

GAHC010167782021



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

Case No. : WP(C)/5400/2021

DR. NIRAB KUMAR SARMAH
S/O LATE JYOTISH CHANDRA SARMAH
PRINCIPAL'S RESIDENCE
DIPHU GOVERNMENT COLLEGE, DIPHU, PO DIPHU GOVERNMENT
COLLEGE, DIPHU, 782462, KARBI ANGLONG, ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY TO THE GOVT.
OF ASSAM, EDUCATION DEPARTMENT, DISPUR GUWAHATI 781006.
KAMRUP(M) ASSAM

2: THE PRINCIPAL SECRETARY
TO THE GOVT. OF ASSAM
EDUCATION DEPARTMENT
DISPUR GUWAHATI 781006

3: THE DIRECTOR OF HIGHER EDUCATION ASSAM

KAHILIPARA
GUWAHATI 781019
KAMRUP (M) ASSAM

4: THE KARBI ANGLONG AUTONOMOUS COUNCIL
PO DIPHU
DIST KARBI ANGLONG
ASSAM
782460 REPRESENTED BY ITS PRINCIPAL SECRETARY

5: SRI TULIRAM RONGHANG
CHIEF EXECUTIVE MEMBER

KARBI ANGLONG AUTONOMOUS COUNCIL
LPO DIPHU KARBI ANGLONG
ASSAM
783460

6:MR. ABDUL MOTIN
ASSOCIATE PROFESSOR
DEPARTMENT OF POLITICAL SCIENCE
DIPHU GOVERNMENT COLLEGE
DIPHU
PO DIPHU DIST KARBI ANGLONG
ASSAM 78246

Advocate for the Petitioner : MR. D DAS SR. ADV
Advocate for the Respondent : SC, HIGHER EDU

BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR

Date of Judgment & Order: 28-06-2023.

JUDGMENT AND ORDER

The petitioner is a member of the Assam Education Service under the Higher Education Department, Government of Assam. The petitioner was initially appointed as Lecturer in Chemistry in the Diphu Government College, Diphu, by a Notification dated 07-10-1994 on the recommendation of the Assam Public Service Commission to which post, he joined on 08-10-1994. Pursuant to an advertisement, issued by the Assam Public Service Commission, calling for applications for filling up various posts of Principals in different colleges including one post of Principal in Diphu Government College, Diphu, the petitioner applied for the said post. After being successful in the recruitment process, the Commissioner and Secretary to the Government of Assam, Higher Education Department on the recommendation of the Assam Public Service

Commission, issued a Notification dated 13-01-2012 appointing the petitioner as Principal of Diphu Government College, Diphu, with effect from the date of taking over charge. While the petitioner was serving as such, the Assam Enviro Legal Protection Society preferred a PIL being PIL No. 61/2012 before this Court alleging primarily that the petitioner did not have the eligibility for the post of Principal, Diphu Government College and, accordingly prayed for cancellation of appointment of the petitioner as Principal in Diphu Government College, Diphu. The said PIL was dismissed by order dated 24-09-2012.

2. The petitioner was placed under suspension with immediate effect pending drawal of disciplinary proceeding by an order dated 20-08-2013, issued by the Principal Secretary, Karbi Anglong Autonomous Council. Being aggrieved, the petitioner approached this Court by filing WP(C) No. 6281/2013. This Court, while issuing notice in the said writ petition, by order dated 09-12-2013, suspended the operation of the impugned order dated 20-08-2013 and the petitioner was allowed to continue as Principal of Diphu Government College, Diphu.

3. By another order dated 07-06-2014, issued by the Principal Secretary, Karbi Anglong Autonomous Council, the petitioner was released, with immediate effect, as Principal Diphu Government College, on the ground that vehement protest has been made against his continuance by the faculty members, students and the general public. Being aggrieved with the release order, the petitioner approached this Court by way of WP(C) No. 3062/2014, assailing the order dated 07-06-2014. This Court, by an interim order dated 20-06-2014, suspended the order dated 07-06-2014, allowing the petitioner to discharge the functions of Principal of Diphu Government College, Diphu.

