Higher Secondary School, i.e., on 28.10.1998 and thereafter, w.e.f. 29.04.1994 vide Corrigendum dated 19.04.2022, the said regularization cannot be used for the purpose of seniority and can at best be considered for pension only.

5. The learned counsel for the appellant further submits that the Proviso to Rule 14 of the Assam Secondary Education (Provincialised Schools) Rules 2018 (in short "the Rules") had been wrongly applied by the learned Single Judge, in determining the seniority of the respondent No.1 over the appellant, inasmuch as, seniority in terms of the Proviso to Rule 14 of the Rules can be counted only from the date when 2 conditions are fulfilled. Firstly, the Teacher/Assistant Teacher has to have a Graduate Degree in terms of Rule 2(i) of the Rules, coupled with the fact that the Teacher/Assistant Teacher receives the Graduate Scale of Pay. The respondent No.1 being a Graduate only w.e.f. 27.09.1997, the seniority of the respondent No.1 as a Graduate Teacher can be counted only from 27.09.1997. He submits that the respondent No.1 was not a Graduate Teacher as per the Rules prior to 27.09.1997. He accordingly submits that the impugned judgment and order should be set aside, as the seniority of the respondent No.1 as a Graduate Teacher has been counted before he was borne into the cadre of Graduate Teachers.

6. Mr. R.P. Sharma, learned Sr. Counsel for the respondent No.1, on the other hand, submits that as per Rule 3(i)(a) of the Rules, the teaching staff in provincialized schools consist of various classes and Class-II states that it shall include the following cadres:-

(i) Vice Principal;

(ii) Post Graduate Teacher; and

(iii) Headmaster/Superintendent

7. The learned Sr. Counsel for the respondent No.1 submits that while both the appellant and respondent No.1 are Post Graduate Teachers, the post of Vice Principal has been placed above the post of Post Graduate Teacher in Class-II. As the respondent No.1 had been holding the post of Vice Principal of the said school for a period of about 5 years, the respondent No.1 had a better claim to be the In-charge Principal of the school. He further submits that in terms of Rule 12 of the Rules, a Post Graduate Teacher having 15 years of service and a Vice Principal having 5 years of service is eligible to be appointed to the regular post of Principal. When the appellant has both the qualifications, the respondent No.1 has a better claim to be appointed as the In-charge Principal of the School. He further submits that as the respondent No.1 has been given the Graduate Scale of Pay since his initial appointment as Senior Hindi Teacher on 29.04.1994, the seniority of the respondent No.1 would have to be counted from the date of receiving the Graduate Scale of Pay. He accordingly submits that in view of the above reasons, there is no infirmity with the decision of the learned Single Judge in coming to a finding that the respondent No.1 was senior to the appellant in the cadre of Graduate/Post Graduate Teachers.

8. We have heard the learned counsels for the parties.

9. Rule 14(1) of the Rules provides as follows:-

"14.Recruitment to the post of Head Master/ Superintendent and procedure thereof: (1) The post of Headmaster of a High School and

Superintendent of a High Madrassa shall be filled up by promotion from the candidates amongst the Graduate Teachers as per District-wise seniority list on the recommendation of the District Selection Committee constituted under Rule 16(2). The selection of Headmaster and Superintendent shall be based upon seniority and satisfactory Annual Confidential Report for last 3 consecutive years as per procedure provider under sub-rule (3):

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."

10. A reading of the above Proviso to Rule 14(1) shows that the seniority of a Graduate Teacher shall be determined from the date of receiving the Graduate Scale of Pay by the Assistant Teacher. However, the same is also subject to the Assistant Teacher being a Graduate Teacher, as defined in Rule 2(i) of the Rules, which states as follows:-

"(i) "Graduate Teacher" means and includes the category of Assistant Teacher, Classical teacher of Higher Secondary or Senior Secondary (erstwhile Junior College) or High Madrassa or a High School including amalgamated Higher Secondary and Senior Secondary and High Schools for whose appointment the minimum qualification is Graduate in Arts/Science/Commerce from recognized University including Demonstrators of a provincialised Higher Secondary School or a Senior Secondary School."

11. In the present case, though the respondent No.1 had been receiving the

Graduate Scale of Pay since 29.04.1994, the respondent No.1 was not a Graduate Teacher. It can thus be said that the seniority of the respondent No.1 as a Graduate Teacher can only be counted w.e.f. 27.09.1997, when he acquired a Graduate Degree in Arts and was also receiving the Graduate Scale of Pay in terms of the Proviso to Rule 14(1) of the Rules. Thus, the seniority of the respondent No.1 cannot be counted as a Graduate Teacher prior to 27.09.1997.

