

GAHC010116522023



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

Case No. : I.A.(Civil)/1548/2023

ASHIKUR RAHMAN
S/O HOBIBOR RAHMAN, VILL. LEMPARA P.O. MARKULA P.S. BAGUAN
DIST. GAOLPARA ASSAM PIN-783120

VERSUS

MUSHARRAF HUSSAIN AND 11 ORS.
S/O LT. HATEM ALI VILL BAMUNDANGA PT-II P.O. MARKULA P.S
LAKHIPUR DIST. GOALPARA ASSAM, PIN-781320

2:ROBIUL ISLAM
S/O NAZIR UDDIN VILL AND P.O. MARKULA P.S BAGUAN DIST.
GOALPARA ASSAM
PIN-781320

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

4:THE DEPUTY COMMISSIONER
GOALPARA
P.O. AND P.S. AND DIST. GOALPARA ASSAMPIN-783101

5:THE ADDL. DEPUTY COMMISSIONER (EDUCATION) GOALPARA
P.O. AND P.S. AND DIST. GOALPARA ASSAMPIN-783101

6:THE INSPECTOR OF SCHOOLS
G.D.C. GOALPARA
P.O. AND P.S. AND DIST. GOALPARA ASSAMPIN-783101

7:THE HEAD MASTER
MARKULA HIGH SCHOOL
P.O. MARKULA P.S BAGUAN

DIST. GOALPARA ASSAM PIN-783120

8:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM SECONDARY EDUCATION DEPARTMENT
DISPUR GUWAHATI-78100

Advocate for the Petitioner : MR F Z MAZUMDER

Advocate for the Respondent : MR. M ALI

Linked Case : WP(C)/8280/2022

MUSHARRAF HUSSAIN AND ANR
S/O LT. HATEM ALI VILL BAMUNDANGA PT-II P.O. MARKULA P.S LAKHIPUR
DIST. GOALPARA ASSAM
PIN-781320

2: ROBIUL ISLAM
S/O NAZIR UDDIN VILL AND P.O. MARKULA P.S BAGUAN DIST. GOALPARA
ASSAM
PIN-781320
VERSUS

THE STATE OF ASSAM AND 7 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
SECONDARY EDUCATION DEPTT. DISPUR GUWAHATI-781006

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

3:THE DEPUTY COMMISSIONER
GOALPARA

P.O. AND P.S. AND DIST. GOALPARA ASSAMPIN-783101

4:THE ADDL. DEPUTY COMMISSIONER (EDUCATION) GOALPARA
P.O. AND P.S. AND DIST. GOALPARA ASSAMPIN-783101

5:THE INSPECTOR OF SCHOOLS
G.D.C. GOALPARA

P.O. AND P.S. AND DIST. GOALPARA ASSAMPIN-783101

6:THE HEAD MASTER
MARKULA HIGH SCHOOL P.O. MARKULA P.S BAGUAN
DIST. GOALPARA ASSAM PIN-783120

7:ASHIKUR RAHMAN
S/O HOBIBOR RAHMAN

VILL. LEMPARA P.O. MARKULA P.S. BAGUAN DIST. GAOLPARA ASSAM
PIN-783120
8:REJABUL HOQUE
S/O JOBED ALI VILL. PANDOBA P.O. MARKULA P.S. BAGUAN DIST.
GAOLPARA ASSAM PIN-783120

Advocate for : MR. M ALI
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 7 ORS

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

18.12.2023

Heard Mr. F.Z. Mazumder, learned counsel for the applicant. Also heard Mr. M. Ali, learned counsel for the respondent.

2. This interlocutory application has been filed seeking modification/vacation/alteration of the impugned order dated 22.12.2022 whereby the appointment of the private respondent No. 7 in the writ petition No. 8280/2022 who is the applicant before this Court has been suspended. The Inspector of School, Goalpara District Circle, Goalpara under No. GDC/SMDC/Pt-II/49/2022-23/2831 dated 16.07.2022 recommended the names of the respondents No. 7 & 8 as President and Vice President of the SMDC of the said Markula High School, Markula district Goalpara has been directed to be suspended.