4. Thereafter, the Principal to the Principal Secretary to the Government of

Assam, Education Department, issued a Notification dated 24-09-2021, attaching the service of the petitioner as an Officer on Special Duty in the Directorate of Higher Education, Assam and allowing one Abdul Motin, Associate Professor, Department of Commerce, Diphu Government College, to hold the charge of Principal of Diphu Government College with immediate effect until further order. Being aggrieved with the Notification dated 24-09-2021, the petitioner is before this Court.

5. I have heard Mr. D. Das, learned senior counsel, assisted by Mr. M. Mahanta, learned counsel appearing for the petitioner. I have also heard Mr. D. Saikia, learned Advocate General, assisted by Mr. K. Gogoi, learned standing counsel, Higher Education Department, representing the respondent No. 1, 2 and 3 and Mr. J. Chutia, learned standing counsel, KAAC for the respondent No. 4.

6. Mr. Das, learned senior counsel, appearing on behalf of the petitioner, submits that the attachment order issued vide Notification dated 24-09-2021 is in the nature of deputation without taking the consent of the petitioner and, therefore, the same cannot withstand the test of law. He submits that the post of OSD is not a cadre post under the Assam Education Service Rules, 1982 ('Rules of 1982', in short), further as no prior consent was obtained from the petitioner before attaching him as an OSD from his substantive cadre post of Principal of Diphu Government College to a non-existing post, the Notification dated 24-09-2021 requires interference. It is also submitted that the recruitment and condition of service of the teaching staff of the Government Degree Colleges are regulated by the Rules of 1982. In the pre-amended Rules of 1982, the post of Principal, Government Colleges are to be filled up by way of promotion from the common gradation list. However, after the amendment of

the Rules of 1982, with effect from 15-09-2009, the recruitment to the post of Principal shall have to be made by direct recruitment only. As a result of the said amendment, the post of Principal of Diphu Government College has become an independent cadre. Accordingly, in terms of the amended Rules of 1982, the Assam Public Service Commission published an advertisement in the year 2011 for filling up the post of Principal in different Government colleges. At the relevant point of time, as the petitioner was serving as Associate Professor in Chemistry at Diphu Government College, he offered his candidature for the post of Principal at Diphu Government College and duly participated in the recruitment process and thereafter he was selected and appointed to the post of Principal of Diphu Government College, Diphu, by Notification dated 13-01-2012. As such, the post of Principal, Diphu Government College, is a single cadre post, which is not transferable; however, by the Notification dated 24-09-2021, the petitioner was attached as an OSD in the Directorate of Higher Education. It is also submitted that the attachment of the petitioner as OSD in the Directorate of Higher Education, Assam, was at the behest of the Karbi Anglong Autonomous Council on extraneous consideration and by influencing the Government to issue the impugned Notification dated 24-09-2021. Therefore, the Notification dated 24-09-2021 can also be considered as punitive in nature and not sustainable in law.

7. Mr. Das, learned senior counsel has placed reliance to the case of **Gayatri Buragohain and ors vs State of Assam and ors.**, reported in **2014 (3) GLT 564**, **Bijendra Pratap Singh vs. State of Arunachal Pradesh and ors**, reported in **2004 (Supp) GLT 827**, **Takhelmayum Thoiba Singh & ors. Vs. State of Manipur & Ors.**, reported in **2008 (2) GLT 718**, **Vice-Chancellor, L.N. Mithila University vs. Dayanand Jha**, reported in **(1986) 3 SCC 7**, **Somesh Tiwari –vs- Union of India &**

Ors., reported in (2009) 2 SCC 592 and the case of Union of India and others vs. Janardhan Debnath and another, reported in (2004) 4 SCC 245.

8. Mr. D. Saikia, learned Advocate General, Assam, on the other hand submits that the Notification dated 24-09-2021 has been issued in the interest of public service and in administrative exigencies attaching the service of the petitioner as OSD in the Directorate of Higher Education Assam. The same is not an order of transfer and it is only a temporary arrangement for attachment which is required for a specific academic reason and there is no regular replacement in his place. It is an in-home arrangement for special purpose, so that the academic work relating to New Education Policy and College related works in the Directorate of Higher Education is properly monitored. He also submits that the petitioner has failed to re-accredit the college by NAAC "National Assessment and Accreditation Council", which deprived the college from receiving grants from UGC affecting the academic progress of the college quality education and research activities in the college. It is further submitted that the Diphu Government College is the only Government college in the district and is the premier institution of the district. However, since the petitioner joined as Principal of Diphu Government College, there has been series of allegations made against him by the faculty members and the students of college as well as the public of Diphu town regarding his arrogance and high handed behaviour. The academic atmosphere was highly affected and the teaching and non-teaching staff of Diphu Government College also submitted a memorandum to remove the petitioner from the post. The tenure of the petitioner as Principal of Diphu Government College has been marred by problems with agitations by the students and several complaints of the faculty members of the college as well as from public for his behavior towards the student and faculty members of the

