

GAHC010115622023



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

Case No. : WP(C)/2442/2023

MD. MAZID ALI
S/O LATE MAFIZUDDIN AHMED
R/O VILL- CHEUNI
P.O. PUB REHABARI
P.S. PATACHARKUCHI
IN THE DISTRICT OF BARPETA
ASSAM
PIN-781329

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
SECONDARY EDUCATION DEPARTMENT
DISPUR
GUWAHATI-781006.

2:THE DIRECTOR OF SECONDARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI
IN THE DISTRICT OF KAMRUP (M)
ASSAM
PIN-781019
3:THE INSPECTOR OF SCHOOLS

BDC
BARPETA

DIST. BARPETA
ASSAM

PIN-781301

4:THE STATE SELECTION BOARD
(FOR SELECTION OF PRINCIPAL OF HIGHER SECONDARY SCHOOLS)
REP. BY THE CHAIRMAN CUM COMMISSIONER AND SECRETARY TO THE
GOVT. OF ASSAM
SECONDARY EDUCATION DEPARTMENT
DISPUR

PIN-781006

5:THE SCHOOL SELECTION COMMITTEE
OF BAMUNDONGRA H.S. SCHOOL
BARPETA
REP. BY THE CHAIRMAN CUM PRESIDENT OF THE SCHOOL MANAGING
COMMITTEE

P.O. HABIDONGRA

DIST. BARPETA
ASSAM

PIN-781308

6:SRI SAJAL KAMAL DAS
S/O LATE BHUBANESWAR DAS
R/O FAIRY LAND COMPLEX
GALIHATI NO. 2
P.O. AND DIST. BARPETA
ASSAM
PIN-781301

Advocate for : MR. P J SAIKIA
SR. ADV

Advocate for : SC
SEC. EDU. appearing for THE STATE OF ASSAM AND 5 ORS.

BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR

ORDER

Date : 19.06.2023

Heard Mr. P.J.Saikia, learned senior counsel assisted by Mr. M.Kalita, learned counsel for the petitioner. Also heard Mr. S.M.T.Chistie, learned standing counsel, Secondary Education for the respondent Nos. 1, 2, 3 and 4; Mr.

D.Chakraborty, learned counsel for the respondent No.5 and Mr. U.K.Nair, learned senior counsel assisted by Mr. S.Hazarika, learned counsel for the respondent No.6.

2. Pursuant to an advertisement dated 30.05.2019, which was published in Dainik Asom for the post of Principal of Bamundongra Higher Secondary School of Barpeta District. The petitioner and the present respondent No.6 applied for the said post and also participated in the interview which was held on 15.06.2019. The School Selection Committee thereafter prepared a panel list, wherein, the respondent No.6 appeared at Sl. No.1 with 20 marks and the petitioner appeared at Sl. No.2 with 18 marks. In the meantime, the petitioner approached this Court by way of WP(C) /7980/2019, apprehending that the respondent No.6 would be appointed to the post of Principal of Bamundongra Higher Secondary School of Barpeta District. The said writ petition was disposed of by order dated 16.12.2019, directing the respondent authorities to do the needful to complete the process of selection for appointment to the post of Principal of the said School as per rules and also by taking into consideration the letter dated 22.08.2019, which was issued by the Joint Director of Secondary Education Department pursuant to the representation made by the petitioner, as expeditiously as possible within a period of 2(two) months.

Thereafter, petitioner was appointed as the Principal of said Bamundongra Higher Secondary School of Barpeta District by order dated 29.07.2021, issued by the Director of Secondary Education, Assam.

3. Being aggrieved, the respondent No.6 filed WP(C)/3558/2021, before this Court challenging the appointment of the petitioner as Principal of the said School by order dated 07.08.2021. After hearing the parties, WP(C)/3558/2021, was disposed of by order dated 11.08.2021 and the operative portion reads as under:

“14. The appropriate authority shall specifically call for the records from the Barpeta BT College as well as from the NCTE to arrive at a factual satisfaction as to on which date the college made its application for recognition before the NCTE. Depending upon the materials that may be available, appropriate order may be passed.

15. If the order to be passed by the approving authority in the Government is in favour of the petitioner, for the purpose of other consequential actions that would be required to be taken, both the writ petitioner and the respondent No.6 would be given an opportunity of hearing to put across their respective cases. Till the approving authority takes its decision and thereafter the consequential actions are taken, the respondent No.6 the Principal of Bamundangra Higher Secondary School shall continue to remain as such. His further continuance would depend on the logical outcome of the process as indicated above. The approving authority under Rule 13(5) to take its decision within a period of three months from the date of receipt of the certified copy of the order, and thereafter the consequential action to bring the process to its logical end may follow.

