

GAHC010180462022



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

Case No. : WP(C)/5862/2022

ANIRUDDHA ADHIKARY
S/O LT. MOHENDRA CH. ADHIKARY, R/O VILL-RANGAPANI, P.S.-
MERERCHAR, P.O.-BONGAIGAON, DIST-BONGAIGAON, ASSAM, PIN-
783384

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, SECONDARY EDUCATION DEPARTMENT,
DISPUR, GUWAHATI-6

2:THE SECRETARY TO THE GOVERNMENT OF ASSAM
SECONDARY EDUCATION DEPARTMENT
DISPUR
GUWAHATI-6

3:THE DIRECTOR OF THE SECONDARY EDUCATION DEPARTMENT
GOVERNMENT OF ASSAM
KAHILIPARA
GUWAHATI-19

4:THE DEPUTY COMMISSIONER
BONGAIGAON
ASSAM
PIN-783384

5:THE INSPECTOR OF SCHOOL
BDC
BONGAIGAON
ASSAM
PIN-783384

6:THE PRINCIPAL OF THE SCHOOL
PMHS SCHOOL
RANGAPANI
BONGAIGAON
ASSAM
PIN-783384

7:SHANKAR ADHIKARY
S/O LT. SRIMANTA ADHIKARY
R/O VILL-RANGAPANI
P.S.-MERERCHAR
P.O.-BONGAIGAON
DIST-BONGAIGAON
RETIRED ASSISTANT TEACHER OF PMHS SCHOOL
RANGAPANI
BONGAIGAON
ASSAM
PIN-78338

Advocate for the Petitioner : MRS A BUJARBARUAH

Advocate for the Respondent : SC, SEC. EDU.

Linked Case : I.A.(Civil)/3031/2022

SHANKAR ADHIKARY
S/O LT. SRIMANTA ADHIKARY
R/O VILL-RANGAPANI
P.S.-MERERCHAR
P.O.-BONGAIGAON
DIST-BONGAIGAON
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2:THE STATE OF ASSAM

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RANGAPANI
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ASSAM
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Advocate for : G UDDIN
Advocate for : GA
ASSAM appearing for ANIRUDDHA ADHIKARY AND 6 ORS.

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

ORDER

Date : 12.12.2023

Heard Ms. A. Bujarbaruah, learned counsel for the petitioner. Also heard Mr. U. Sarmah, learned standing counsel, Secondary Education Department, representing the respondents No. 1, 2, 3 & 5; Ms. D. Das Barman, learned Addl. Senior Government Advocate, appearing on behalf of respondent No. 4; Ms. J. Akhtar, learned counsel, appearing on behalf of respondent No. 6; and Mr. G. Uddin, learned counsel, appearing on behalf of respondent No. 7.

The petitioner by way of instituting this writ petition, has challenged the communication, dated 24.08.2022, by which, the name of respondent No. 7 was recommended for appointment as the President, School Management and Development Committee(SMDC) of Parameswar Memorial Higher Secondary School, Rangapani, Bongaigaon.

In terms of the policy in place for constitution of the School Management and Development Committee(SMDC); the Inspector of Schools vide communication, dated 01.10.2021, required the Principal and Headmaster of the Secondary Schools under his jurisdiction including the school in question, to submit names for empanelment as President and Vice-President of the School Management and Development Committee(SMDC) of such school. Following the said communication as well as the notification of the Government of Assam holding the field; governing the process for selection of appointment of

President and Vice-President of the School Management and Development Committee(SMDC), a meeting was convened of the general public by the Principal of the School in question, on 27.10.2021, and therein, 3(three) names came to be empanelled for the post of President, School Management and Development Committee(SMDC) of the said school. The name of the petitioner was placed at Serial No. 1 and the name of the respondent No. 7 was placed at Serial No. 3. Thereafter, the matter was forwarded to the Inspector of Schools, who, in turn, placed the matter before the Deputy Commissioner. The Deputy Commissioner upon approval of the Guardian Minister of the District, issued the communication, dated 24.08.2022, recommending the name of the respondent No. 7 as the President, School Management and Development Committee(SMDC) of the school, in question.

It is also to be noted that prior to issuance of the communication, dated 24.08.2022, a list forwarded by the Guardian Minister, is also available in the records of the writ petition, wherein it is seen that against the said school; the name of the petitioner was recommended for the post of President, School Management and Development Committee(SMDC). The said list available at Annexure-7 of the writ petition, contains the signature of the Guardian Minister.

Ms. Bujarbaruah, learned counsel for the petitioner, assailing the communication, dated 24.08.2022, contended that the general public of the school, in question, in its meeting held on 27.10.2021, having recommended the name of the petitioner at Serial No. 1; it is the mandate that the petitioner is to

be nominated as the President, School Management and Development Committee(SMDC) of the school, in question, and only in the event of any incapability coming to notice which again has to be demonstrated, the other 2(two) persons in seriatum in the said panel, can be considered.

It is the further contention of Ms. Bujarbaruah, learned counsel for the petitioner, that the name of the petitioner having been recommended by the Guardian Minister, at the first instance; the Deputy Commissioner of the District, in any manner, could not have taken a contrary view and approved the name of the respondent No. 7 for the post of President, School Management and Development Committee(SMDC), of the school, in question.

