

REPORTABLE

GAHC010191492023



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

Case No. : I.A.(Civil)/2615/2023

SMTI. MOUCHUMI SAHARIA,
ASSISTANT TEACHER, CUM I/C PRINCIPAL, MANGALDAI TOWN GIRLS
HIGHER SECONDARY SCHOOL, MANGALDAI DIST.- DARRANG, ASSAM,
PIN- 784125

VERSUS

SMRITI REKHA KALITA AND 3 ORS.
W/O- AMAR KUMAR DEKA, ASSISTANT TEACHER, MA, B.ED,
MANGALDAI GIRLS HIGHER SECONDARY SCHOOL, R/O- WARD NO.6,
MANGALDAI, DIST.- DARRANG, ASSAM, PIN- 784125

2:THE STATE OF ASSAM

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

3:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI

ASSAM
PIN- 781019

4:THE INSPECTOR OF SCHOOLS
DARRANG DISTRICT CIRCLE
MANGALDAI
ASSA

Advocate for the Petitioner : MR. M DUTTA

Advocate for the Respondent : SC, SEC. EDU.

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

Date : 28-09-2023

JUDGMENT & ORDER (ORAL)

Heard Mr. M Dutta, learned counsel for the applicant, Mr. BD Das, learned senior counsel assisted by Mr. B Purkayastha, learned counsel for the writ petitioner and Mr. SMT Chisti, learned counsel for the respondents in the Secondary Education Department, Government of Assam.

2. An order dated 22.07.2023 of the Director of Secondary Education, Assam is assailed in WP(C) No. 4526/2023. The writ petitioner Smti Smriti Rekha Kalita and the applicant herein Smti Mouchumi Saharia are both claiming their respective legal rights to be the in-charge Principal of Mangaldoi town Girls Higher Secondary School. In consideration thereof, an order dated 27.07.2023 had been passed by the Director of Secondary Education, Assam taking note that the writ petitioner Smti Smriti Rekha Kalita had obtained her M.A Degree without obtaining No Objection Certificate (NOC) or any previous permission from the appointing authority. Accordingly, it was viewed that the conduct of the

writ petitioner Smti Smriti Rekha Kalita in obtaining the M.A Degree without the NOC or previous permission was in violation of Rule 13 of the Assam Civil Services (Conduct) Rules, 1965 (in short Rules of 1965), which provides that no Government servant while in 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.

3. While issuing notice in the writ petition by the order dated 09.08.2023, the order impugned dated 27.07.2023 was stayed, the implication whereof would be that the writ petitioner Smti Smriti Rekha Kalita would continue to be the in-charge Principal of the school concerned. The applicant has instituted this interlocutory application for vacating the interim order on the ground that as the writ petitioner Smti Smriti Rekha Kalita had obtained the M.A Degree in violation of the provisions of Rule 13 of the Rules of 1965, therefore, the authorities were justified under the law in not accepting the M.A Degree of the petitioner. Accordingly, it is submitted that as a prima-facie case has been made out and also considering the balance of convenience and the irreparable loss of the applicant, the interim order ought to be vacated.

4. We have heard Mr. M Dutta, learned counsel for the applicant. Mr. Dutta, learned counsel takes the Court through the provisions of Rule 13 of the Rules of 1965, which is explicit enough that a Government servant cannot join or attend any educational institution or appear at any examination of a recognized board or university without obtaining permission. From such point of view, it would have to be accepted that the writ petitioner may have obtained the M.A Degree in violation of Rule 13 of the Rules of 1965. But, however, we take note that Rule 13 of the Rules of 1965 is a Rule framed under the Assam Civil

Services (Conduct) Rules, 1965, meaning thereby that a violation of any provisions thereof would have to be construed to be a misconduct. If the act of the writ petitioner would have to be construed to be a misconduct under the Rules of 1965, the appropriate remedy would be to initiate a disciplinary proceeding against the person for having committed the misconduct under the Assam Services (Discipline and Appeal) Rules, 1964. But, a misconduct of such nature of having obtained a degree from a university without obtaining permission cannot lead to a conclusion that the degree obtained from a university itself is untenable in law.

5. A university offers a degree in exercise of the powers under section 22 of the University Grants Commission Act, 1956 and taking note of Rule 21 of the General Clauses Act, it is only the university who can declare the degree obtained to be untenable in law or may withdraw it. No other third party can be understood to have any jurisdiction or authority not to accept a degree offered by a university in exercise of the powers under section 22 of the UGC Act, 1956.

6. We are unable to accept the view formed by the Director of Secondary Education, Assam in the order dated 27.07.2023 that as because the writ petitioner Smti Smriti Rekha Kalita had obtained the M.A Degree without obtaining NOC or previous permission from the authority, therefore, the M.A Degree of the writ petitioner would be unacceptable as per Rule. From such point of view, the writ petitioner can be said to have made out a strong prima facie case against the order dated 27.07.2023. If the M.A Degree of the writ petitioner is otherwise valid and acceptable in law, the writ petitioner may have a legal right to be the in-charge Principal and accordingly also has the benefit of the balance of convenience as well as will suffer irreparable loss if the interim order dated 09.08.2023 is vacated.

7. Accordingly, the interlocutory application stands dismissed on being found without merit.

JUDGE

Comparing Assistant