

BEFORE

HON'BLE MR. JUSTICE UJJAL BHUYAN

Heard Mr. MR Khandakar, learned counsel for the petitioner and Mr. RM Deka, learned Standing counsel, Education (Elementary) Department.

Considering the grievance expressed by the petitioner and the order that is proposed to be passed, issuance of formal notice to the respondents is considered not necessary and the case is taken up for disposal at the motion stage itself.

Petitioner is the Headmaster of Santipur LP School, Hatsingimari in the district of Dhubri. He is aggrieved by the impugned order dated 01-11-2014 issued by the Deputy Inspector of Schools, South Salmara, which reads as under:

As reported by the Sub-Divisional Magistrate, Hatsingimari an also own statement given by Sri Rofiquel Islam Mollah, Head Teacher, Santipur L.P. School that he is suffering from deafness and also not able to read and write clearly due to his eye problem. As a result Sri Rofiquel Islam Mollah, Head Teacher is physically not fit to function smoothly as Head Teacher of the School.

Therefore, for smooth functioning and in the public interest, Smti. Zamila Khatun, Asstt. Teacher of the said school is hereby allowed to act as i/c Head Teacher of the School with immediate effect until further order. Sri Rofiquel Islam Mollah will remain as Asstt. Teacher of the school and to take medical treatment.

From a perusal of the aforesaid order it appears that as per the report submitted by the Sub-Divisional Magistrate, petitioner suffers from deafness as well as partial blindness. Holding that petitioner is not physically fit to function as Head Teacher of the School, one Smt. Zamila Khatun, an Assistant Teacher of the said school, has been allowed to function as in-charge Headmaster. In case of the petitioner, it is stated that he will remain as Assistant Teacher of the School.

It is not in dispute that the school in question is a provincialised School and the substantive post held by the petitioner is Head Teacher. It is also not in dispute that the post of Head Teacher is higher than the post of Assistant Teacher. Therefore, by the impugned order dated 01-11-2014, petitioner has been demoted from the higher post of Head Teacher to the lower post of Assistant Teacher on the ground of being physically unfit. Physical fitness of the petitioner has been assessed by the Sub-Divisional Magistrate, Hatsingimari, who is not an expert on the subject. Without ascertaining the physical fitness of the petitioner through a competent Medical Board, the Deputy Inspector of Schools, South Salmara could not have removed the petitioner from the post of Head Teacher. In any case, down grading the petitioner from Head Teacher to Assistant Teacher without issuing any notice to him and without giving him an adequate opportunity of hearing is not at all justified. The manner in which the impugned order has been passed by the Deputy Inspector of Schools cannot be appreciated. The same is wholly untenable and calls for interference.

Accordingly, this Court directs the Director of Elementary Education, Assam to examine the physical fitness of the petitioner either through experts or by constituting a Medical Board. If it is found on such examination that petitioner is physically fit no order removing him from his post as Head Teacher would be warranted. If on the other hand, it is found that petitioner is not physically fit to discharge his function as Head Teacher, the Director shall pass necessary order(s) in the interest of the School but without disturbing the service status of the petitioner.

The above exercise shall be carried out by the Director of Elementary Education within a period of 2 months from the date of receipt of a certified copy of this order. Till the matter is examined at the level of the Director, the impugned order dated 01-11-2014 shall be kept in abeyance. Consequential order shall be passed following the decision taken by the Director.

A copy of this order may be furnished to Mr. RM Deka, learned Standing counsel, Education (Elementary) Department for doing the needful.

With the above direction, writ petition is disposed of. No costs.