

GAHC010206272023



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

Case No. : WP(C)/5419/2023

TANKESWAR NATH

S/O- LATE UMESH CHANDRA NATH, B.SC., B.ED, MA, SENIOR MOST
ASSISTANT TEACHERM SARTHEBARI HIGHER SECONDARY SCHOOL,
SARTHEBARI, R/O- VILL. AND P.O. GAHIYA, DIST.- BARPETA, ASSAM, PIN-
781311

VERSUS

THE STATE OF ASSAM AND 3 ORS
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

2:THE DIRECTOR OF SECONDARY EDUCATION ASSAM
KAHILIPARA GUWAHATI ASSAM
PIN- 781019

3:THE INSPECTOR OF SCHOOLS
BARPETA DISTRICT CIRCLE
BARPETA
ASSAM

4:SRI JITEN CHANDRA BARMAN
ASSISTANT TEACHER
CUM I/C PRINCIPAL
SARTHEBARI HIGHER SECONDARY SCHOOL
SARTHEBARI DIST. BARPETA
ASSAM PIN- 78130

Advocate for the Petitioner : MR B D DAS
Advocate for the Respondent : SC, SEC. EDU.

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

Date : 18.12.2023

ORDER

Heard Mr. B. Purkayastha, learned counsel for the petitioner. Also heard Ms. Dimpy Musahary, learned standing counsel, Secondary Education Department, Government of Assam, appearing on behalf of respondents No. 1, 2 & 3, and Mr. K. R. Patgiri, learned counsel, appearing on behalf of respondent No. 4.

2. The petitioner by way of instituting the present petition, has presented a challenge to the order, dated 30.03.2023, by which the respondent No. 4(Jiten Chandra Barman) was allowed to hold the post of Principal, Sarthebari Higher Secondary School, Sarthebari, along with financial power to draw and disburse the salary in addition to his normal duty as an Assistant Teacher under FR 49(c). The said arrangement was to come into effect from 01.04.2023.

The petitioner who is a Graduate Teacher, has been serving in the said Sarthebari Higher Secondary School, Sarthebari, w.e.f. 31.03.1999 and was also drawing his pay and allowances in the graduate scale of pay w.e.f. 30.12.1993. The respondent No. 4 had joined as a graduate teacher in the said school on 22.03.2001 and was drawing his graduate scale of pay from the date of his joining i.e. 22.03.2001.

The service conditions of the teachers working in the Higher Secondary Schools are governed by the provisions of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018.

A vacancy arising in the school against the post of Principal; the petitioner had the legitimate expectation being the senior-most and qualified in terms of Rule 12 of the said Rules of 2018 to be appointed against the post on regular basis and pending recruitment on regular basis to hold the charge of the post of the Principal of the said school.

The petitioner had acquired his M.A. Degree in Assamese from the Krishna Kanta Handique State Open University and had prosecuted the said study during the period 2014-16.

Poised thus, the petitioner came across the impugned order, dated 30.03.2023, by which the respondent No. 4 was allowed to hold the charge of the Principal of the school w.e.f. 01.04.2023 on the incumbent of the post retiring w.e.f. 31.03.2023. On an inquiry, the petitioner was given to understand that the M.A. Degree prosecuted by him with Krishna Kanta Handique State Open University having been not so prosecuted with prior permission from the authorities concerned, his said Degree would not be considered to be valid and in that view of the matter, he not fulfilling the eligibility criteria as mandated under Rule 12(3)(1) of the said Rules of 2018 in-as-much as the M.A. Degree is a mandatory qualification to hold the charge of the post of Principal, Sarthebari Higher Secondary School, Sarthebari.

3. The grounds as assigned for refusing to the petitioner, the in-chargeship of the post of Principal, Sarthebari Higher Secondary School, Sarthebari, is that he had prosecuted his M.A. Degree from the Krishna Kanta Handique State Open University without obtaining prior or previous permission from the appointing

authority. The said refusal is purportedly based on the provisions of the Assam Civil Service (Conduct) Rules, 1965, more particularly, Rule 13 thereof.

