

GAHC010043552023



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

**Case No. : WP(C)/1213/2023**

ANIL TAMULI  
SON OF BRAJEN TAMULI,  
VILLAGE AND P.O.- SAMARJAN,  
DISTRICT- DHEMAJI, ASSAM,  
PIN- 787037.

VERSUS

THE STATE OF ASSAM AND 3 ORS  
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,  
DEPARTMENT OF SCHOOL EDUCATION,  
DISPUR, GUWAHATI- 781006.

2:THE DIRECTOR OF SECONDARY EDUCATION  
ASSAM  
KAHILIPARA  
GUWAHATI- 781019.

3:THE INSPECTOR OF SCHOOLS  
DHEMAJI DISTRICT CIRCLE  
DHEMAJI

DISTRICT- DHEMAJI  
ASSAM

PIN- 787057.

4:JYOTI BURAGOHAIN  
IN-CHARGE HEADMISTRESS OF DHEMAJI ADARSHA HIGH SCHOOL

LACHIT NAGAR  
P.O.- KHUBALIA

DISTRICT- DHEMAJI  
PIN- 787037

**Advocate for the Petitioner** : MR. D CHETIA

**Advocate for the Respondent** : SC, SEC. EDU.

**BEFORE**  
**HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA**

**ORDER**

**Date : 17.10.2023**

Heard Mr. N. Sarma, learned counsel for the petitioner and Mr. B. Kaushik, learned counsel for the respondents No. 1, 2 and 3, being the authorities in the Secondary Education Department. Also heard Mr. A. Dhar, learned counsel for the respondent No. 4.

2. The petitioner Anil Tamuli and the respondent No. 4 Jyoti Buragohain are both teachers in the Dhemaji Adarsha High School in the Dhemaji district. The petitioner is aggrieved by the order dated 18.01.2023 of the Director of Secondary Education, Assam, by which the respondent No. 4 Jyoti Buragohain had been allowed to be the In-charge Headmistress of the school. The order dated 18.01.2023 in paragraph 3 provides that Anil Tamuli had not completed his graduation as on 18.01.2023 when the order impugned was passed.

3. Mr. N. Sarma, learned counsel for the petitioner states that subsequently the petitioner had obtained his graduate degree on 08.02.2023.

4. Fundamentally, the said submission cannot be of any aid of the petitioner inasmuch as, the legality of an administrative order would have to be viewed from the facts and circumstances prevailing on the day when the order was passed and cannot be invalidated because of any subsequent event that may

have taken place. If the subsequent event has any relevance, it would be for the person acquiring the subsequent qualification to make a representation for consideration of the authorities. But in the absence of any such claim being made, acquiring a subsequent qualification cannot invalidate an administrative order where admittedly on the date when the administrative order was passed, the person concerned did not have the required qualification.

5. Both the petitioner and the respondent No. 4 make their respective claims that as per service, they are senior most in the school. On the other hand, the petitioner submits that the respondent No. 4 does not have B.Ed. degree which is prerequisite qualification for being a regular Headmaster which according to the proposition laid down by this Court in the case of *Jagannath Pegu Vs. State of Assam & Ors.*, reported in 2007 (3) GLT 389, the required qualification of a regular Headmaster is also applicable in respect of an In-charge Headmaster.

6. From the point of the view of paragraph 3 of the impugned order dated 18.01.2023, we do not notice any infirmity in the order dated 18.01.2023. As we are not interfering with the order dated 18.01.2023 and if the petitioner is of the view that upon subsequent acquisition of the qualification of graduation the petitioner has a better claim to be the In-charge Headmaster of the school, representation may be made before the Director of Secondary Education, Assam, who shall pass a reasoned order thereon. In doing so, the respondent No. 4 be also given a hearing by the Director. The reasoned order be passed within a period of 30 days from the date of the representation that may be submitted by the petitioner.

7. A further issue has arisen as to whether the graduation degree of the petitioner would be a valid degree inasmuch as, there is an allegation that the petitioner did not obtain necessary permission from the authorities while

undergoing the graduation course. This question is no longer res-integra and had been settled by this Court in the case of *Smt. Mouchumi Saharia Vs. Smriti Rekha Kalita and 3 Ors. dated 28.09.2023 in I.A.(Civil) No. 2615/2023*, that if an in-service teacher had obtained a qualification without obtaining permission, the same by itself will not invalidate the qualification of the degree but may be a case of misconduct in view of violation of Clause 13 of the Assam Civil Services (Conduct) Rules, 1965 and the remedy thereof before the authorities would be to proceed against such person who conducted the misconduct, but that by itself will not entitle the authorities to reject a degree which is otherwise valid in law.

Writ petition stands disposed of as indicated above.

**JUDGE**

**Comparing Assistant**