

GAHC010023412022



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

Case No. : WA/181/2022

HAFIZ UDDIN AHMED AND ANR.
S/O- ALIM UDDIN, VILL. and P.O.- GUNIALGURI, DIST.- BARPETA, ASSAM.

2: KHANDAKAR BABUL HUSSAIN
S/O- ATOWAR RAHMAN
VILL.- BOLAIPTHER
P.O.- KALGACHIA, DIST.- BARPETA, ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS.
TO BE REP. BY THE SECY. TO THE GOVT. OF ASSAM, EDUCATION DEPTT.,
DISPUR, GHY- 6.

2:THE DIRECTOR OF HIGHER EDUCATION
KAHILIPARA, GHY- 37.

3:THE GOVERNING BODY OF NABAJYOTI COLLEGE
TO BE REP. BY ITS PRESIDENT
P.O.- KALGACHIA, DIST.- BARPETA
ASSAM.

4:THE SELECTION COMMITTEE
FOR SELECTION OF PRINCIPAL OF NABAJYOTI COLLEGE REP. BY THE
PRESIDENT OF GOVERNING BODY
NABAJYOTI COLLEGE
P.O.- KALGACHIA, DIST.- BARPETA, ASSAM.

5:SHAHJAHAN ALI AHMED
S/O- ALIM UDDIN AHMED
VILL. and P.O.- BALIKURI
DIST.- BARPETA, ASSAM.

6:THE UNIVERSITY GRANT COMMISSION

REPRESENTED BY ITS SECRETARY
BADARPUR, SHAH ZAFAR MARG ITO
NEW DELHI- 110002

Advocate for the Petitioner : MR S BORTHAKUR

Advocate for the Respondent : SC, HIGHER EDU, MR. M.K. CHOUDHURY, SR. ADVOCATE
MR. A. CHAMUAH, SC. UGC

BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

JUDGMENT

Date : 21-06-2023

(S. Mehta, CJ)

1. Heard the learned counsel for the parties.
2. The instant intra-court writ appeal has been instituted by the appellants/writ petitioners being aggrieved by the judgment and final order dated 06.01.2022, passed by the learned Single Bench in WP(C) No. 4957/2016 filed by the appellants herein seeking issuance of writ in the nature of *quo warranto* and consequential direction to remove Mr. Shahjahan Ali Ahmed, the respondent no. 5 herein, from the post of Principal of Nabajyoti College in the district of Barpeta.
3. We have considered the submissions advanced at the Bar and have gone through the impugned judgment and the material placed on record.
4. Mr. S. Borthakur, learned counsel representing the appellants vehemently and fervently contended that the respondent no. 5 herein did not satisfy the mandatory criterion of fifteen years experience as provided in the advertisement dated 29.11.2011, issued by the President of the Governing Body, Nabajyoti College, Kalgachia and, hence, his selection and appointment as Principal of the

said college vide order dated 06.01.2012 is *de hors* the rules. He contended that the respondent no. 5 is holding a civil post in a provincialised college and, hence, the appellants herein being public-spirited citizens and residents of the district of Barpeta, are entitled to question the appointment of an unqualified person on the post of Principal and in seeking a writ of quo warranto to remove him from the post. His fervent contention was that the respondent no. 5, who was initially appointed as a lecturer in G.L. Choudhury College on 17.04.1993, took study leave under Faculty Induction Programme (FIP) of UGC for pursuing Ph.D. from 01.10.2004 to 31.03.2007 and thereafter sought another extension of six months study leave. It was the contention of Mr. Borthakur that this period, which the respondent no. 5 spent on study leave, could not have been counted towards teaching experience and, hence, respondent no. 5 was not having the requisite teaching experience of fifteen years after excluding the said period and, as a consequence, he was not entitled to be appointed as Principal in the said college. He drew attention of the court to Clause 3.9.0 of the UGC Regulations, 2010 and urged that the said Clause clearly stipulates that the period of time taken by candidates to acquire M. Phil. and/or Ph.D. Degree shall not be considered as teaching/research experience to be claimed for appointment to the teaching positions. He, thus, urged that in light of the aforesaid exclusion clause in the UGC Regulations, the period of almost three and half years spent on study leave sanctioned to the respondent no. 5 is required to be excluded from the period of his teaching experience and, hence, he would fall well short of the required teaching experience in terms of the advertisement and is, thus, not qualified to be appointed as a Principal in the school.