college and to maintain cordial academic atmosphere in the college, the Notification dated 24-09-2021 was issued attaching him as an OSD with the responsibilities of monitoring the new education policy and college related works. He further submits that the attachment order does not amount to transfer of the petitioner from his substantive post and, therefore, there is no question of the Notification dated 24-09-2021 contravening the provisions of the Rules of 1982. He also submits that the petitioner is yet to join to his place of posting despite the order passed by this Court.

9. Mr. D. Saikia, learned Advocate General, Assam, has placed reliance to the case of **Saravjit Singh vs. Union of India**, reported in **2002 0 Supreme (P&H) 720**.

10. Mr. J. Chutia, learned standing counsel, Karbi Anglong Autonomous Council, endorses the submission made by the learned Advocate General and submits that the attachment Notification dated 24-09-2021 does not amount to transfer and, therefore, no interference is required.

11. The submissions forwarded by the learned counsel for the parties have been noted.

12. Rule 3 of the Rules of 1982 prescribes the Class and Cadre of Class-I and Class-II employees of the Assam Education Service. A perusal of the same would indicate that the post of OSD in the Directorate of Higher Education, Assam, does not form a part of the Class and Cadre of Class-I employees of the Rules of 1982 and, therefore, the same will have to be considered as an ex-cadre post.

13. A perusal of the notification dated 24-09-2021 clearly indicates that the petitioner is attached as an Officer on Special Duty (OSD) in the Directorate of Higher Education and one Abdul Motin, Associate Professor, senior most faculty

member in the Department of Commerce in Diphu Government College is allowed to hold the charge of Principal of Diphu Government College, Diphu.

14. The vital issue involved in the present writ petition is whether the petitioner could have been transferred to the post of OSD in the Directorate of Higher Education, Assam. The Rules of 1982 do not, admittedly, cover the post of OSD in the Directorate of Higher Education, Assam. Therefore, the post of OSD will have to be considered as an ex-cadre post. An employee cannot be sent, without his or her consent, to an ex-cadre post. Attaching an employee to an ex-cadre post would basically mean that he is on deputation and, therefore, if he is sent on deputation, the consent of the employee is required to be obtained.

In the case in hand, no consent of the petitioner has been obtained, therefore, I am of the considered opinion that the attachment of the petitioner as an OSD in the Directorate of Higher Education, Assam, is wholly illegal and cannot be sustained in law.

15. The contention of the learned Advocate General that there are serious allegations against the petitioner by the faculty members and students of the college as well as public of Diphu town has been considered by this Court. The allegations made against the petitioner from different forums can be ascertained only after a departmental proceeding is held and concerned authorities come to a prima facie satisfaction. In the present case, no such departmental proceeding has been initiated against the petitioner and it appears that the petitioner has been attached as an OSD in the Directorate of Higher Education, Assam, without a departmental proceeding. What, therefore, transpires from the Notification dated 24-09-2021, is that it is not an attachment simpliciter and the attachment of the petitioner as an OSD is by way of punitive nature.

16. The reliance made by the learned Advocate General in the case of Saravnit Singh (supra) has also considered by this Court, however, I am of the considered opinion that the said authority has no application to the case in hand.

17. In the facts and circumstance of what has been discussed hereinabove, the impugned Notification dated 24-09-2021 attaching the service of the petitioner as an OSD in the Directorate of Higher Education, Assam, is hereby set aside and quashed. Consequential orders placing the petitioner as Principal of Diphu Government College, Diphu, shall be issued by the authority concerned forthwith.

18. The writ petition is allowed.

19. No order as to cost.

JUDGE

Comparing Assistant