

GAHC010168552022



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

Case No. : I.A.(Civil)/2530/2022

IKBAL HUSSAIN MAZUMDER
S/O AFTAB UDDIN MAZUMDER, VILL-NIMAICHANDPUR, P.S.-
HAILAKANDI, DIST-HAILAKANDI, ASSAM

VERSUS

SK ISLAM UDDIN AND 6 ORS.
S/O LT. S.K. GONI MIA, VILL-NIMAICHANDPUR, DIST-HAILAKANDI,
ASSAM

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM
EDUCATION DEPARTMENT (SECONDARY)
ASSAM
DISPUR
GUWAHATI-6

3:THE SECRETARY TO THE GOVERNMENT OF ASSAM
EDUCATION DEPARTMENT (SECONDARY)
ASSAM
DISPUR
GUWAHATI-6

4:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19

5:THE DEPUTY COMMISSIONER
HAILAKANDI
ASSAM

6:THE INSPECTOR OF SCHOOLS
HDC
HAILAKANDI
ASSAM

7:THE PRINCIPAL
NIMAICHANDPUR H.S. SCHOOL
VILL-NIMAICHANDPUR
P.O.-NIMAICHANDPUR
PIN-788155
DIST-HAILAKANDI
ASSA

Advocate for the Petitioner : MR. J LASKAR

Advocate for the Respondent : MR. I H LASKAR

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

Date : 02-06-2023

Heard Sri J.H Laskar, learned counsel for the applicant, who by means of this application has prayed for vacation/ alteration/modification of an order dated 27.05.2022, passed in the WP(C)/ No. 3512/2022.

By the aforesaid order, while notice of motion was issued, an interim order was passed that the respondent No. 7 shall not function as the President of the SMDC of the Nimaichandpur H.S School. The Hon'ble Court took into consideration that as per the guidelines, the President of the SMDC should not have a political career and to demonstrate the same, the petitioner have relied upon a notification dated 14.09.2021, whereby the respondent No. 7 was shown to be the State Secretary of the Minority Morcha, Assam Pradesh.

On the other hand, Shri Laskar, the learned counsel for the applicant/respondent No. 7 has submitted that the earlier notification dated 24.06.2016, governing the field of appointment of President of SMDC has been modified vide a notification dated

27.10.2021. He submits that the selection of appointment has been done in terms of the said notification and the notification itself is not been the subject matter of challenge, the present stay order is liable to be vacated.

Per contra, Shri Deka, the learned counsel for the opposite party/writ petitioner has submitted that though there is modification of the original notification dated 24.06.2016, the initial process laid down which require consultation with the Principal/Head Master and the local people cannot be overlooked. He further submits that in this regard he relies upon the cases of in "*Azhar Uddin & Ors. -Vs- The State of Assam & Ors reported in 2019(4) GLT 279* and *Narendra Kumar Nath -Vs- The State of Assam & 5 Ors in WP(C) No. 3302/2022*" in support of his submission.

Shri B. Koushik, learned Standing Counsel for the Department submits that although, the affidavit has not been filed, he would produce the record.

This Court has noticed by the subsequent notification dated 27.10.2021, the earlier guidelines contained in the notification dated 24.06.2016 have been modified. Even otherwise, the political affiliation has been explained in Clause-4 of the original notification that the disqualification would be for any person, who had contested any election of Panchayat level/Parliament/Assembly in the last 20 years which has not the pleaded case. That apart, in terms of the notification dated 27.10.2021 not only the power of appointment have been vested upon the Deputy Commissioner, the Deputy Commissioner is empowered to make the selection of the President and Vice-President of the SMDC, which is to be approved by the Guardian Minister.

Unless the notification is put to challenge, the consequent action of passing the order of appointment of the respondent No. 7, pursuant to the said notification, there cannot be any prima facie case for continuing an order, of stay.

This Court has also considered the case laws relied upon the by the learned counsel for the opposite party/ writ petitioner.

In the case of *Azhar Uddin (supra)* the decision was rendered on 09.05.2019 and the present notification dated 27.10.2021 was not in existence and the selection

made in that case was in terms of the notification of the year 2016.

In the case of "*Narendra Kumar Nath (supra)*", the Hon'ble Court had taken into consideration the requirement of the approval of the concerned Guardian Minister and the facts of both the cases are distinguishable.

In view of the aforesaid facts and circumstances and the discussions made above, this Court is of the opinion that the interim order dated **27.05.2022**, passed in the writ petition is liable to be vacated and accordingly, the same stands vacated.

JUDGE

Comparing Assistant