

WP(C) 3494/2011

BEFORE

HON'BLE MR JUSTICE B D AGARWAL

This application has been filed by the respondent No.4 in WP (C) No. 3494 of 2011, namely Sri Asim Kr. Mahanta, seeking review of the order dated 25.7.2011, whereby the order dated 14.6.2011, passed by the Director, Secondary Education, Assam allowing Sri Asim Kr. Mahanta to hold the Bhalukmari H. S School was set aside.

Heard Mr. B Chakraborty, learned counsel for the applicant as well as Mr. M Biswas, learned counsel for the writ petitioner Digendra Chandra Das. The State was represented by Ms. P Chakraborty.

Admittedly, the writ petition was disposed of on 25.7.2011 at the motion stage itself without any counter from the State or the private respondent.

It may be mentioned here that the ex-parte order was passed since the private respondent did not appear despite receipt of notice. At the same time, no counter has also been filed by the State of Assam in the review application.

The order dated 14.6.2011 was interfered with basically on the ground that the private respondent No.4 was transferred to Bhalukmari H.S School to Sankar Dev H. S School, Nagaon on the premise that the transfer was made on the request of the private respondent.

It was held that under Rule 24(2) (v) of the Assam Secondary Education (Provincialized) Service Rules, 2003 if a

teacher is transferred to another school on his own request, he will lose seniority. This view has now been affirmed by the Full Court Bench in the Case of Zamal Uddin Ahmed -vs- State of Assam & Ors. : (2012) 1 GLT 1.

However, my observation of transfer of private respondent on his own request is now being disputed by Mr. Ashim Kumar Mahanta.

Since, no counter affidavit has been filed by the State of Assam and since records are not available, it would be just and proper to dispose this review application with a direction to the applicant to file appropriate application before the Director, Secondary Education to decide the seniority in term of the law laid down by the Full Court Bench in the case of Zamal Uddin (supra).

To expedite the process, Digendra Chandra Das is also directed to submit a representation and furnishing a copy of representation to the writ petitioner and who shall also file his reply to the Director, Secondary Education, Govt. of Assam within a week.

If the Director feels it necessary, he may hear both the parties or may pass order on the basis of the materials available before him.

The representation of the private respondent shall be disposed of within a period of 4(four) weeks from the date of receipt of the representation.