12. The appellant, on the other hand, had been substantively appointed as an Assistant Graduate Teacher in the said school on 06.05.1996, i.e., prior to the respondent No.1 becoming a Graduate. As such, for all purposes, the appellant was senior to the respondent No.1 as a Graduate Teacher in the said school. The giving of the Graduate Scale of Pay to the respondent No.1, without the respondent No.1 being a Graduate, prior to 27.09.1997, does not confer any benefit of seniority to the respondent No.1, as the Proviso to Rule 14(1) of the Rules has not been complied with.

13. The order dated 08.02.2007 issued by the Director of Education, BTC states that the appointment of the respondent No.1 as Senior Hindi Teacher on ad hoc basis was regularized w.e.f. the date of the respondent No.1 joining the Barghuli Nehru Higher Secondary School, i.e., on 28.10.1998, which had been made on the basis of the appointment order dated 23.10.1998. Thereafter, on 19.04.2022, a Corrigendum was issued in respect of the order dated 08.02.2007, wherein the regularization of the service of the respondent No.1 was to be read as 29.04.1994. Interestingly, this corrigendum had been issued just 6 days prior to the filing of the writ petition WP(C) 2809/2022, by the respondent No.4, which was on 25.04.2022.

14. Though an issue has arisen as to whether the appellant should have prayed for setting aside the Corrigendum dated 19.04.2022, we are of the view that this Court has ample power to take a decision on the validity of the said Corrigendum while deciding the present appeal.

15. In the case of **R.K. Mobisana Singh Vs. Kh. Temba Singh & Ors.**, reported in **(2008) 1 SCC 747**, the Hon'ble Supreme Court held that retrospective regularization can only be granted when there exists such a rule and that if rules were not followed, question of grant of regularization with retrospective effect would not arise. It also held in Para 42 as follows:-

"Retrospective regularization, whether in terms of the directions of the High Court or otherwise, thus, although could confer other service benefits to the officer concerned, but the same cannot be held to be of any assistance for reckoning seniority with retrospective effect."

16. In the case of **Ganga Vishan Gujrati and Ors. Vs. State of Rajasthan & Ors.**, reported in **(2019) 16 SCC 28**, the Hon'ble Supreme Court held that seniority cannot be granted to an employee from a date when the employee was not borne in a cadre.

17. In view of the above decisions of the Hon'ble Supreme Court as indicated above, the seniority of the respondent No.1 as a Graduate Teacher could only be determined from the date when the respondent No.1 acquired the Graduate Degree in Arts, which was on 27.09.1997. In view of the above, the Corrigendum dated 19.04.2022 issued by the Director of Education, BTC cannot in any manner be construed to give seniority to the respondent No.1 over the appellant in the cadre of a Graduate/Post Graduate Teacher.

18. In view of the reasons stated above, we are not in agreement with the decision of the learned Single Judge, wherein the respondent No.1 has been found to be senior to the appellant in the cadre of Graduate/Post Graduate Teacher. Consequently, the impugned judgment and order, in so far as it relates to the inter se seniority of the appellant and the respondent No.1, is answered to the effect that the appellant is more senior of the two persons.

19. Though we are of the view that no person has a right to be the In-charge Principal of a school, as the said post is to be filled up on a regular basis, the filling up of the post of In-charge Principal which is done for administrative convenience till the time it is filled up on a regular basis, should be done on the basis of seniority. The In-charge Principal should be from amongst the senior most eligible feeder cadre teacher, who can also be considered for promotion to the post of Principal on a regular basis. In the case of **Abdus Salam Vs. State of Assam**, reported in **2018 3 GauLT 739**, this Court had held that the senior most teacher, who is qualified for promotion as Headmaster, should hold the post of In-charge Headmaster. In the case of **Sujit Paul Vs. State of Assam & Ors.**, reported in **2007 SCC OnLine Gau 569**, this Court had held that in normal circumstances, ad hoc period of service cannot be counted towards seniority and retrospective regularization may not lead to retrospective seniority, inasmuch as, regularization of service, for the purpose of seniority, normally takes effect prospectively, i.e., from the order of regularization.

20. As the appellant is found to be senior to the respondent No.1 as Graduate/Post Graduate Teacher, he would have to be made the In-charge Principal. The impugned judgment and order dated 16.05.2024 passed in WP(C) 2809/2022 not being in conformity with the reasons stated above, we are

unable to sustain the same. The same is accordingly set aside.

21. The appeal is accordingly allowed and disposed of.

JUDGE

JUDGE

Comparing Assistant