Per contra, Mr. Sarma, learned Standing Counsel, Secondary Education Department, submits that there is no illegality or irregularity committed by the respondents in the selection of the respondent No. 7 for the post of President, School Management and Development Committee(SMDC), of the school in question, and the same was made strictly in accordance with the rules governing the field for selection and appointment of President and Vice-President of the School Management and Development Committee(SMDC).

Mr. Sarma, learned standing counsel, Secondary Education Department, also submits that though the Guardian Minister during the process of consideration, had recommended the name of the petitioner as the President, School Management and Development Committee(SMDC) of the school in

question, but before the said process could be taken to its logical conclusion, there was a modification and the name of the respondent No. 7 was recommended for the post of President, School Management and Development Committee(SMDC), of the school in question, and accordingly, the communication, dated 24.08.2022, came to be issued wherein, the said position is demonstrated and the said respondent No. 7 was nominated for the post of President, School Management and Development Committee(SMDC), of the school in question. It is the contention of the learned standing counsel that because of the interim directions operating in the case; the matter could not take to its logical conclusion.

Mr. G. Uddin, learned counsel for respondent No. 7, adopts the submission made by Mr.Sarma, learned standing counsel, Secondary Education Department, and further submits that the placement of the petitioner in the panel list is of no consequence and the same is only a process of gathering the names of eligible candidates. The consideration is made at the level of the Deputy Commissioner with the involvement of the Guardian Minister and the process having been followed in accordance with law; there is no illegality or irregularity in the appointment of the respondent No. 7 for the post of President, School Management and Development Committee(SMDC), of the school, in question.

I have considered the submissions advanced by the learned counsels for the parties and also perused the materials placed on record including the records, in original, as produced by Mr. Sarma, learned standing counsel,

Secondary Education Department.

At the outset, it is to be noted that the nomination of a person for the post of President, School Management and Development Committee(SMDC), is not a matter of right and the same is at the sole discretion of the authorities empowered to do so keeping in view the larger interest of the School. The procedures if not violated or there being any allegation of mala fide brought on record, the nomination should not ordinarily be interfered with by the Court invoking its extraordinary power under Article 226 of the Constitution of India.

The nomination made of 3(three) persons including the respondent No. 7 is, at best, a panel prepared by the general public including the school authorities which forms the basis of consideration for nomination by the higher authorities i.e. the Deputy Commissioner with the involvement of the Guardian Minister.

In the case, in hand; although the petitioner was recommended at Serial No. 1 in the said panel list prepared by the school authorities along with the general public in its meeting held on 27.10.2021, the placement of the petitioner at Serial No. 1 of the panel list, cannot be said to be a placement on merit for the post of President, School Management and Development Committee(SMDC), of the school in question.

As such, in the said view of the matter, the assertion made by Ms.

Bujarbaruah, learned counsel for the petitioner, to the effect that the petitioner is at Serial No. 1 and so, he should be recommended for the post of President, School Management and Development Committee(SMDC), of the school in question, is being considered only to be rejected in-as-much the list is only a panel list and the same is not prepared on merit basing on some determinable criteria.

The second submission of Ms. Bujarbaruah, learned counsel for the petitioner, that during the process for nomination of a candidate for the post of President, School Management and Development Committee(SMDC) of the school in question, the name of the petitioner was recommended by the school authorities and was duly approved by the Guardian Minister and there being no apparent reason, the name of the respondent No. 7 recommended by the Deputy Commissioner with the approval of the Guardian Minister is clearly unsustainable and requires interference of the Court.

The aforesaid submission has been considered by the Court and the materials placed on record have also been perused.

It is seen from the materials placed on record that although the Guardian Minister has sent recommendation in favour of the petitioner for the post of President, School Management and Development Committee(SMDC), of the school in question, however immediately, thereafter, the Guardian Minister had furnished a list wherein, the name of the petitioner was substituted by that of

the respondent No. 7 though no reason has been assigned for the said change. It is also to be noted that there is nothing adverse brought against the petitioner for dropping his name. The said change is therefore, not fatal and would not in any manner, deemed to have infringed any right of the petitioner. It is also to be noted that in the writ petition, there is no allegation of mala fide against the authorities who were a part of the preparation of the panel list in its meeting held on 27.10.2021. Further, the process of consideration had not concluded and prior to such conclusion, the name of the petitioner came to be replaced with that of the respondent No. 7 and such replacement being done during the process of consideration involved, nothing much can be read into it. It is not a case where the petitioner's name was finally approved by all authorities involved in the process and thereafter, his name came to be replaced with that of the respondent No. 7, which situation would have presented a different scenario, requiring examination of reasons existing for the same.

The facts as emanating in the matter as well as the nature of appointment/nomination involved, I am of the considered view that no right of the petitioner came to be infringed. Further, the petitioner has not brought on record, any material to demonstrate that he was deliberately denied such nomination. No mala fide has been alleged. Further, it is not the contention of the petitioner that the respondent No. 7 is in any manner, incapacitated from holding the post of President, School Management and Development Committee(SMDC), of the school in question and as such, the contentions raised by the petitioner in this writ petition, does not merit acceptance.

The writ petition accordingly stands dismissed. The interim orders passed, if any, stands vacated.

JUDGE

Comparing Assistant