

GAHC010205472016



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

Case No. : WP(C)/4074/2016

UTTAR KAMPITH MAHAVIDYALAYA SR. and ANR
REP. BY ITS PRESIDENT OF THE GOVERNING BODY OF THE COLLEGE,
SHRI KANAK CH. DEKA, P.O. JAGARA DIST. NALBARI, ASSAM PIN -
781310.

2: DR. PANKAJ KUMAR ROY
IN-CHARGE
PRINCIPAL/SECRETARY
UTTAR KAMPITH MAHAVIDYALAYA SR. P.O. JAGARA
DIST. NALBARI
ASSAM PIN - 78131

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
HIGHER EDUCATION DEPARTMENT, DISPUR, GUWAHATI - 781006, ASSAM.

2:THE SECRETARY

TO THE GOVT. OF ASSAM
HIGHER EDUCATION DEPARTMENT
DISPUR
GUWAHATI - 781006
ASSAM.

3:THE DIRECTOR

HIGHER EDUCATION
ASSAM
KAHILIPARA
GUWAHATI--781019
ASSAM

Advocate for the Petitioner : MR.D C K HAZARIKA

Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 17.03.2023

Heard Ms. J. Kalita, learned counsel for the petitioners. Also heard Mr. S. Das, learned standing counsel for the Higher Education Department, respondent nos.1, 2 and 3

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioners have prayed for (1) setting aside and quashing of the impugned order dated 27.06.2016 (Annexure-III), issued by the Director of Higher Education, Assam, by which direction was issued for publication of advertisement and selection of regular Principal in the Uttar Kampith Mahavidyalaya (Sr.) (petitioner no.1); and (2) for a direction to the respondent no.3 to consider the representation dated 02.07.2016 by the President of the Governing Body of the petitioner no.1 college to keep under abeyance the selection process for filling up the post of Principal of the said college.

3. The learned counsel for the petitioners has submitted that the District Scrutiny Committee, Nalbari in exercise of power under the provision of section 10 of the erstwhile Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011, had recommended the service of the teaching and non-teaching employees of the petitioner no.1 college to be provincialized. Accordingly, the order of provincialisation dated 20.01.2014 was issued by the respondent no.3 under section 4(1) of the said Act. However, in the process, the service of Dr. Tarun Sarma was provincialized as the Principal of the said college. It is alleged that the certificate of HSLC Examination, 1969,

which was produced by the said person was fake. The said person had superannuated from service on 31.12.2014, whereas he had actually passed out the HSLC Examination in the year 1967 and accordingly, he should have superannuated on 01.08.2010 and his service could not have been provincialized. Accordingly, to challenge the provincialisation of service of the said Dr. Tarun Sarma, the petitioner has instituted WP(C) 977/2016 and accordingly, it is submitted that till disposal of the said writ petition, the respondent authorities could not have proceeded to issue an employment advertisement for filling up the post of the Principal of petitioner no.1 college.

4. Heard the submissions made by the learned standing counsel for the respondents.

5. It may be mentioned that by order passed today, WP(C) 977/2016 has been closed by granting liberty to the petitioner to take such steps as he may be so advised if the relevant HSLC pass certificate is declared by the competent Court to be fake.

6. It is noted that this writ petition was filed on 12.07.2016 and before that date, the person concerned had already superannuated on 31.12.2014.

7. Under such circumstances, for all technical purposes, the office of the Principal of the petitioner no.1 college became vacant on 01.01.2015. On the date, when the said person had been appointed as a Principal, the petitioner did not put up his candidature for the post of Principal and therefore, there is no way that at this stage, the Court can consider issuing direction on the respondent authorities to consider the petitioner as an incumbent for the post of Principal of petitioner no.1 college from the date when Dr. Tarun Sarma was appointed.

8. Therefore, we find that the post of Principal of the petitioner no.1

college can only be filled up by way of a transparent recruitment process. It is also submitted at the bar that in the meanwhile, the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 (since been repealed) and another law has been enacted for the purpose.

9. Accordingly, on the ground that the WP(C) 977/2016, since been disposed of, the Court is of the considered opinion that no interference is called for against the order dated 27.06.2016, issued by the Director of Higher Education, Assam, by which direction was issued for publication of advertisement and selection of regular Principal in the Uttar Kampith Mahavidyalaya (Sr).

10. Accordingly, the Court does not find any merit in this writ petition and the same is dismissed. The interim order passed on 13.07.2016 stands vacated.

11. Therefore, it would be now open for the Higher Education Department to take a call for appointment of regular Principal of the petitioner no.1 college, if they so desire.

12. The learned standing counsel for the Higher Education Department shall transmit a copy of this order to the respondent authorities.

JUDGE

Comparing Assistant