

WP(C) 3140/2011

BEFORE

THE HON'BLE MR. JUSTICE B.K. SHARMA

Heard Mr. A.R. Sikdar, learned counsel for the petitioner as well as Mr. M.R. Pathak, learned Standing Counsel, Education Department. None has appeared on behalf of the respondent No. 5, although names of the engaged counsels are shown in the cause list.

The petitioner is aggrieved by Annexure-2 communication dated 10.2.2011 made by the Inspector of Schools CDC, Silchar to the Principal in-charge of Judhisthir Saha H.S. School conveying the decision that the respondent No. 5 being next senior most teacher among the Assistant Teachers serving in the school, he would discharge his function as AOC.

According to the petitioner, he having been appointed on 29.5.1992 in the graduate scale of pay as Assistant Teacher, he is senior to the respondent No. 5 as the said respondent was transferred to the school by Annexure-5 order dated 30.12.1994 with the clear stipulation that he would not be entitled to seniority over the existing teachers of the school. Although the order states that transfer of the teachers named in the order were in public interest, but the conditions stipulated therein clearly indicate that they were not entitled to receive any TA/DA, meaning thereby they were transferred on their own requests. Moreover, the order was issued with the clear stipulation that they would not be entitled to seniority over other teachers of the school.

In the impugned communication, the Inspector of Schools, CDC has referred to only one part of the Annexure-5 order and not the terms and conditions of the order. In the counter affidavit filed by the respondents also the same very stand has been taken and there is no reference of the terms and conditions of Annexure-5 order.

As pointed out by Mr. Sikdar, learned counsel for the petitioner that the respondent No. 5 was also brought to regular establishment by Annexure-4 order dated 23.8.1999 with effect from 1.3.1996. Prior to that he was serving under a particular scheme.

From all the aforesaid facts it is clearly established that the petitioner is senior to the respondent No. 5. Consequently the Inspector of Schools could not have held that the respondent No. 5 to be senior most teacher of the school. Accordingly the said Annexure-2 order dated 10.2.2011 stands set aside and quashed with the declaration that the petitioner is senior to the respondent No. 5. Necessary consequences thereof will now follow.

Writ petition is allowed.