

GAHC010050192017



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

Case No. : WP(C)/7052/2017

SHEIKH FARUQUE AHMED
HINDI TEACHER LOKAPRIYA HIGH SCHOOL S/O AKSED ALI SHEIKH R/O
BANDHABPARA P.O. and P.S. BILASIPARA DIST. DHUBRI, ASSAM, PIN -
783348

VERSUS

THE STATE OF ASSAM and 4 ORS.
TO BE REP. BY THE COMMISSIONER AND SECRETARY, GOVT. OF ASSAM,
EDUCATION DEPARTMENT, DISPUR, GUWAHATI - 781006.

2:THE DIRECTOR OF SECONDARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI - 781019.

3:THE INSPECTOR OF SCHOOLS

DHUBRI DISTRICT CIRCLE DDC
DHUBRI
P.O. and DIST. DHUBRI
ASSAM
PIN - 783301.

4:THE SCHOOL MANAGING COMMITTEE
LOKAPRIYA HIGH SCHOOL
REP. BY ITS PRESIDENT
SK. SHAHJAHAN MONTU S/O LT. KHARIYA SHEIKH VILL- KADAMTOL
PT.III
P.O. BILASIPARA
DIST. DHUBRI

ASSAM
PIN - 783348.

5:JOHIRUL HOQUE
S/OLT. UMAR ALI SHEIKH VILL- KADAMTOLA PT.II P.O. BILASIPARA
DIST. DHUBRI
ASSAM
PIN - 783348

Advocate for the Petitioner : MR.S K M ALOMGIR

Advocate for the Respondent : MR. M KHAN (R-4, R-5)

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 15.05.2023

Heard Mr. N. Ahmed, learned counsel for the petitioner. Also heard Mr. U. Sarma, learned standing counsel for the Secondary Education Department, respondent nos.1 to 3 and Mr. M. Khan, learned counsel for the respondent nos.4 and 5.

2. The case of the petitioner, in brief, is that he was appointed as a Hindi Teacher at Lokapriya High School, Kadamtola, Bilasipara, Dhubri by order dated 25.09.1995, issued by the then Headmaster of the school. Accordingly, the petitioner had joined the service in the said school on 27.09.1995. It is projected that although the said school was a venture educational institution, the appointment of the petitioner was duly approved by the Inspector of Schools, DDC, Dhubri on 16.10.1995. On retirement of the then Headmaster, the School Managing Committee had appointed the respondent no.5 as a teacher of the school, allegedly without following due procedure. In the

meanwhile, the respondent no.5 filed a writ petition before this Court being WP(C) no. 3964/2017, wherein the petitioner was impleaded as respondent no.6 vide order passed in I.A.(Civil) 2488/2017. The petitioner was discharged from service by communication dated 17.07.2017 without following any procedure, without issuance of prior notice or after drawing up any proceeding. Accordingly, by filing this writ petition under Article 226 of the Constitution of India, the petitioner has prayed for quashing of the communication dated 17.07.2017, thereby discharging him from service and for a direction to the respondent authorities to consider his representation dated 18.08.2017.

3. In course of submissions, the learned counsel for the respondent nos.4 and 5 has submitted that WP(C) no. 3964/2017 was dismissed and it is submitted that during the pendency of this writ petition, the erstwhile venture school, being Lokapriya High School, Kadamtola, Bilasipara, Dhubri has been provincialized by order dated 05.02.2021. It is also submitted that the School Managing and Development Committee ("SMDC" for short) has also been reconstituted. In order to show that writ petition against the venture/private school is not maintainable, the learned counsel for the respondent no.5 has cited the case of *Trigun Chand Thakur v. State of Bihar & Ors., Civil Appeal No. 10003/2010*, decided by the Supreme Court of India on 09.07.2019, thereby dismissing the Civil Appeal and affirming the dismissal of the writ petition being not maintainable against a private institution.

4. Even assuming that there are grounds in this writ petition to show that the termination of the petitioner was not in accordance with law, but due to the change of circumstances, whereby the said school has been provincialized, the appointment of Headmaster would be the prerogative of the authorities in

the School Education Department, Assam. The resolution by the SMDC to discontinue the service of the petitioner, at the relevant time was by the SMDC of a private/venture institute and in the case of *Trigun Chand Thakur (supra)*, cited by the learned counsel for the respondent nos.4 and 5, the Supreme Court of India had approved of the Division Bench judgment of the Patna High Court holding that the managing committee of a privately managed school would not be "State" within the meaning of Article 12 of the Constitution of India. The view was affirmed and accordingly, the said ratio would squarely be applicable to the facts of the present case.

5. Therefore, the Court is disinclined to entertain the writ petition where relief is essentially sought for against the erstwhile SMDC of the venture educational institution. Moreover, as the said institution has now been provincialized, as stated at the Bar, the petitioners would not be entitled to any relief as prayed for as the appointment of Headmaster of a provincialized school would be the prerogative of the authorities in the School Education Department.

6. Therefore, the issue raised by the petitioner has not been adjudicated on merit and the writ petition stands dismissed.

7. It would be open to the petitioner to seek such remedy as he may be so advised.

JUDGE

Comparing Assistant