

GAHC010084032018



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

Case No. : WP(C)/2619/2018

DIBYAJYOTI MAHANTA
S/O- LATE LAKSHMI KANTA MAHANTA, R/O- H NO. 33, NAMGHAR PATH,
RUKMINI NAGAR, P.O- DISPUR, GUWAHATI-6, DIST- KAMRUP(M), ASSAM

VERSUS

GAUHATI UNIVERSITY AND 9 ORS.
REP. BY THE VICE CHANCELLOR, GOPINATH BORDOLOI NAGAR,
GUWAHATI- 781014, DIST- KAMRUP(M), ASSAM

2:THE CHAIRMAN
STATUTORY SELECTION COMMITTEE
GAUHATI UNIVERSITY
GOPINATH BORDOLOI NAGAR
GUWAHATI- 781014
DIST- KAMRUP(M)
ASSAM

3:DULAL CHANDRA GOSWAMI
MEMBER STATUTORY SELECTION COMMITTEE
GAUHATI UNIVERSITY
R/O- PRAKRITI APARTMENT
LANKESWAR
AIRPORT ROAD
GUWAHATI

4:P K CHOUDHURY
MEMBER
STATUTORY SELECTION COMMITTEE
GAUHATI UNIVERSITY
R/O- NABAGRAHA MANDIR ROAD
CHENIKUTHI

GUWAHATI

5:B R BHUYAN
MEMBER OF STATUTORY SELECTION COMMITTEE
GAUHATI UNIVERSITY
R/O- M R DEWAN ROAD
SILPUKHURI
GUWAHATI- 781003

6:JAYSHREE GOSWAMI MAHANTA
MEMBER
STATUTORY SELECTION COMMITTEE
GAUHATI UNIVERSITY
R/O- OLD MLA HOSTEL
DISPUR
GUWAHATI- 06

7:DHIRAJ BORA(VC)
MEMBER
STATUTORY SELECTION COMMITTEE
GAUHATI UNIVERSITY
ASSAM SCIENCE AND TECHNOLOGY UNIVERSITY
TETELIA NEAR AEC
JALUKBARI

8:THE REGISTRAR CUM MEMBER SECRETARY
GAUHATI UNIVERSITY
GOPINATH BORDOLOI NAGAR
GUWAHATI- 781014

9:AMIT CHOUDHURY
S/O- LATE AHINDRA KUMAR CHOUDHURY
R/O- H NO. 45
PAHARTOLI
P.O- VINOBA NAGAR
GUWAHATI- 781018

10:THE EXECUTIVE COUNCIL
GAUHATI UNIVERSITY
GOPINATH BORDOLOI NAGAR
GUWAHATI-781014
REPRESENTED BY ITS CHAIRMAN

Advocate for the Petitioner : MR. P MAHANTA

Advocate for the Respondent : SC, G U

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

23-01-2023

Heard Mr. P. Mahanta, learned counsel for the petitioner and Mr. P. J. Phukan, learned Standing counsel, Gauhati University for the respondent Nos. 1 to 8. Also heard Mr. P. D. Nair, learned counsel for the private respondent No. 9.

2. The Registrar of Gauhati University (G.U. in short), Guwahati issued an Advertisement No. NTS-8/2017 dated 29.08.2017 for one post of Director of the Institute of Distance and Open Learning (IDOL) of Gauhati University against un-reserved category specifying the term of the said post for a period of 5 (five) years.

3. Prior to that, the Registrar, G.U. issued an Advertisement No. NTS-9/2016 dated 01.09.2016 for the said post of Director, IDOL, G.U. but the Selection Committee did not recommend anyone in the selection process held on 10.11.2017 at 11:00 am pursuant to the said advertisement dated 01.09.2016.

4. While serving as the Dean (Study Centre) of Krishna Kanta Handique State Open University, the petitioner participated in the selection process along with seven other candidates for the post of Director of IDOL, G.U. in terms of the advertisement dated 29.08.2017 issued by the Registrar, G.U. that was held on 10.11.2017.

