

GAHC010023112017



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

**Case No. : WP(C)/2912/2017**

ATIQUR RAHMAN CHOUDHURY  
M.A., B.ED. SUBJECT TEACHER POLITICAL SCIENCE, ASIMIA HIGHER  
SECONDARY SCHOOL, P.O. KANAIBAZAR, DIST. KARIMGANJ, ASSAM PIN  
- 788724.

VERSUS

THE STATE OF ASSAM and 6 ORS.  
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,  
EDUCATION SECONDARY DEPARTMENT, DISPUR, GUWAHATI-6

2:THE DIRECTOR OF SECONDARY EDUCATION

ASSAM KAHILIPARA  
GUWAHATI -19.

3:STATE SELECTION COMMITTEE

ASSAM REP. BY THE CHAIRMAN-CUM- COMMISSIONER and SECRETARY  
TO THE GOVT OF ASSAM  
EDUCATION SECONDARY DEPARTMENT  
DISPUR GUWAHATI -6.

4:THE INSPECTOR OF SCHOOLS

KARIMGANJ DISTRICT CIRCLE  
KARIMGANJ

5:SCHOOL SELECTION COMMITTEE-CUM-  
SMDC OF ASIMIA HS SCHOOL  
KARIMGANJ  
REP. BY ITS CHAIRMAN/PRESIDENT BISHNU PADA DEBNATH

B.A.  
KARIMGANJ  
R/O KANAIBAZAR  
P.O. KANAIBAZAR  
DIST. KARIMGANJ  
ASSAM  
PIN - 788724

6:MASTAQUE AHMED CHOUDHURY  
M.A. MEMBER SECRETARY  
SCHOOL SELECTION COMMITTEE FOR SELECTION OF REGULAR  
PRINCIPAL  
ASIMIA HIHGER SECONDARY SCHOOL  
P.O. KANAIBAZAR  
DIST. KARIMGANJ  
ASSAM  
PIN - 788724.

7:MD. ASAD UDDIN  
M. SC  
B.ED. SUBJECT TEACHER MATHS ASIMIA HIGHER SECONDARY SCHOOL  
P.O. KANAIBAZAR  
DIST. KARIMGANJ  
ASSAM  
PIN - 788724

**Advocate for the Petitioner : MR R KARIM**

**Advocate for the Respondent : MR.U K NAIRR- 5and6**

**BEFORE  
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

**ORDER**

**Date : 13.03.2023**

Heard Mr. S.K. Das, learned counsel for the petitioner. Also heard Mr. R. Mazumdar, learned standing counsel for the Secondary Education Department, representing respondent nos.1 to 4; Mr. U.K. Nair, learned senior counsel, assisted by Ms. D. Mahanta, learned counsel for the respondent nos. 5 and 6; and Mr. F.U. Barbhuiya, learned counsel for the private respondent no. 7.

Also heard Mr. D.K. Roy, learned standing counsel for the Assam Higher Secondary Education Council, Assam.

2. The case of the petitioner, in brief, is that he has the educational qualification of M.A., B.Ed., and is the subject teacher in Political Science in Asimia Higher Secondary School, Karimganj. At the relevant time, the petitioner, who was the senior most teacher, was additionally allowed to hold the charge of the Principal of the said Asimia H.S. School, however, as the respondent no. 7 was selected for appointment to the post of Principal of Asimia H.S. School, Karimganj, by filing this writ petition under Article 226 of the Constitution of India, the petitioner has prayed for (a) quashing of the School Management and Development Committee (SMDC for short) of Asimia Higher H.S. School, Karimganj; (b) for quashing the School Selection Committee headed by respondent no. 5; (c) for quashing the selection of respondent no. 7 for the post of Principal of the said school; (d) for a direction to the respondent authorities to cancel/ recall/ rescind and/or otherwise forbear from giving effect to the impugned order dated 02.05.2017; and for a direction for either review or verification and/or scrutiny of the selection records of the State Selection Committee and appoint the petitioner as Principal of the said Asimia H.S. School, Karimganj.

