

GAHC010157742023



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

Case No. : WP(C)/4125/2023

MD. SAMSUL HOQUE
S/O- NAZIB UDDIN AHMED, GRADUATE ASSISTANT TEACHER, MA, B.ED,
IN-CHARGE PRINCIPAL OF BECHIMARI HIGHER SECONDARY SCHOOL,
DARRANG, R/O- NIMTALI TO KHAGJANI ROAD,
KHETESWAR (NIMTALI), GHANSIMALU,
UDALGURI, ASSAM, PIN- 784115

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM,
DEPARTMENT OF SCHOOL EDUCATION (SECONDARY EDUCATION
DEPARTMENT), ASSAM (CIVIL) SECRETARIAT, BLOCK-C, DISPUR,
GUWAHATI, ASSAM, PIN- 781006

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

3:THE INSPECTOR OF SCHOOLS DARRANG DISTRICT CIRCLE
MANGALDAI ASSAM

Advocate for the Petitioner : MR. A K DUTTA

Advocate for the Respondent : SC, SEC. EDU.

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

Date : 19.12.2023

ORDER

Heard Mr. B. Purkayastha, learned counsel for the petitioner. Also heard Mr. U. Sarma, learned standing counsel, Secondary Education Department, Government of Assam, appearing on behalf of all the respondents.

2. The petitioner by way of instituting the present petition, has raised a grievance with regard to the provisions incorporated in a communication, dated 02.02.2023, relating to submission of a proposal for posting of Principal of different provincialized Secondary schools and a requirement made thereon, in Clauses 12 and 16 to disclose as to whether the No objection Certificate(NOC) was taken from the appointing authority to acquire an educational qualification and/or B.Ed. qualification.

The petitioner was initially recruited as a Science Graduate Assistant Teacher in Bechimari ME School vide order dated 11.02.1992. The petitioner is in receipt of a graduate scale of pay since the date of his initial appointment. The Bechimari ME School came to be amalgamated with Bechimari Higher Secondary School, Darrang, under the scheme of Siksha Khetra vide order dated 22.02.2017. The petitioner after amalgamation of Bechimari ME School, had acquired his B.Ed. Degree in the year 2020 on being deputed for the same by the authorities vide order dated 11.07.2018. The petitioner while serving in Bechimari ME School, had pursued his masters course and had acquired the MA Degree in Assamese in the

month of August, 2015, from the Institute of Distance and Open Learning, Gauhati University. The petitioner having acquired his MA Degree along with the B.Ed. Degree satisfied the requirement for being recruited to the post of Principal of Bechimari Higher Secondary School, Darrang. The petitioner also has completed the requisite length of service for a graduate teacher for the purpose of holding the post of Principal of the said school. The petitioner on 30.01.2021 was allowed to hold the post of Principal, Bechimari Higher Secondary School, Darrang, on a vacancy arising thereon.

The petitioner in view of the prescriptions made in the format available in the communication, dated 02.02.2023, more particularly, Clauses 12 and 16 thereof, apprehends that the MA Degree as acquired by him, having not been so acquired after receiving permission from the departmental authorities, the charge of the post of Principal of the said school as given to him, would be taken back and he would be replaced by another teacher of the school. As such, this writ petition.

3. The apprehension as raised by the petitioner is based on the information as derived by him from the Offices of the respondent authorities that on account of acquiring the MA Degree from the Institute of Distance and Open Learning, Gauhati University in the year 2015 without obtaining prior permission from the authorities, the said MA Degree would not be given any credence and the petitioner would be rendered ineligible for holding the post of Principal of Bechimari Higher Secondary School, Darrang. The said action is being contemplated against the petitioner under the provisions of Rule 13 of the Assam Civil Service (Conduct) Rules, 1965.

4. The provisions of Rule 13 of the Rules of 1965, being of relevance is extracted hereinbelow:

“13. Prosecution of studies by Government servants in educational institutions. - No Government servant while in Government service shall join or attend any educational institution for the purpose of preparing himself for or shall appear at any examination of a recognized-Board or University without obtaining previous permission from the appointing authority:

Provided that the appointing authority may refuse such permission in the interest of the public service on consideration that such joining or attending any educational institution or appearing at any examination may create dislocation of work or stand in the way of the efficient discharge of his duties by the Government servant concerned. Permission of study leave or any other kind of leave granted for the purpose of joining or attending any educational institution shall be subject to the condition that the Government servant shall not seek election to or hold any electist office in Students' Union or other Association of Student's except Association formed for purely literary, academic or athletic pursuits.”