4. The provisions of Rule 13 of the Rules of 1965, being of relevance is extracted hereinbelow:

“13. Prosecution of studies by Government servants in educational institutions. - No Government servant while in Government 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:

Provided that the appointing authority may refuse such permission in the interest of the public service on consideration that such joining or attending any educational institution or appearing at any examination may create dislocation of work or stand in the way of the efficient discharge of his duties by the Government servant concerned. Permission of study leave or any other kind of leave granted for the purpose of joining or attending any educational institution shall be subject to the condition that the Government servant shall not seek election to or hold any electist office in Students' Union or other Association of Student's except Association formed for purely literary, academic or athletic pursuits.”

5. The provisions of Rule 13 of the Rules of 1965 mandates that no government employee while in service, shall join or shall attend any educational institution for preparing himself or shall appear at an examination of a recognized Board or University without obtaining previous permission from the appointing authority.

The provisions of Rule 13 only mandates that prior permission shall be obtained by a government employee for prosecuting any course of study. The violation of Section 13 would amount to a misconduct for which the employer may draw a disciplinary proceeding against the government employee. The provisions of Rule 13 of the Rules of 1965 cannot be invoked to invalidate any degree acquired by a government employee, the course of study for which the government employee had prosecuted without previous permission from the authorities.

6. The said issue is no longer *res-integra* and this Court, vide order, dated 28.09.2023, passed in IA(c)2615/2023 [**Smt. Mouchumi Saharia v. Smriti Rekha Kalita & 3 ors.**] had held that if a Degree had been obtained without prior permission of the appointing authority, the same would be a misconduct under Rule 13 of the Rules of 1965 and it being a misconduct, the relevant proceedings of law applicable against the candidate, would be a proceeding against such candidate under the Assam Services(Discipline and Appeal) Rules, 1964, but the same by itself cannot invalidate the otherwise valid degree obtained from the respective Universities and further, that the Degree obtained from a University is governed by Section 22 of the University Grants Commission Act, 1956.

7. On application of the decision of this Court in the case of **Mouchumi Saharia**(supra); to the issues arising in the present case, it is clear that the petitioner having been validly granted a Masters Degree in Assamese and the said Degree having been obtained from an institution recognized by the University Grants Commission, the respondent authorities do not have the jurisdiction and authority to invalidate the said Degree obtained by the petitioner and such invalidation cannot be done even impliedly.

The effect of the denial of the benefits of holding the charge of in-charge Principal of the said school to the petitioner inspite of being the senior-most Teacher of the school, amounts to an invalidation of the Degree obtained by the petitioner in Krishna Kanta Handique State Open University, which is impermissible.

8. Accordingly, the order, dated 30.03.2023, having been issued only on the ground that the petitioner was not eligible to hold the charge of the post of

Principal, Sarthebari Higher Secondary School, Sarthebari, on account of he having obtained his M.A. Degree without prior permission from the competent authorities for undergoing such a course; stands interfered with.

9. The M.A. Degree acquired by the petitioner having been so acquired from a recognized University; the said Degree is otherwise valid and acceptable in law and accordingly, the petitioner having fulfilled the eligibility criteria as mandated for recruitment to the post of principal of the school in question, under the provisions of Rule 12(3) of the said Rules of 2018; a legal right has accrued to the petitioner to hold the charge of the post of Principal, Sarthebari Higher Secondary School, Sarthebari.

10. Accordingly, the matter stands remanded back to the Director, Secondary Education Department, who shall now pass appropriate orders allowing the petitioner to hold the charge of the post of Principal, Sarthebari Higher Secondary School, Sarthebari, after due verification of the particulars of all candidates in the fray.

It is needless to say that the Director, Secondary Education Department, while considering the qualifications of the eligible persons shall be at liberty to examine as to whether the said qualifications were obtained from the recognized Universities/institutions.

The exercise required to be carried-out to allow the petitioner to hold the charge of the post of Principal, Sarthebari Higher Secondary School, Sarthebari,

shall be carried-out by the Director, Secondary Education Department, within a period of 2(two) months from the date of receipt of a certified copy of this order.

11. With the above directions; the writ petition stands disposed of.

JUDGE

Comparing Assistant