3. The learned counsel for the petitioner has made three-fold submissions:-

a. Firstly, it is submitted that the respondent no. 7 is a mathematics teacher, but the school does not have recognition for mathematics, save and except for a brief period in 1994-95 session and therefore, the school is an Arts stream H.S. School with no students in the said

subject. In the said regard, it was submitted that this Court, by order dated 03.03.2023, had taken note of his submissions and had directed the Assam Higher Secondary Education Council (AHSEC for short) to produce the approval order given by the AHSEC to impart courses in the said college and therefore, the records produced be also considered by the Court.

b. Accordingly, as 5 marks were prescribed for leadership quality, it is submitted that as the result of the school in mathematics subject in Higher Secondary was 0%, the petitioner could not have been awarded 5 marks and/or more marks in the said category. The learned counsel for the petitioner has presented the following chart:-

| Year | Political Science        |                        |        | Mathematics              |                        |        |
|------|--------------------------|------------------------|--------|--------------------------|------------------------|--------|
|      | No. of students appeared | No. of students passed | Pass % | No. of students appeared | No. of students passed | Pass % |
| 2012 | 62                       | 51                     | 82.25% | Nil                      | Nil                    | 0%     |
| 2013 | 74                       | 72                     | 97.29% | 02                       | Nil                    | 0%     |
| 2014 | 86                       | 82                     | 95.34% | Nil                      | Nil                    | 0%     |
| 2015 | 92                       | 84                     | 91.30% | Nil                      | Nil                    | 0%     |
| 2016 | 68                       | 66                     | 97.05% | Nil                      | Nil                    | 0%     |

c. Secondly, it was submitted that the SMDC was constituted in an illegal manner and while in the General Meeting held on 12.07.2016, names of two persons each were recommended for the post of President and Vice-President of SMDC, but altogether different names were approved as President and Vice President respectively. It is submitted that resultantly, the School Selection Committee was headed by respondent no. 5 as Chairman, which had vitiated the proceedings of the School Selection Committee. In the said context, it was also

submitted that the fourth member had studied only upto Class-V, ought not to have been made a member of the School Selection Committee to sit upon selection of Principal. Hence, it was submitted that the Education Department be directed to produce the record relating to grant of approval by the State Selection Committee in respect of the constitution of SMDC.

d. Thirdly, it was submitted that the petitioner had raised all the said issues in W.P.(C) 64/2017, but during the pendency of the said writ petition, the respondent authorities had issued the impugned order and therefore, the present writ petition had to be instituted and moreover, it has been submitted that another person, namely, Kamal Uddin had also filed W.P.(C) 340/2017 to challenge the illegally constituted SMDC and School Selection Committee, which are both sub-judice before this Court.

4. The submissions made by the learned counsel for the respondents have been considered.

5. As per the order dated 23.06.2016, under the column in respect of leadership skills which carried 5 marks, the following is provided for – “*Based on the result of HSLC/AMH/HSSLC of current year (2016) and last year (2015) of the school in which the person is working at present. The candidate will produce the result sheet duly certified by the Principal of the institution where he/she is presently serving*”. Thus, the learned counsel for the petitioner has not been able to show that the marks for leadership skill is dependent only on pass percentage of students in a particular subject, or that percentile assessment of a candidate is to be done on the basis of pass percentage of students in a

particular subject. The existence of such a scheme could also not be shown from any act or rules in force or from any notification whatsoever whether issued by and/or followed by the Education (Secondary) Department of the Govt. of Assam. Therefore, the Court is constrained to hold that the petitioner has not been able to show that if there is no student in a particular subject or if none of the admitted students pass in any particular subject, the concerned subject teacher is liable to be termed as a person having no leadership quality at all. Therefore, the first point urged by the learned counsel for the petitioner is found without any legal force.

6. The second point raised by the learned counsel for the petitioner is (i) that the constitution of the SMDC was illegal, (ii) the State Selection Board had not done the exercise of proper evaluation before recommending the names of President and Vice Principal of SMDC and resultantly, the School Selection Committee was also illegally constituted. In the said regard, it is seen from the pleadings that the petitioner was the In-Charge Principal of the Asimia H.S. School during the relevant period and therefore, the petitioner is deemed to have knowledge as to which persons are the members of the SMDC and the School Selection Committee. Thus, the petitioner had taken a calculated risk of offering his candidature for the post of Principal of his own school, without challenging the constitution of the SMDC and/or the constitution of the School Selection Committee. However, after the result of the selection was unfavourable, he is questioning the constitution of SMDC and School Selection Committee, which is impermissible as per catena of judgments, and in this regard, we may refer to a few, viz., (i) *D. Sarojkumari v. R. Helen Thilakom & Ors.*, (2017) 9 SCC 476, (ii) *Gurmeet Pal Singh v. State of Punjab*, (2018) 7 SCC 260, (3) *Karnati Ravi & Anr. v. Commissioner Survey Settlements*