On the issue of *locus* of the appellants to institute the writ petition and the

appeal, Mr. Borthakur urged that the registration of a criminal case against the appellant no. 1 herein would not detract from his right to approach the court and to seek a writ of *quo warranto* so as to question the patently illegal appointment of respondent no. 5 on the important post of Principal of the college. On these grounds, Mr. Borthakur implored the court to accept the appeal, reverse the impugned judgment and, as a consequence, issue a writ in the nature of *quo warranto* so as to set aside the appointment of respondent no. 5 as Principal of Nabajyoti College.

5. Per contra, Mr. M. K. Choudhury, learned senior counsel representing the respondent no. 5, vehemently and fervently opposed the submissions advanced by Mr. Borthakur. He urged that the writ petitioner no. 1 (appellant no. 1 herein) was arraigned as an accused in Kalgachia P.S. Case No. 372/2013, instituted at the instance of respondent no. 5 herein, who is the victim in the said case, which involves, amongst others, offence punishable under section 307 IPC. The charge-sheet of the said case recites that the informant, being the Principal of Nabajyoti College, lodged the FIR alleging that he was brutally assaulted by the appellant no. 1 and his companions. It was further contended that the writ petitioner no. 2 (appellant no. 2 herein) is a cousin brother of the Secretary of the Students' Union of the said college and sought to derive undue gains from the college, which was blocked by the Principal, i.e. respondent no. 5 herein and, hence, appellant no. 2 was having a vested interest in filing the writ petition. Regarding writ petitioner no. 3 (who is not an appellant in this appeal), it was contended that he is an active member of a political party, namely, All India United Democratic Front (AIUDF). Thus, his motive in filing the writ petition is also dubitable.

Regarding merits of the case, the contention of Mr. Choudhury was that as

per Clause 8.2 of the UGC Regulations, 2010, respondent no. 5 was entitled to seek study leave, with pay, for acquiring Ph.D. Degree while in service. The said Clause clearly stipulates that study leave would be counted as a period in service and hence, the tenure of study leave availed by the respondent no. 5 in terms of the UGC Regulation cannot be excluded from his service experience as teacher. It was the further contention of Mr. Choudhury that the embargo contained in Clause 3.9.0 was exclusively for teaching positions, whereas the post of Principal carries more significant responsibilities of administration of the college and, hence, the same cannot be put at par with the teaching positions. On these grounds, Mr. Choudhury implored the court to dismiss the writ appeal.

6. Mr. A. Chamuah, learned counsel representing the UGC submitted that the restriction contained in Clause 3.9.0 of the UGC Regulations, 2010 is only *qua* the appointment to teaching positions. It has however been stated in the affidavit filed on behalf of the UGC that the respondent no. 5 does not fulfil the condition of API Score required for direct recruitment for the post of Principal. It has been further explained in the said affidavit that the wisdom of the selection committee could not be questioned and the reasoning for award of marks under each head is the prerogative for the selection committee on the collective judgment after examining the candidate's educational backgrounds, publication (both qualitative and quantitative) and performance in the interview.

7. Seen, thus, in the light of the aforesaid material, we have no hesitation in holding that the post of Principal cannot be termed to be a teaching position *simpliciter*. Though it cannot be denied that a Principal may be required to impart teaching in the educational institution, but the primary duty of a Principal

is of administration of the institution. Hence, we feel that Clause 3.9.0 of the UGC Regulations, 2010 cannot be *ipso facto* applied to the post under consideration i.e., Principal of a college. The view taken by the learned Single Judge after a comprehensive discussion of Clause 3.9.0 and Clause 8.2 of the UGC Regulations, 2010 holding that the respondent no. 5 was duly qualified for the post of Principal, is one possible view in the prevailing facts and circumstances. Hence, while examining the matter in the intra-court writ appellate jurisdiction, this court would be loath to interfere in such findings, more so, when proceedings of the writ petition were instituted by the persons, one of whom was responsible for assaulting the respondent no. 5 and has been charge-sheeted for the said incident. Moreover, the appointment of the respondent no. 5 as a Principal was made in the year 2011, whereas the writ petition came to be instituted in the year 2016. Hence, we are of the view that the writ petition does not appear to have been filed with *bona fide* objectives in addition to being a delayed action and, thus, the dismissal thereof by the learned Single Bench was justified. The impugned judgment dated 06.01.2022 does not suffer from any infirmity warranting interference.

As a consequence, we do not find any merit in this writ appeal, which is dismissed as such.

No order as to cost.

JUDGE

CHIEF JUSTICE

Comparing Assistant