

GAHC010072922023



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

Case No. : WP(C)/1936/2023

GAZI RAHMAN AND 2 ORS.

S/O- LATE AYNAL HOQUE, R/O- VILL.- SOUTH SALMARA PART-II, P.O. AND
P.S. SOUTH SALMARA, DIST. SOUTH SALMARA MANKACHAR, PIN-
783127.

2: ZAKIR HUSSAIN BEPARI

S/O- LATE GHUTU BEPARI

VILL.- BAPUZI NAGAR (SHALBARI)

P.O. GOALPARA

ASSAM

PIN- 783121.

3: ZOHIRUL ISLAM MOLLAH

S/O- KOBAD HOSSAIN MOLLAH

VILL.- SOUTH SALMARA PART-I

P.O. AND P.S. SOUTH SALMARA

DIST. SOUTH SALMARA MANKACHAR

PIN- 783127

VERSUS

THE STATE OF ASSAM AND 3 ORS

REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,
DEPARTMENT OF SCHOOL EDUCATION, DIPSUR, GUWAHATI-781006.

2:THE DIRECTOR OF SECONDARY EDUCATION

ASSAM

KAHILIPARA

GUWAHATI-781019.

3:THE INSPECTOR OF SCHOOLS

SOUTH SALMARA DISTRICT CIRCLE

SOUTH SALMARA MANKACHAR DISTRICT

ASSAM
PIN- 783127.

4:NURUL AMIN AHMED
SUBJECT TEACHER
R.B.P. H.S. SCHOOL
P.O. SOUTH SALMARA
DIST. SOUTH SALMARA MANKACHAR
PIN- 783127

Advocate for the Petitioner : MR. M MONDAL

Advocate for the Respondent : SC, SEC. EDU.

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

ORDER

Date : 16.10.2023

Heard Mr. S. Borthakur, learned counsel for the petitioners and Mr. B. Kaushik, learned counsel for the respondents in the Secondary Education Department. Also heard Mr. S. Muktar, learned counsel for the respondent No. 4.

2. All the three writ petitioners had obtained their M.A. degree respectively from Krishna Kanta Handique State Open University and Chatrapati Shahu Ji Maharaj University, Kanpur in the years 2020, 2015 and 2004. The three writ petitioners along with the respondent No. 4 are all vying to be the Principal of R.B.P. Higher Secondary School, South Salmara, where one of the required qualifications is M.A. degree. By the impugned order dated 27.01.2023 of the Director of Secondary Education, Assam, the candidature of the three petitioners namely, Gazi Rahman, Zakir Hussain Bepari and Zohirul Islam Mollah were rejected inasmuch as, the M.A. degree obtained by them was found unacceptable to the Director inasmuch as, the degrees were obtained without prior permission of the appointing authority and therefore, it was a violation of Clause 13 of the Assam Civil Services (Conduct) Rules, 1965 (for short 'the

Rules of 1965'). On the other hand, the petitioners allege that the B.Ed. degree of the respondent No. 4 was also obtained in a same manner of not having taken permission from the appointing authority.

3. The order dated 27.01.2023 is assailed in this writ petition, inasmuch as the degrees of the three writ petitioners as well as the B.Ed. degree of the respondent No. 4 were all awarded in a valid and legitimate manner by the respective universities from which they were obtained and therefore the Director of Secondary Education, Assam in respect of the petitioners did not have the jurisdiction and authority to invalidate their degrees for the purpose of considering them in the process of selection for Principal of the school. The reasoning given by the Director that having not obtained prior permission from the appointing authority, Rule 13 of the Rules of 1965 was violated would be unacceptable in law in view of the pronouncement of 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*, wherein a consideration was given to the question as to whether if a degree is obtained by a person who is in service under the Government of Assam without obtaining prior permission of the authorities, would be a valid or an invalid degree.

4. By the judgment and order dated 28.09.2023 in I.A.(Civil) No. 2615/2023 in *Smt. Mouchumi Saharia (supra)*, it had been held that if a degree had been obtained without obtaining prior permission of the appointing authority, the same would be a misconduct under Rule 13 of the Rules of 1965 and it being a misconduct, the relevant provision of law applicable would be a proceeding against such candidates under the Assam Services (Discipline and Appeal) Rules, 1964, but the same by itself cannot invalid the otherwise valid degree obtained from the respective universities and further that a degree obtained

from the university is governed by Section 22 of the University Grants Commission Act, 1956.

5. As the M.A. degree of the three petitioners were also invalidated by the Director by the impugned order dated 27.01.2023, we are of the view that under the law the same would be an unauthorised act and accordingly the invalidation of the M.A. degree of the three petitioners by the order dated 27.01.2023 is set aside. The matter is remanded back to the Director of Secondary Education, Assam to process the respective claims of the petitioners as well as the respondent No. 4, as per law.

6. However, as already observed, setting aside the order dated 27.01.2023 shall not be a legal bar on the part of the respondent authorities if they intend to proceed against the petitioners, as per law as indicated. Having set aside the order dated 27.01.2023, the Director to also look into the validity of the order dated 28.01.2023 of the ADC (Edu)-cum- Inspector of Schools I/c, South Salmara Mankachar, Hatsingimari, by which the respondent No. 4 was allowed to be the Academic In-charge of R.B.P. Higher Secondary School and whether in view of setting aside the order dated 27.01.2023, the respondent No. 4 would still be eligible to be the Academic In-charge.

7. The reasoned order regarding the Academic In-charge be passed within a period of fifteen days from the date of receipt of certified copy of this order and processing the claim of the petitioners on the basis of their respective M.A. degrees to be done as per law.

Writ petition stands disposed of as indicated above.

JUDGE

Comparing Assistant