5. The provisions of Rule 13 of the Rules of 1965 mandates that no government employee while in service, shall join or shall attend any educational institution for preparing himself or shall appear at an examination of a recognized Board or University without obtaining previous permission from the appointing authority.

The provisions of Rule 13 only mandates that prior permission shall be obtained by a government employee for prosecuting any course of study. The violation of Section 13 would amount to a misconduct for which the employer may draw a disciplinary proceeding against the government employee. The provisions of Rule 13 of the Rules of 1965 cannot be invoked to invalidate any degree acquired by a government employee, the course of study for which the government employee had prosecuted without previous permission from the authorities.

6. The said issue is no longer *res-integra* and this Court, vide order, dated 28.09.2023, passed in IA(c)2615/2023 [**Smt. Mouchumi Saharia v. Smriti Rekha**

Kalita & 3 ors.] had held that if a Degree had been obtained without 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 proceedings of law applicable against the candidate, would be a proceeding against such candidate under the Assam Services(Discipline and Appeal) Rules, 1964, but the same by itself cannot invalidate the otherwise valid degree obtained from the respective Universities and further, that the Degree obtained from a University is governed by Section 22 of the University Grants Commission Act, 1956.

7. On application of the decision of this Court in the case of **Mouchumi Saharia**(supra); to the issues arising in the present case, it is clear that the petitioner having been validly granted a Masters Degree in Assamese and the said Degree having been obtained from an institution recognized by the University Grants Commission, the respondent authorities do not have the jurisdiction and authority to invalidate the said Degree obtained by the petitioner and such invalidation cannot be done even impliedly.

8. The Clauses 12 and 16 of the format as contained in the communication, dated 02.02.2023, if applied, would amount to the MA Degree qualification of the petitioner being invalidated, which is impermissible in-as-much as the said Degree has not been invalidated till date by an authority competent to do so under the law.

Accordingly, the format as contained in the communication, dated 02.02.2023, more particularly, Clauses 12 and 16 thereof, are interfered to the

extent of requirement therein of the teacher concerned to produce a No objection Certificate(NOC) from the appointing authority for pursuing educational and professional courses.

The absence of the No objection Certificate(NOC) shall not be detrimental in considering the case of the petitioner for holding the charge of the post of Principal, Bechimari Higher Secondary School, Darrang, and/or in having his considered on merits for regular recruitment to the said post.

9. The M.A. Degree acquired by the petitioner having been so acquired from a recognized University; the said Degree is otherwise valid and acceptable in law and accordingly, the petitioner having fulfilled the eligibility criteria as mandated for recruitment to the post of principal of the school in question, under the provisions of Rule 12(3) of the said Rules of 2018; a legal right has accrued to have his case considered for the purpose of being given the charge of the post of Principal, Bechimari Higher Secondary School, Darrang, pending a regular recruitment to the said post.

10. Accordingly, the matter stands remanded back to the Director, Secondary Education Department, who shall, while considering the case of the incumbents in Bechimari Higher Secondary School, Darrang, eligible to hold the charge of the post of Principal, Bechimari Higher Secondary School, Darrang; consider the case of the petitioner in the light of the observations and directions made hereinabove and thereafter, come to a conclusion as to the person entitled to hold the charge of the post of Principal, Bechimari Higher Secondary School, Darrang, when the same falls vacant.

It is needless to say that the Director, Secondary Education Department, while considering the qualifications of the eligible persons, shall be at liberty to examine as to whether the said qualifications were obtained from the recognized Universities/institutions.

The exercise required to be carried-out for the purpose of holding the charge of the post of Principal, Bechimari Higher Secondary School, Darrang, shall be carried-out by the Director, Secondary Education Department, within a period of 2(two) months from the date of receipt of a certified copy of this order.

It is also provided that the post of Principal, Bechimari Higher Secondary School, Darrang, when considered to be filled-up on regular basis and if petitioner participates in such selection process, his case shall be considered on merits and shall not be rejected on the ground that the petitioner had obtained his MA Degree without obtaining the permission from the departmental authorities.

11. With the above directions; the writ petition stands disposed of. There shall be no order as to costs.

JUDGE

Comparing Assistant