16. Writ petition stands closed on the above terms.”

4. Thereafter, the Secretary to the Govt. of Assam, Department of School Education issued an order dated 9th of March, 2023, by which it was held that the respondent No.6 may be notified as Principal of Bamundongra Higher Secondary School of Barpeta District, as the B.Ed Degree of the respondent No.6 was authenticated by the NCTE. The operative portion also reads as under:

“Being aggrieved with that without hearing to the petitioner and not taking any report from the concerned authority on the authenticity of the documents related to his B’ed Degree, department of School Education rejected the candidature of the petitioner for the said post on the ground that petitioner’s B.Ed degree is not valid and DSE had issued the Order to appoint Shri Majid Ali as principal of the abovementioned school, Petitioner filed the instant case. The Hon’ble Gauhati High Court had disposed off the case vide Order, dtd. 11/08/2021 with a direction that the approving authority in the Govt will verify the record/documents relating to the B.Ed Degree of the petitioner and will conduct a hearing to put their respective cases and will dispose the matter.

In compliance of the Hon’ble Court’s Order, a hearing was conducted on 20/10/2021 at 2 PM in the Office Chamber of Special Commissioner, Secondary Education Deptt. Hearing was attended by the petitioner and Shri Mazid Ali. In the said Hearing, the petitioner had submitted a photocopy of NCTE letter regarding NCTE recognition upto the end of academic session of 1997-98. The documents were sent to NCTE for authentication vide letter, dtd. 01/11/2021 and followed by 3 nos of Reminders.

In the mean time, the petitioner filed a Contempt Petition bearing No. Cont. Case(C) No.23/2022 alleging that department had not complied with the Court Order, dtd. 11/08/2021 passed in WP(C) No.3558/2021.

NCTE has authenticated the documents pertaining to B.ED Degree obtained by Shri Sajal Kamal Das vide letter No. NCTE-Legal 011/323/2022/Legal Section-ERC, dtd.20/01/2023.

Order : After careful consideration of the above and approval of competent authority obtained accordingly, it is decided that Shri Sajal Kamal Das may be notified as Principal, Bamundongra Higher Secondary School, Nagaon.”

5. Consequently, the In-Charge, Director, Secondary Education, Assam passed the order dated 29.04.2023, reverting back the petitioner to its original post of Post Graduate Teacher (Advance Assamese) of Rehabari Higher

Secondary School, Barpeta district and appointing the respondent No.6 as Principal on regular basis of Bamundongra Higher Secondary School of Barpeta District.

6. Being aggrieved with the order dated 29.04.2023, passed by the In-charge, Director, Secondary Education, Assam, petitioner is before this Court on the ground that while the Secretary to the Govt. of Assam, Department of School Education considered the matter, the judgment was misconstrued and not in conformity with the direction contained in the order dated 11.08.2021, passed in WP(C) /3558/2021.

7. I have considered the order dated 9th of March, 2023. A perusal of the same would indicate that a hearing was conducted by the concerned authority before coming to a conclusion with regard to the status of B.Ed Degree of the present respondent No.6. What was directed by the order dated 11.08.2021 was that the concerned authority shall call for the records from the Barpeta B.T. College as well as from the NCTE to arrive at a factual satisfaction as to on which date the college made its application for recognition before the NCTE. The order further directed that it was only when the concerned authority is to issue an order in favor of the petitioner therein/respondent No.6 in the present writ petition, that a hearing would be held with regard to the writ petitioner and the present respondent. This has not been done.

8. Accordingly, the matter is remanded back to the Secretary, School Education, Department to re-hear the petitioner as well as the respondent No.6

on the order that is to be passed by the concerned authority and thereafter pass appropriate orders in accordance with law within a period of 2(two) months from the date of receipt of a copy of this order of this Court. Consequently, the order dated 9th of March, 2023, issued by the Secretary to the Government of Assam, Department of School Education is set aside and quashed.

While hearing the petitioner and the respondent No.6, the rival claims of both the parties shall be considered.

The status-quo order passed by this Court earlier shall continue till a final decision is made by the concerned authority. The concerned authority shall thereafter forthwith communicate the order passed to the petitioner as well as to the respondent No.6.

9. With the above directions, this writ petition is disposed of.

JUDGE

Comparing Assistant