

GAHC010094812023



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

Case No. : I.A.(Civil)/1224/2023

MD. SAIFUL ISLAM
S/O- ALI HUSSAIN AHMED ,
VILL- SOWARI POITARY
P.O- JOYBHUM
DIST- GOALPARA, ASSAM, PIN-783129

VERSUS

ANISUR RAHMAN AND 6 ORS.
S/O- LATE SAYEN UDDIN HMED, VILLAGE - JOYBHUM, P.O- CHUNARI,
DIST- GOALPRA, ASSAM

2:THE STATE OF ASSAM

REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM
EDUCATION DEPARTMENT
DISPUR
GUWAHATI-781006

3:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-781019

4:THE INSPECTOR OF SCHOOLS

GOALPARA .DISTRICT .CIRCLE.
GOALPARA
P.O. AND P.S.-GOALPARA
DIST-GOALPARA
ASSAM
PIN-783101

5:THE DEPUTY COMMISSIONER
GOALPARA
P.O AND DIST-GOALPARA
ASSAM
PIN-783101

6:THE PRINCIPAL
CHUNARI HIGHER SECONDARY SCHOOL.
P.O- CHUNARI

DIST- GOALPARA
ASSAM
PIN-783129

7:THE SCHOOL MANAGEMENT AND DEVELOPMENT COMMITTEE
OF CHUNARI HIGHER SECONDARY SCHOOL.
REP. BY ITS PRESIDENT
P.O- CHUNARI

DIST- GOALPARA
ASSAM
PIN-78312

Advocate for the Petitioner : MR F Z MAZUMDER

Advocate for the Respondent : MR. D A KAIYUM

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

ORDER

Date : 12-09-2023

Heard Mr. FZ Mazumder, learned counsel for the applicant. Also heard Mr. DA Kayum, learned counsel for the writ petitioner and Mr. B Kaushik, learned counsel for the Secondary Education Department of Government of Assam.

2. This interlocutory application is instituted for vacating the interim order dated 27.01.2023 in WP(C)/371/2023. By the said order, the appointment of the applicant respondent no. 7 by the order of the Inspector of Schools, Goalpara

dated 16.12.2022 was stayed. In the order dated 27.01.2023 it was taken note that the procedure for selection and appointment of President of a School Management and Development Committee (in short, SMDC) is as per the guidelines laid down in the Notification No. ASE 416/2014/116 dated 24.06.2016 and as the appointment of the applicant respondent no. 7 was made in deviation of the established guidelines, therefore, a prima facie case has been made out and accordingly, the communication dated 16.12.2022 was stayed.

3. In this interlocutory application, Mr. FZ Mazumder, learned counsel for the applicant respondent no. 7 refers to the notification dated 24.06.2016 of the Government of Assam in the Secondary Education Department which lays down the selection process of President and Vice President of SMDC of a school which is extracted as below:

“The Inspector of Schools after consultation with the Principal/Head Master and local people will forward 2 names of the Director, Secondary Education, Assam for each President and Vice-President with the recommendation of the Deputy Commissioner within a period of 30 days. After considering the names Director, Secondary Education, Assam will provide the list to the Government with his comment for selecting single name after comparing data of both the candidates and then Government will approve the Committee.”

4. A reading of the afore-extracted provisions of the guidelines makes it discernable that Inspector of Schools after consultation with the Principal/Head Master and local people where the school is located will forward two names to the Director, Secondary Education, Assam along with the recommendation of the Deputy Commissioner and the Director of Secondary Education, Assam, thereafter shall provide a list to the Government with his comments with a single name and then the Government would approve the appointment. But a reading of the afore-extracted provisions also makes it discernable that although a procedure has been laid down, it has not been provided that as to which

authority will actually make the appointment.

5. Mr. FZ Mazumdar, learned counsel for the applicant respondent no. 7 further brings it to the notice of the Court the Notification dated 27.10.2021 of the Principal Secretary to the Government of Assam in the Secondary Education Department which provides that in partial modification of the Notification dated 24.06.2016, the Deputy Commissioner is empowered to select the President and Vice-President of the SMDC of the concerned school.

6. A conjoint reading of the Notifications dated 24.06.2016 and 27.10.2021 makes it discernable that after going through procedure prescribed in the Notification dated 24.06.2016, it is the Deputy Commissioner who will make the actual appointment. Upon taking note of the aforesaid conclusion when we examine the impugned order dated 16.12.2022 by which the applicant respondent no. 7 was appointed as President of the SMDC of the concerned school, it is noticed that the procedure adopted is in aberration to the guidelines laid down in both the aforesaid two Notifications dated 24.06.2016 and 27.10.2021.

7. Mr. DA Kayum, learned counsel for the writ petitioner on the other hand raises a claim by referring to the communication dated 30.09.2021 of the Principal of Chunari Higher Secondary School that it is the writ petitioner Anisur Rahman who was recommended to be the President of the SMDC of the school concerned.

8. A reading of the afore-extracted provisions of the Notification dated 24.06.2016 makes it discernable that the process is to be initiated by the Inspector of Schools in consultation with the Principal/Headmaster of the school concerned and it is not that upon a recommendation being made by the

Principal/Headmaster, it would be the finality in the matter which would raise a claim in favour of a person to be the President of the SMDC of the concerned school. As neither the claim of the writ petitioner nor the claim of the applicant respondent no. 7 appears to be as per the procedure laid down on a conjoint reading of the two Notifications dated 24.06.2016 and 27.10.2021, we accordingly set aside the order dated 16.12.2022 of the Inspector of Schools, Goalpara appointing the respondent no. 7 as President of SMDC of the Chunari Higher Secondary School.

9. Accordingly, we direct the Director of Secondary Education, Assam to initiate a proper process of selection of the President of Chunari Higher Secondary School by strictly following the procedure laid down as per the conjoint reading of the two Notifications dated 24.06.2016 and 27.10.2021 and appoint a President through the appropriate authority which would have to be understood to be the Deputy Commissioner of the district concerned as per the Notification dated 27.10.2021. The aforesaid exercise of appointing the President be done within a period of two months from the date of receipt of certified copy of this order. But, however, as the applicant respondent no. 7 is appointed and discharging the functions, till the new President is appointed by following the due procedure of law, the applicant respondent no. 7 to continue to discharge the functions.

In the above terms, this interlocutory application stands closed.

JUDGE

Comparing Assistant