

GAHC010060582021



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

Case No. : WP(C)/2326/2021

OMPRAKASH CHATURVEDY
S/O KEDAR NATH CHOUBEY, MA. B.ED
SENIOR MOST GRADUATE ASSISTANT TEACHER, SWADHIN BAZAR HIGH
SCHOOL, SONAI, RESIDENT OF VILLAGE AND PO NUTUN RAMNAGAR
PART II, PS SONAI, DIST CACHAR, ASSAM, 788126

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, EDUCATION (SECONDARY) DEPARTMENT, DISPUR GUWAHATI
06

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

3:THE INSPECTOR OF SCHOOLS
CACHAR DISTRICT CIRCLE
CACHAR
ASSAM
788001

4:THE NATIONAL COUNCIL FOR TEACHER EDUCATION

EASTERN REGIONAL COMMITTEE
REPRESENTED BY ITS REGIONAL DIRECTOR
15 NILAKANTA NAGAR
NAYAPALLI

BHUBANESHWAR
ORISSA
751012

5:MD. FAKRUL ISLAM MAZUMDER
EX OFFICIO ASSISTANT HEADMASTER
SWADHIN BAZAR HIGH SCHOOL
SONAI
DIST CACHAR
ASSAM 78811

Advocate for the Petitioner : MR. A K DUTTA

Advocate for the Respondent : SC, SEC. EDU.

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

ORDER

Date : 12.10.2023

Heard Mr. B. Purkayastha, learned counsel for the petitioner and Mr. R. Mazumder, learned counsel for the respondents No. 1, 2 and 3, being the authorities in the Secondary Education Department. Also heard Mr. I. Alam, learned counsel for the respondent No. 4, being the authorities in the National Council for Teacher Education (NCTE) and Mr. H. Ali, learned counsel for the respondent No. 5.

2. The petitioner Omprakash Chaturvedy is stated to be the only teacher of Swadhin Bazar High School in the Cachar district who has the qualification of B.Ed. degree. Upon death of the earlier Headmaster Joynab Abedin Barbhuiya, the Inspector of Schools, CDC, Silchar was allowed to act as the In-charge Headmaster of the school along with financial powers as per the order dated 26.08.2020 of the Director of Secondary Education, Assam. Thereafter, the President of the SMDC of the school submitted a representation dated 09.02.2021 which was signed by the other Members of the SMDC before the

Commissioner and Secretary to the Government of Assam in the Secondary Education Department that the respondent No. 5, namely, Fokrul Islam Mazumder who is otherwise the senior most teacher of the school be allowed to be the In-charge Headmaster.

3. Consequent thereof, the order dated 26.02.2021 was passed by the In-charge Director of Secondary Education, Assam. Considering the representation of the President and others of the SMDC, the Director upon scrutiny of the list of teachers of the Swadhin Bazar High School found that there was only teacher having B.Ed. degree i.e. the petitioner Omprakash Chaturvedy. But the Director was also of the view that the B.Ed. degree obtained by the petitioner Omprakash Chaturvedy was through off campus mode and accordingly found the degree itself to be unacceptable. In the circumstance, the Director was of the view that there was no teacher in the school who had a valid B.Ed. degree and accordingly the respondent No. 5, namely, Fokrul Islam Mazumder who was otherwise the senior most amongst the teachers not having B.Ed. degree in the school was allowed to be the In-charge Headmaster. The order dated 26.02.2021 is assailed in this writ petition.

4. Mr. B. Purkayastha, learned counsel for the petitioner refers to the B.Ed. degree of the petitioner annexed as Annexure-2C page 21 to the writ petition, which is a certificate issued by the Indira Gandhi National Open University (IGNOU) wherein it is certified that Omprakash Chaturvedy had been awarded the degree of Bachelor of Education and June, 2015 is stated to be the date.

5. Mr. B. Purkayastha, learned counsel for the petitioner also relies upon an order dated 28.05.1999 of the Regional Director of National Council for Teacher Education (NCTE) which is a statutory body governing the B.Ed. course that the Northern Regional Committee of the NCTE had granted recognition to the Indira

Gandhi National Open University for awarding B.Ed. degree in a two years course from the academic year 1999-2000.

6. Mr. I. Alam, learned counsel for the respondents in the NCTE has also produced the order dated 28.05.1999 of the Regional Director of National Council for Teacher Education (NCTE) as well as a communication dated 09.08.2007 of the Member Secretary of the NCTE which also makes it discernible that the B.Ed. degree offered by IGNOU is a valid and acceptable degree in law.

7. As the name suggests, the B.Ed. degree from IGNOU is a degree obtained from an open university, but when we examine the impugned order dated 26.02.2021, the B.Ed. degree of the petitioner was rejected by the Director by accepting it to be a degree obtained through off campus mode. It is clarified by both Mr. R. Mazumder, learned counsel for the respondents in the Secondary Education Department and Mr. I. Alam, learned counsel for the respondents in the NCTE that B.Ed. degree from an open university and B.Ed. degree through an off campus mode are two different concepts where two separate laws govern the two aspects.

8. In view of the above, we have to accept that the Director of Secondary Education in the impugned order dated 26.02.2021 was fundamentally incorrect, firstly in its conclusion that the B.Ed. degree of the petitioner from IGNOU is a degree through off campus mode and that the said degree is not a valid and acceptable degree in law.

9. Mr. H. Ali, learned counsel for the respondent No. 5 on the other hand raises certain objection that even otherwise the writ petitioner is not entitled to be the In-charge Headmaster considering his length of service.

10. However, the said submission has no relevance in the issue before the

Court in the present writ petition inasmuch as, the question of acceptability of the B.Ed. degree of the petitioner from IGNOU is the issue at hand in the present writ petition.

11. Accordingly, the impugned order dated 26.02.2021 is set aside. The matter is remanded back to the Director of Secondary Education to pass a fresh order as to who should be the In-charge Headmaster of the Swadhin Bazar High School. In doing so, the Director to also take note that under the law as laid down by this Court in the case of *Jagannath Pegu Vs. State of Assam & Ors.*, reported in 2007 (3) GLT 389, wherein it had been provided that to be an In-charge Headmaster the incumbent concerned should have the necessary qualification of a regular Headmaster and further that under Rule 14 of the Assam Secondary Education (Provincialised Schools) Service Rules, 2018, the required qualification to be a Headmaster also includes a degree of B.Ed. meaning thereby, that an incumbent who would not have a B.Ed. degree may not be entitled for being promoted either as the Headmaster or being allowed to be the In-charge Headmaster. The Director to take note of all the relevant law applicable for appointment of a Headmaster and also take note of the B.Ed. degree of the petitioner which is found to be a valid degree under the law. The reasoned order to be passed within a period of one month from the date of receipt of certified copy of this order.

12. Writ petition stands disposed of as indicated above.

13. A copy of the order dated 28.05.1999 and the communication dated 09.08.2007 is kept on record.

JUDGE

Comparing Assistant