3. It is submitted by the learned counsel for the applicant that he is not associated with any political party and therefore the allegations against the applicant that he has a political career is not correct. It is submitted that he was a member of political party on which he has disassociated on 26.10.2022 which is well prior to the date of approval of the name of the applicant. In this context

the learned counsel for the applicant has referred to the copy of his application encloses as Annexure-C, Page-17 of the interlocutory application. The further submissions of the learned counsel is that as per the notification and the procedure laid down, two names to the Director, Secondary Education for each President and Vice President of the SMDC was required to be sent, however, since it is admitted that the applicant's name was never recommended by the Deputy Commissioner as he was not a bonafide claimant. It is further submitted that although the Head Master of the school proposed the name of the applicant as President but the said proposal was never recommended by the Deputy Commissioner for forwarding to the Director for approval. It is the submission of the learned counsel for the applicant that in terms of the Notification dated 27.10.2021 whereby the earlier guidelines were modified, it is the Deputy Commissioner who is empowered to select the President and Vice President of SMDC of Educational Institutions of the concerned district with the approval of the Guardian Minister. It is this approval of the Guardian Minister which has been communicated by the Inspector to the Head Master and which has been put to challenge by the applicant and suspended for vacation/modification of which the instant interlocutory application has been filed.

4. Mr. P. Saikia, learned counsel representing the Deputy Commissioner has relied upon his affidavit to submit that the names of the applicant along with another was duly recommended by the Head Master and sent to the Deputy Commissioner through the Inspector of School. Therefore the contentions of the applicant that name of the applicant was never recommended is factually incorrect. It is submitted that the procedure laid down has been accepted and duly followed while forwarding the names for due selection to the post of President and Secretary.

5. Mr. M. Ali, learned counsel appearing for the opposite party No. 1 & 2 reiterates his contentions and submissions made in the writ petition to say that the procedure prescribe under the notification dated 27.06.2016 has not been followed in respect of the private respondent whose name has been recommended by the Guardian Minister contrary to the procedure prescribe, therefore the same has been put to challenge. That apart, he reiterates that the applicant is connected with the political party, on the face of it he is disqualified to hold the post of the President.

6. Having heard the learned counsels for the parties, it is seen that there is a procedure prescribed by a Notification No. 27.06.2016 read with the subsequent Notification by which certain amendments were brought in. As per the procedure prescribed, the Inspector of School after consultation with the Principal or Head Master and local people will forward two names to the Director, Secondary Education for each President and Vice President with the recommendation of the Deputy Commissioner within a period of 30 days. Thereafter, the Director Secondary Education will provide the list to the Government for comment and the Government thereafter will approve the committee. This procedure was prescribed by Notification dated 27.06.2016. Subsequently this procedure was amended by subsequent Notification dated 27.10.2021. This procedure was partially modified and the Government vide Notification No ASF 416/2014/116 dated 24.06.2016 and letter No. ASF 416/2014/Pt.II/83, it was the Deputy Commissioner who has subsequently been empowered to select the President and Vice President of the School Management and Development Committee (SMDC) of an educational institution of the concerned district with the approval of the Guardian Minister.

7. Under such circumstances, the subsequent notification has brought in an

amendment to empower the Deputy Commissioner of the District to select and appoint the President and Vice President of the SMDC of an Educational Institution of the concerned district with the approval of the Guardian Minister of the district.

8. In the facts which has emerged during the submissions of the counsels as well as from the pleadings available on record in the Interlocutory Application, it is seen that two names were duly selected and sent up by the Head Master of the School through the Inspector of School to the Deputy Commissioner which included the name of the applicant. The names of the applicant/private respondent No. 7 was never put up by the school authorities nor was it included by the Inspector /Deputy Commissioner at the time of sending it for approval before the Guardian Minister. The factual position as it appears to be that the name of the applicant was recommended by the Guardian Minister and the same was sent for compliance to the concerned school authorities. Under such circumstances, the question to be decided by the Court is that in view of the procedure prescribed under Notification dated 26.06.2016 read with Notification dated 27.10.2021, whether the procedure is prescribed is required to be adhered to by the Guardian Minister during the process of approval of the names forwarded. The further question that will arise is whether it was open to the Guardian Minister to replace the name of the persons who were put up by the school management committee by the Head Master through the Inspector and the Deputy Commissioner by passing the procedure prescribed or was it incumbent on the competent authority to remand the matter back the authorities for reconsideration a fresh.

9. Under such circumstances, this Court is of the considered opinion that the matter will require proper examination.

10. The parties have already exchanged their affidavits and therefore it is duty of the Court that the matter needs to be heard and the question be decided finally.

11. Under such circumstances, this Court does not consider it an appropriate case to modify or vacate the interim order passed by the Court on 22.12.2022.

12. The prayer for vacation/modification of the interim order therefore stands rejected. Accordingly, the interlocutory application stands dismissed.

13. The connected writ petition is now posted for admission hearing on a date to be fixed by the Registry in the Month of January, 2024.

JUDGE

Comparing Assistant