5. The respondent No. 9 while serving as a Professor in the Department of Statistics in the Gauhati University also participated in the said selection process for the post of Director, IDOL, G.U. as advertised by the Registrar, G.U. on 29.08.2017 that was held on 10.11.2017 along with the petitioner and six others.

6. The Selection Committee in the said selection process held on 10.11.2017 in terms of the advertisement dated 29.08.2017 placed the respondent No. 9 as first recommended candidate for the post of Director, IDOL, G.U. and the petitioner at 2nd position.

7. In terms of the said recommendation dated 10.11.2017 of the Selection Committee, the Executive Council of the Gauhati University on 31.03.2018 resolved to appoint the respondent No. 9 as the Director of IDOL, G.U.

8. Accordingly, the respondent No. 9 joined his service on 01.04.2018 as the Director of IDOL, G.U. seeking lien from the respondent G.U.

9. The petitioner filed this writ petition on 24.04.2018 challenging the selection and appointment of the respondent No. 9 to the post of Director of IDOL, G.U. in terms of the said advertisement dated 29.08.2017 stating that the Selection Committee for selection to the post of Director of IDOL, G.U. in terms of the advertisement dated 29.08.2017 issued by the Registrar, G.U. was not constituted in conformity with the provisions of the Gauhati University Act, 1947.

10. It is brought to the notice of the Court that the respondent Gauhati University did not extend the lien of the respondent No. 9 w.e.f. 01.04.2020. As such, since 01.04.2020, the post of Director of IDOL, G.U. is lying vacant.

11. It is well settled that a person cannot approbate or reprobate at the same time and it cannot eat the cake and have it soon.

12. Petitioner participated in the selection process and appeared before the Selection Committee on 10.11.2017 without any objection regarding constitution of the said Selection Committee. But being aggrieved with the recommendation of the Executive Council of the Gauhati University approving the name of the respondent No. 9 in terms of the recommendation of the said Selection Committee dated 10.11.2017 for the post of Director IDOL, G.U. in terms of the said advertisement dated 29.08.2017, he has filed this writ petition on 24.04.2018.

13. Moreover, w.e.f. 01.04.2020, the respondent No. 9 is not serving as the Director, IDOL, Gauhati University in terms of the advertisement dated 19.08.2017

14. During the deliberation of the matter, both Mr. P. J. Phukan, learned Standing counsel, G.U. and Mr. P.D. Nair, learned counsel for the private respondent No. 9 by placing a copy of the Office Order dated 21.06.2022 issued by the Registrar, G.U. submitted that as per the approval of the Vice-Chancellor of Gauhati University dated 13.06.2022, the respondent No. 9, Professor and Head of the Department of Statistics, G.U. has been assigned with the additional responsibility of the Director In-charge, GUIDOL, GU with immediate effect until a new Director is appointed in GUIDOL, GU in addition to his normal duties and that the Registrar of Gauhati University on 19.01.2023 issued the advertisement No. NTS-1/2023 for one post of Director of GUIDOL, G.U.

15. It is to be noted herein that respondent No.5, one of the Member of the Selection Committee for the post of Director of GUIDOL, G.U. in terms of the re-advertisement dated 19.01.2023 has filed

his affidavit in the matter.

16. Though the petitioner submitted that the matter should be adjudicated as to whether the selection of the respondent No. 9 for the post of Director of GUIDOL, G.U., was legal or not. But the Court is not inclined to consider the prayer of the petitioner which is only for the academic purpose as the respondent No. 9 is no longer in the said post of Director of IDOL, Gauhati University.

17. Considering the entire aspect of the matter and since the respondent No. 9 is not the Director of Institute of Distance and Open Learning (IDOL) of Gauhati University and the said Institute is managed by the In-charge Director and further, a new advertisement for the post of Director, GUIDOL, G.U. has already been issued on 19.01.2023 by the respondent Gauhati University, this Court is of the view that this writ petition is without any merit, accordingly stands dismissed.

JUDGE

Comparing Assistant