

GAHC010051672023



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

Case No. : WP(C)/1551/2023

DR. MATIUR RAHMAN
SON OF LATE MAHBUBOR RAHMAN,
R/O- HOUSE NO. 19, MANIK NAGAR,
R.G. BARUAH ROAD,
P.O. AND P.S. - DISPUR,
DISTRICT- KAMRUP(M), ASSAM- 781005.

VERSUS

GAUHATI UNIVERSITY AND 3 ORS.
REPRESENTED BY THE REGISTRAR, GAUHATI UNIVERSITY,
GOPINATH BORDOLOI NAGAR,
GUWAHATI- 781014.

2:THE VICE CHANCELLOR
GAUHATI UNIVERSITY
GOPINATH BORDOLOI NAGAR

GUWAHATI- 781014.

3:THE REGISTRAR
GAUHATI UNIVERSITY
GOPINATH BORDOLOI NAGAR

GUWAHATI- 781014.

4:DR. APARAJITA BARUAH
HEAD
DEPARTMENT OF LAW

GAUHATI UNIVERSITY-CUM- PRINCIPAL (IN-CHARGE)

UNIVERSITY LAW COLLEGE

GAUHATI UNIVERSITY

GUWAHATI- 781001

Advocate for the Petitioner : MR K K MAHANTA (Sr. Advocate)

Advocate for the Respondent : SC, G U

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

JUDGMENT & ORDER (ORAL)

Date : 11-12-2023

Heard Mr. K.K. Mahanta, learned Senior Counsel assisted by Ms. N. Begum, learned counsel for the petitioner. Also heard Mr. P.J. Phukan, learned counsel for the respondents in the Gauhati University and Ms. B. Choudhury, learned counsel for the respondent No. 4 although it is stated that the respondent No. 4 had handed back the charges that was given to her as the Principal of the University Law College.

2. The writ petitioner is an Assistant Professor in the University Law College and aspires to become the In-Charge Principal of the University Law College but the said aspiration had been frustrated by the order impugned dated 16.02.2023 by which the respondent No. 4 was made the In-Charge Principal.

3. Mr. K.K. Mahanta, learned Senior Counsel for the petitioner raises the contention that the respondent No. 4 is an incumbent from the Law Department of the Gauhati University whereas by the order impugned dated 16.02.2023 she has been made the In-Charge Principal of the University Law College and the

same would be impermissible as it amounts to an inter departmental positioning.

4. To understand the status of the University Law College *vis-à-vis* the Law Department of the Gauhati University, we required the respondents in the Gauhati University to produce the relevant records by which the University Law College was created and as to what status was given to the University Law College under the Gauhati University.

5. Mr. K.K. Mahanta, learned Senior Counsel for the petitioner had earlier stated that initially it was the Earle Law College which functioned and then came into existence the Gauhati University and upon the Gauhati University coming to its existence, the Earle Law College was managed by the Gauhati University to be an entity within the University. But however, in the year 1974 the Government of Assam in the Education Department deemed it appropriate to carve out the Earle Law College from the control of the Gauhati University and to recognize it as an independent law college and named it Government Law College and upon undertaking the aforesaid steps the Government Law College started functioning at a location outside the premises of the Gauhati University. Presently the Government Law College is functioning as the B.R.M. Government Law College in its own campus in Guwahati. But after the Earle Law College was carved out from the control of the Gauhati University, in an around the year 1976, the University authorities deemed it appropriate that the Gauhati University should also operate a law college which started functioning as the University Law College.

6. In the circumstance an issue has arisen as to what would be the status of the University Law College, whether it is an independent law college like any other law college or it is a department of the Gauhati University or under the

arrangement it has a special status of its own to be different from the other departments of the Gauhati University.

7. As per the records produced by Mr. P.J. Phukan, learned counsel for the Gauhati University, the emergent meeting of the Executive Council held on 24.05.1989 at 1 P.M. with the Vice Chancellor as the Chairman had taken a resolution, the relevant portion of which is extracted as below:

“Proceedings of the Emergent Meeting of the Executive Council held on 24.5.89 at 1 P.M. in the University Executive Council Chamber.

Members Present:

Vice- Chancellor, Chairman.

Chairman, SEBA,

Dr. I.M. Das.

Dr. A.C. Sarma,

Dr. A.C. Singh,

Dr. B.C. Lahkar,

Shri J.C. Nath.

Shri H.N. Kalita,

Shri C.M. Medhi,

Dr. D.Kakoti,

Dr. A.C. Borthakur.

The Registrar was present in his capacity as

Ex-Officio Secretary to the Council.

This meeting of the Executive Council read and discussed the memorandum of ULCSU of 24.3.89 and 20.3.89, represented from Principal, University Law College dated 24.2.89 and the Head of the Department of Law of the University dated 24.5.89. Considered also the minutes of discussion held on 11.4.89 and 3.5.89 by the E.C. Sub-Committee with the representatives of ULCSU on the aforesaid memoranda.

