

GAHC010019362018



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

Case No. : WP(C)/548/2018

KAMALENDU SAIKIA
S/O- LATE ROHIT CHANDRA SAIKIA, R/O- SOUTH AMOLAPATTY, P.O-
MOHONAGHAT, DIBRUGARH TOWN, DIST- DIBRUGARH, ASSAM, PIN-
786008

VERSUS

THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM,
EDUCATION (HIGHER) DEPTT., DISPUR, GUWAHATI- 781006

2:THE DIRECTOR
HIGHER EDUCATION
ASSAM
KAHILIPARA
GUWAHATI- 781019

3:THE GOVERNING BODY
DIBRU COLLEGE
DIBRUGARH
DIST- DIBRUGARH
ASSAM
REP. BY THE PRESIDENT

4:THE PRINCIPAL
DIBRU COLLEGE
DIBRUGARH
DIST- DIBRUGARH
ASSAM

5:THE SELECTION COMMITTEE
FOR APPOINTMENT OF PRINCIPAL OF DIBRU COLLEGE

DIBRUGARH
REP. BY ITS CHAIRMAN

6:JITU BURAGOHAIN
S/O- LATE HARESWAR BURAGOHAIN
PRINCIPAL
NAMRUP COLLEGE
P.O- PORBATPUR
DIST- DIBRUGARH
ASSA

Advocate for the Petitioner : MR. Y S MANNAN

Advocate for the Respondent : SC, HIGHER EDUCATION

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 28.03.2023

Heard Mr. Y.S. Mannan, learned counsel for the petitioner. Also heard Mr. K. Gogoi, learned standing counsel for the Higher Education Department, representing respondent nos. 1 and 2, and Mr. P.J. Phukan, learned counsel appearing for respondent nos. 3 to 6.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the selection process for the post of Principal, Dibru College, Dibrugarh, which was initiated vide advertisement published on 01.12.2017.

3. In brief, the case of the petitioner is as he fulfills all the requisite criteria, pursuant to the herein before referred employment advertisement along with others, he and the respondent no. 6 had applied for

selection and appointment to the post of Principal of Dibru College. The screening committee had also found the petitioner to be otherwise eligible. The petitioner and three others including the respondent no.6 had appeared in the interview held on 12.01.2018. The selection committee placed the name of the respondent no. 6 in the first position and the name of the petitioner was placed in second position. Thereafter, the matter was processed and sent to the Director of Higher Education (respondent no.2) for approval and appointment. The petitioner had submitted a representation dated 17.01.2018 to the respondent no. 2, stating therein that in recommending the name of the respondent no. 6 in first position, the UGC Regulation, 2010 and subsequent amendments thereto were not followed and that the respondent no. 6 was not a teacher from Post Graduate Department and not a Principal of a Post Graduate College and that he is presently the Principal of Namrup College, which is a Under-Graduate College and was not a guide for scholars undergoing research degree. Accordingly, information was sought for and request was also made for taking steps to interfere in the selection procedure, but as the same was not responded to, the present writ petition has been filed.

4. The learned counsel for the petitioner has submitted that during the pendency of this writ petition, he has come to know that the respondent no.6 had been appointed as Principal of Dibru College by an order dated 30.01.2018 issued by the Director of Higher Education, Assam (respondent no. 2) and therefore, the said appointment was brought on record by filing an additional affidavit.

5. The learned counsel for the petitioner has submitted that

insofar as the petitioner is concerned, vide communication dated 15.06.2007, he was approved for Guide-ship by the Periyar Institute of Distance Education under Periyar University, Tamilnadu as supervisor for guiding candidates leading to M.Phil. Economics research programme and vide communication dated 16.10.2007, the petitioner was recognized as a Guide for guiding research scholar in course "Economics" leading to award of M.Phil. Degree in Vinayaka Missions University.

6. It has been fairly submitted that after issuance of the UGC (Minimum Standard and Procedure for Award of M.Phil./Ph.D. Degree) Regulation, 2009, one cannot be a guide of a different University situated outside his concerned University. Subsequently, the Higher Education Department, Govt. of Assam, by OM No. AHE-293/2008/147 dated 09.07.2012, provided that in view of the decision of the Supreme Court of India in the case of *Prof. Yashpal & Anr. v. State of Chhattisgarh & Ors.*, [reported in (2005) 5 SCC 420], no University can start any off campus centres/study centre/centers and centre operating through the franchisees outside their specific territorial jurisdiction.

7. Hence, it is submitted that between the period 15.06.2007 till UGC Regulation, 2009 was notified, the guide-ship experience of the petitioner would remain and cannot be taken away. Therefore, it is submitted that the petitioner is otherwise eligible for being selected and appointed to the post of Principal of Dibru College.

8. Questioning the qualifications and experience of the respondent

no.6, it is submitted that as per the list of Ph.D. Supervisors, annexed to the writ petition as Annexure-L, the name of the petitioner does not appear as a Ph.D. Supervisor in the Arts, Commerce and Science stream of Dibrugarh University. It is also submitted that in respect of the statements made in paragraph 10 and 11 of the writ petition regarding lack of any research guidance experience of the respondent no.6 in Dibrugarh University, specific denial has not been pleaded by the respondent no. 2 in the said authority's affidavit-in- opposition and moreover, the respondent no.6 has not filed any affidavit-in- opposition to controvert the statement made by the petitioner in the writ petition.