*and Land Records & Ors., (2018) 12 SCC 635, (4) HC Pradeep Kumar Rai and Ors. v. Dinesh Kumar Pandey & Ors. (2015) 11 SCC 493.*

7. Moreover, the impugned order dated 02.05.2017 (Annexure-P-12) is a testimony of the fact that “on the recommendation of the State Selection Board, Assam” and in pursuance to the Government approval accorded, the respondent no.7 was appointed as principal on regular basis. The said order is quoted below for ready reference:-

*“On recommendation of the State Selection Board, Assam and in pursuance of the Government approval accorded vide letter No. ASE.82/2014/Pt-11/130, Dt. 14.03.2017 and subject to reversion without notice and without assigning any reason thereof, **Asad Uddin, M.Sc, B.Ed**, Subject Teacher is hereby appointed as Principal on regular basis and posted in Asimia Higher Secondary School, District-Karimganj against the existing vacant post with effect from the date of his/her joining.*

*The post will carry scale of pay of Rs.30,000 to 1,10,000/- with Grade Pay of Rs.13,300/- per month and other allowances as admissible as per Rule.*

*This order supersedes any order, if any issued earlier, from this office for placing in- charge Principal of the School. However, this appointment is subject to the final order of Hon'ble Gauhati High Court in WP(C) No. 3781/2016.”*

8. Thus, from the contents of the said order dated 02.05.2017, the case projected by the learned counsel for the petitioner appears to be without any legs because, under the provisions of Section 114, *Illustration (e)* of the Evidence Act, 1871, the Court may presume that all judicial and official acts have been regularly performed, moreso, because approval was also accorded by the Government vide letter dated 14.03.2017, as stated in the said order dated 02.05.2017. Be that as it may, in order to assail the recommendation made by the State Selection Board must be arrayed as a respondent. However, in this case, the petitioner has impleaded “State Selection Committee” as respondent no. 3, but as per the contents of the said impugned order dated 02.05.2017, the

recommendation was made by the "State Selection Board" and moreover, as commission of illegality is alleged therefore, perhaps the members of the Board were also necessary parties, but no final opinion is returned on impleading of members of State Selection Board as proper and necessary, which is left to be decided in an appropriate case. However, although the petitioner has assailed the constitution of the said SMDC and School Selection Committee, but the petitioner has not been able to show that all the members of the said two committees have been made parties in this writ petition. Therefore, it would be a travesty of justice to decide the legality of the SMDC and School Selection Committee without notice to the persons who might be aggrieved and/or adversely affected by any decision on the issue. Therefore, the challenge to the constitution of SMDC and School Selection Committee fails on the ground of non- impleading of proper and necessary parties in this writ petition.

9. The learned standing counsel for the Secondary Education Department has successfully demonstrated that the 4<sup>th</sup> Member of SMDC is a parent representative, for whom no education qualification is prescribed. Therefore, challenge to the said appointment also fails.

10. We also take note that the Supreme Court of India, in the case of *Lila Dhar v. State of Rajasthan and Ors.*, (1981) 4 SCC 159, has cautioned that it is not for the Courts to re-determine the appropriate method of selection unless obvious oblique motives are proved in a particular case. In this present case, the petitioner has not made any attempt to establish that there was any oblique motive of the members constituting the SMDC, School Selection Committee and the State Selection Board to appoint the respondent no. 7 to the post of Principal over the candidature of the petitioner. Be it mentioned that the

SMDCs had been revamped by the Secondary Education Department by virtue of notification no. ASE.416/2025/116 dated 27.06.2016 (Annexure-P-13).

11. The learned counsel for the petitioner has submitted that the constitution of SMDC has been challenged by some third party. The pendency of such a writ petition would not come in the way of the Court to decide this writ petition because even in this writ petition prayer has been made to assail the constitution of the SMDC and School Selection Committee.

12. In light of the discussions above, we do not find any merit in this writ petition because no infirmity could be shown in the selection and appointment of the respondent no. 7 as Principal of Asimia Higher Secondary School, Karimganj vide order under memo no. GB-EST/ Principal Aptt/11/2017/a dated 02.05.2017. Thus, the petitioner is not found entitled to any reliefs, as prayed for in this writ petition. Accordingly, this writ petition stands dismissed.

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

**JUDGE**

**Comparing Assistant**