Having considered various aspects of the matter the Council resolves that-

- 1. Subject to the provisions of G.U. Act, 1947 as amended upto date, the University Law College, which is the only constituent college of the University be deemed to be a department, under the Faculty of Law, and as such the rights and responsibilities including promotional avenues as applicable to the other departments provided in the G.U. Act, Ordinance,*

Statutes, Rules etc. be extended mutatis mutandis to the University Law College....."

8. A reading of the resolution of the Executive Council of the Gauhati University held on 24.05.1989 makes it discernible that the University Law College which till then was the only constituent college of the University, be deemed to be a department under the Faculty of Law. Accordingly, as per the said resolution of the Executive Council, it has to be understood that the status of the University Law College is that of a deemed department under the Faculty of Law. It is stated that apart from the deemed department of the University Law College there also exists the Law Department of the Gauhati University. As the Law Department of the Gauhati University and the University Law College which is also a deemed department are separate entities, it has to be understood that the Law Department and the University Law College are two separate and distinguishable departments within the Law Faculty of the Gauhati University.

9. Section 15 of the Gauhati University Act, 1947 provides that the University shall include Faculties of Arts, Science, Law, Medicine, Technology, Agriculture, Engineering, Commerce and Indian Fine Arts and such other Faculties as may be prescribed by the Statutes. Section 15 (2) provides that each faculty shall be subjected to the control of the Academic Council, have charge of the teaching and the courses of study and the research work in such subjects as may be assigned to such Faculty by the Ordinances. Section 15 (3) provides that each Faculty shall consist of the Heads of the Departments comprised in the Faculty.

10. A reading of Section 15(3)(i) of the Gauhati University Act, 1947 makes it discernible that the individual departments under the Faculties of the Gauhati University shall have a Head of the Department. Accordingly, we have to

understand that the Law Department of the Gauhati University which is a department of its own and the University Law College which is again in another deemed Department under the Law Faculty, would have their respective Heads of Departments. But it is stated that the Head of the Department of the University Law College is nomenclatured as the Principal of the University Law College. In other words, we have to understand that inspite of the nomenclature Principal being used, substantially the Principal would be the Head of the deemed department of the University Law College and the Law Department will have another Head of the Department of their own.

11. In view of the aforesaid arrangements as indicated above, by taking note of Section 15 of the Gauhati University Act, 1947 as well as the resolution of the Executive Council dated 24.05.1989 it appears to us that the scheme of the arrangements under the Gauhati University is that inter departmental positioning of the Professors and Assistant Professors may not be permissible. We arrive at such a view by taking note of an illustrated example that if the Physics and Chemistry are two separate departments under the Faculty of Science, it is not conceivable that a professor or an associate professor of the Physics Department to be the Head of the Department of Chemistry or vice versa. If it is not permissible in respect of any other department under the other faculties, the same principle in order to maintain parity should also be applicable to the Law Faculty and therefore, if the Law Department and the University Law College are two separate and distinguishable departments, the inter departmental positioning may not be permissible.

12. Now on question as to who should be the In-Charge Principal of the University Law College, Guwahati, as the University Law College is a deemed department under the Faculty of Law. As the faculties are under the control of

the Academic Council, we refer the matter to the Academic Council of the Gauhati University to take a decision as per law as to who would be a suitable person to be the In-Charge Principal of the University Law College but by taking note that the inter departmental positioning of the Professors and Associate Professors may not be permissible as indicated above. In doing so, the provisions of Section 15 (5) of the Gauhati University Act, 1947 shall also be taken note of that each faculty shall comprise of such Departments of teaching as may be prescribed by the Ordinances and the Head of such departments shall be Professor of the Department meaning thereby of the Department itself which again fortify the conclusion that inter departmental positioning may not be permissible. Section 15 (5) further provides that if there is no professor, the reader of a department shall be made the head of the department. It is stated that the reader is presently re-designated as the Assistant Professor.

13. In the instant case, it is submitted by Mr. K.K. Mahanta, learned Senior Counsel for the petitioner that the petitioner is still an Assistant Professor *inasmuch* as he was illegally deprived from being promoted as Associate Professor although his case was cleared by IQAC of the Gauhati University. As we are requiring the Academic Council to take a decision, the same may also be taken note of by the Academic Council and if the writ petitioner has any grievance as regards his promotion or his position in the deemed department of the University Law College as an Associate Professor, the same may also be looked into and appropriate order be passed on the same. While taking the said decision, the Academic Council may also give a hearing to the petitioner allowing him to substantiate his claim in detail. It is stated that the writ petitioner would retire in the month of February, 2024 and therefore, the Academic Council is requested to take a decision as indicated above within a

period of one month from the date of receipt of certified copy of this order.

Writ petition stands disposed of in the above terms.

JUDGE

Comparing Assistant