9. It is submitted that in paragraph 10 of the affidavit-in- opposition by respondent no.2, reference was made to the UGC (Minimum Standard and Procedure for Award of M.Phil/Ph.D. Degree) Regulation, 2009, by which a University cannot hire the service of a faculty member of any college teacher or university teachers of another University. It is submitted that the petitioner has no grievance against the said 2009 Regulation. However, it is submitted that the said 2009 Regulation of UGC as well as the OM dated 09.07.2012, issued by the Govt. of Assam, Higher Education Department, would both have prospective application, which would not affect and/or disturb the qualification acquired by the petitioner as research supervisor for Periyar University and Vinayaka Missions University.

10. By referring to a list of Principals of Colleges in the State of Assam, it is submitted that a large number of Principals had the experience of being research guide for Universities outside the State of Assam. Accordingly, it

is submitted that the petitioner cannot be singled out to deny the benefit of being a research guide in respect of two above referred Universities.

11. In support of his submission, the learned counsel for the petitioner has cited the case of *Annamalai University v. the Secretary to the Government, Information and Tourism Department & Ors*, (2009) 4 SCC 590, which was followed in the case of *Abdul Motin v. Manisankar Maiti & Ors*, (2018) 16 SCC 533.

12. The learned standing counsel for the respondent nos.1 and 2 has produced the records relating to the selection and appointment of the respondent no.6 as Principal of Dibru College, which was called for by order of this Court dated 05.02.2018. By referring to the documents contained in the record, it is submitted that the then Deputy Registrar (Academic), Dibrugarh University by letter under reference no. DU/DR-A/12-1/12/96 dated 26.04.2012, addressed to the respondent no.6, has stated that as per decision of the meeting of Research Council in Science held on 04.04.2012, he was considered eligible for supervising Ph.D. work in Dibrugarh University. He has also referred to notification under reference no. DU/DR-A/11-1/1135 dated 14.12.2015, issued by the Deputy Registrar (Academic), Dibrugarh University, which discloses one Dr. Prof. P.K. Borua, Department of Life Sciences, Dibrugarh University as well as Dr. Jitu Buragohain (respondent no.6), Department of Botany in Namrup College were appointed as the research supervisor for one Hemamoni Das (Life Sciences), w.e.f. 16.03.2015. Accordingly, it is submitted that the respondent no.6 was an approved supervisor for supervising Ph.D. work under Dibrugarh University and therefore, the selection and appointment of

respondent no.6 was not vitiated. It is further submitted that as per the appointment order dated 30.01.2018, the term of appointment was for five years, which has expired. Hence, it is submitted that adjudication of the petitioner would only be an academic exercise.

13. The learned counsel for the respondent no.6 has submitted that as per instructions received by him, the respondent no.6 would superannuate on 31.03.2023. Therefore, the appointment of the respondent no.6 has been extended up to 31.03.2023. He has adopted the submissions made by the learned standing counsel for the respondent nos.1 and 2.

14. Considered the submissions, as well materials available on the record and the records produced by the learned standing counsel for respondent nos. 1 and 2.

15. The case of *Annamalai University (supra)*, followed in the case of *Abdul Motin (supra)*, were cited for the proposition that Ph.D. degree issued by an Open University and another Ph.D. degree issued by a formal conventional university must be treated at par having been so issued under the uniform standards prescribed by University Grants Commission Act. There is no quarrel with the proposition, but the said aspect has not been gone into in this case. For the reasons as disclosed herein after, the said cases would have no application in this case.

16. It is seen that as per Clause 2 of the qualification, experience and norms mentioned in the employment advertisement, amongst others, the

candidate must have done research guidance. It does not prescribe that one must have experience as supervisor/ guide for M.Phil. and/or Ph.D. scholar. Although in para-11 of the writ petition, the petitioner has stated that the respondent no. 6 did not have research guide-ship, but as Annexure-L, the petitioner has annexed a list of Ph.D. Supervisors under Dibrugarh University. Yet, vide Annexure-D and E of the writ petition, the petitioner has disclosed that he was guide approved for M.Phil.(Economics) research and therefore, admittedly, the petitioner himself was not a Ph.D. research guide.

17. Be that as it may, the record relating to proposal for appointment of Principal, Dibru College, Dibrugarh, bearing DHE/CE/AC/Apptt./Pt/11/2018 contains a letter from the Deputy Registrar (Academic), Dibrugarh University under reference no. DU/DR-A/12-1/12/96 dated 26.04.2012, which is addressed to the respondent no.6, mentioning therein that as per decision of the meeting of Research Council in Science held on 04.04.2012, the respondent no.6 was considered eligible for supervising Ph.D. work in Dibrugarh University. Therefore, the said record discloses that the Dibrugarh University had approved the name of the respondent no.6 as a Ph.D. Guide, and the record also discloses that one research scholar was placed under the supervisor-ship of the respondent no. 6 together with one another guide. Moreover, the List of Ph.D. supervisors/ guide, annexed to the writ petition at Annexure-L is not authenticated by any authority under the Dibrugarh University and/or the Higher Education Department, Govt. of Assam. The petitioner has neither disclosed the source from where the said list has been procured nor it is stated anywhere as the date when the said list was prepared. Therefore, no reliance can be placed on an un-authenticated and un-dated list annexed to the writ petition.

18. In view of the discussions above, the Court is constrained to hold that the respondent no. 6 cannot be held to be disqualified to be appointed to the post of Principal of Dibru College, Dibrugarh on the ground that he was not Ph.D. guide under Dibrugarh University. Therefore, this writ petition fails and the same is dismissed.

19. As indicated herein before, in view of the finding recorded herein before, the cases cited by the learned counsel for the petitioner do not help the petitioner in any way.

20. The parties are left to bear their own cost.

21. The original file produced by the learned Standing Counsel for the Higher Education Department is returned.

JUDGE

Comparing Assistant