

GAHC010187502020



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

Case No. : WP(C)/5636/2020

KALPANA GOSWAMI
W/O DR. HEM CHANDRA GOSWAMI, R/O JAKAIPLOWA NO. 2 BIHPURIA,
DIST. LAKHIMPUR, PIN 784161, ASSAM.

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REPRESENTED BY THE COMMISSIONER AND SECY. TO THE GOVT. OF
ASSAM, EDUCATION (HIGHER) DEPTT. DISPUR, GUWAHATI 781006

2:THE DIRECTOR
EDUCATION (HIGHER)
DEPTT.
GOVT. OF ASSAM
KAHILIPARA
GUWAHATI 781022

3:THE INSPECTOR OF SCHOOLS
LAKHIMPUR
DIST. LAKHIMPUR
ASSAM.

4:THE PRESIDENT
GOVERNING BODY
KHEREKAJAN COLLEGE
DIST. LAKHIMPUR
ASSAM

Advocate for the Petitioner : MR. K N CHOUDHURY

Advocate for the Respondent : SC, HIGHER EDU

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

19.01.2023

Heard Mr. R. M. Deka, learned counsel for the petitioner. Also heard Mr. K. Gogoi, learned Standing Counsel for the Higher Education Department, Government of Assam representing the respondent Nos. 1, 2 and 3 and Mr. R. J. Deka, learned Counsel for the Governing Body, the respondent No. 4.

2. The present writ petition is filed assailing the order dated 23.11.2020 issued by the Director, Higher Education, Assam. At that relevant point of time, when the impugned order was issued, the petitioner was working as In-Charge Principal of Kherajkhat College, Lakhimpur and holding a substantive post of Assistant Professor in the said college. The President of the Governing Body of the said college by its communication dated 09.11.2020, alleged that some irregularities has been committed by the present petitioner and requested the Director of Higher Education, Assam to take necessary action against the present petitioner.

3. In response to such communication, the impugned order dated 23.11.2020, was issued by the Director of Higher Education, Assam whereby, the Director requested the Governing Body of the College to forward such allegations in the form of a resolution of the Governing Body for further necessary action. In the said communication, the Director of Higher Education, Assam further requested the President of Governing Body to submit a proposal with Governing Body's resolution for handing over the charge of Principal to the

next senior most Assistant Professor of the College till the allegation against the present petitioner, who was the Principal-In-Charge is finalized.

4. Mr. R. M. Deka, learned counsel while assailing the impugned order dated 23.11.2020, submits that such direction has been issued by the Director without giving the petitioner any opportunity to know what the allegations are and if the petitioner is removed from the charge of Principal on the basis of such allegation, the same will cause prejudice to the petitioner and will amount to punishing him without giving an opportunity of hearing.

5. Per contra, Mr. K. Gogoi, learned Standing Counsel for the Higher Education Department, Assam submits that in terms of the Assam College Employees (Provincialisation) Rules, 2010, the Director of Higher Education, Assam shall not take any action regarding any allegation against the Principal until and unless, same is duly forwarded through proper Governing Body resolution and in the present case, as no such resolution was forwarded, except a representation, the Director had requested the Governing Body of the college to have a proper resolution relating to the allegation as well as relating to the removing the present petitioner from Principal-in-Charge during pendency of an enquiry, if such resolution is taken. Therefore, Mr. Gogoi, submits that this writ petition is pre matured inasmuch as no prejudice would be caused to the petitioner, if an enquiry is conducted.

6. Mr. Gogoi, learned counsel further contends that the petitioner shall not have any valid and substantive right to continue as a Principal-in-Charge and the authorities are within their jurisdiction and competence to enquire into the alleged irregularities of the Principal-in-Charge by keeping him out of such office for the interest of such enquiry.

7. This Court has given anxious consideration to the arguments advanced by the learned counsel for the parties. Also perused the materials available on record.

8. A bare reading of the impugned communication reflects that it is only a request by the Director of Higher Education of Assam to the College authority to send the allegation against the Principal-in-Charge as has been made by communication dated 09.11.2020, in a proper form by way of a Governing Body resolution. The said letter also reflects that the Director has requested the Governing Body to take a resolution for handing over the charge of Principal to the next senior most Assistant Professor of the College in the event any enquiry is made against the present petitioner. This Court is also of the considered opinion that the Governing Body of a College will definitely have a right to enquire into the any irregularities, which alleged to have been committed by any employee, including the Principal. Such enquiry may be a fact finding enquiry or a regular Departmental enquiry.

9. The service conditions of an employee including Principal and teaching faculty of a provincialised college is governed by the Assam College Employees (Provincialisation) Act, 2005 and Assam College Employees (Provincialisation) Rules, 2010. Section 5 of the Act, 2005 mandates that services of the employees who do not exercise the option to continue in the existing terms and conditions prior to enactment of the Act, 2005, within the stipulated time under Clause "D" of Section 3, shall vest with the government. The Rules, 5(7), Rule 7(a) and Rule 15, if conjointly read clearly shows that the appointing and disciplinary authority is the Director and the Governing Body of the College is the recommending authority and such recommendation shall take a final shape

when the Director approves it.

It is also clear from the Rule 27 of Rules 2010 that Governing Body of College is to exercise all other powers of appointing authority as per usual norms.

The aforesaid Rules, 2010, also clearly stipulates that the employees of Assam Provincialised Colleges shall be governed by the Assam Services (Discipline and Appeal) Rules, 1964, Assam Civil Services Conduct Rules, 1967 and the guideline made thereunder. Therefore, it is also clear that the employer can take any punitive action against an employee of a provincialised college by following the procedure established and laid down under Assam Services (Discipline and Appeal) Rules, 1964.

10. Thus in the event any irregularities are alleged against an employee, the employer shall have the competence and authority to proceed against such employee under the Provisions of Assam Services (Discipline and Appeal) Rules, 1964 and the employer shall also have a fact finding enquiry.

11. In the case in hand and as discussed hereinabove, the impugned order cannot be said to be a punitive action inasmuch as the substantive post of the petitioner is an Assistant Professor not a Principal. Admittedly, the petitioner was holding the charge of the office of the Principal and she was not substantially appointed as Principal of the College in terms of Rule 5 (1) of the Rules 2010. That being the position, the petitioner shall not have any valuable or established right to continue as a Principal-In-charge of the college, more so in a situation, when certain allegations are made against her in the office of the Principal itself.

12. The communication dated 09.11.2020 cannot be termed as an initiation of

proceeding under the provision of Assam Services (Discipline and Appeal) Rules, 1964, inasmuch as the content of the communication dated 23.11.2020, as discussed hereinabove, cannot be termed as punitive action against the petitioner under the provision of Assam Services (Discipline and Appeal) Rules, 1964, and therefore, the contention of Mr. R. M. Deka, learned counsel that the petitioner is entitled for a notice is not acceptable inasmuch as such action cannot be termed as punitive or that the impugned order has prejudiced or violated any right of the petitioner.

13. This Court cannot also be oblivious of the fact that the authority cannot take punitive action against any person, in the present case, the petitioner, without giving her any opportunity of hearing. However, in the present case, no such action has yet been proposed or taken to issue a writ of mandamus or a writ of certiorari.

14. In that view of the matter, this Court is of the considered opinion that by issuing the impugned communication no fundamental or any other right of the petitioner has been violated. Accordingly, the present writ petition stands dismissed.

15. With the aforesaid terms, this writ petition stands disposed of.

16. Interim order if any stands vacated.

JUDGE

Comparing Assistant