

GAHC010206832019



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

Case No. : WP(C)/6296/2019

MOTIAR RAHMAN
S/O LT. OHED ALI, R/O VILL. KASHIARTARI, P.O. CHIRAKUTI, P.S.
FAKIRGANJ, DHUBRI, PIN-783330, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
EDUCATION (SECONDARY) DEPTT. DISPUR, GUWAHATI-6, ASSAM

2:THE DIRECTOR OF SECONDARY EDUCATION ASSAM
KAHILIPARA
GUWAHATI-18

3:THE INSPECTOR OF SCHOOLS
DHUBRI DIST. CIRCLE
DIST. DHUBARI
ASSAM
PIN-783301

4:THE PRINCIPAL
CHIRAKUTI HIGHER SECONDARY SCHOOL
CHIRAKUTI
DHUBRI
ASSAM
PIN-783348

5:HANIF ALI SIKDAR
THE PRINCIPAL
CHIRAKUTI HIGHER SECONDARY SCHOOL
CHIRAKUTI
DHUBRI

ASSAM
PIN-78334

Advocate for the Petitioner : MR. M K CHOUDHURY

Advocate for the Respondent : SC. EDU.

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

ORDER

Date : 15.03.2023

Heard Mr. M.K. Choudhury, learned senior counsel, assisted by Ms. N. Dutta, learned counsel for the petitioner. Also heard Mr. R. Mazumdar and U.C. Sarma, learned standing counsel for the Secondary Education Department, representing respondent nos. 1 to 4, and Mr. S.K. Das, learned counsel for private respondent no. 5.

2. The petitioner is presently serving at Chirakuti H.S. School, Chirakuti, Dhubri, Assam (hereinafter referred to as "*CHS School*" for brevity) and claims to be the senior-most subject teacher in the said school. The respondent no. 5 is presently serving as the Principal of the said *CHS School*. Having doubt regarding the manner in which the said respondent no. 5 had obtained B.Ed. Degree, the petitioner had filed a complaint dated 19.03.2019 before the Commissioner and Secretary to the Government of Assam, Education (Secondary) Department (respondent no.1) and accordingly, the said authority vide letter dated 09.04.2019, required the Director of Secondary Education, Assam (DSE for short) i.e. respondent no. 2 to make an enquiry and furnish a detailed report. By projecting that the said direction was not carried out, the present writ petition has been filed under Article 226 of the Constitution of

India, *inter alia*, praying for the following reliefs, viz., (i) directing the respondent nos. 1 and 2 to remove the respondent no. 5 from the post of Principal of *CHS School*, (ii) directing the respondent nos. 1 and 2 to initiate departmental proceeding against the respondent no. 5 for misrepresentation and forgery of official school records, (iii) direct the respondent nos. 1 and 2 to appoint the petitioner as In-Charge Principal of *CHS School*, (iv) directing the respondent no. 2 to initiate an enquiry and furnish a report based on the petitioner's complaint dated 19.03.2019 and letter dated 09.04.2019 issued by the respondent no. 1.

3. The learned senior counsel for the petitioner has strenuously submitted that the respondent no. 5, while serving as a regular subject teacher in *CHS School* and without affecting his duty, could not have simultaneously pursued his B.Ed. course from Dhubri Post Graduate Teachers' Training College, Jhagarpar, Dhubri (hereinafter referred to as "DPGTT College" for brevity), as a regular student in the said College. It was submitted that the road distance between *CHS School* and *DPGTT College* was 56 km, and one would have to cross river to travel the distance, which would consume more than 2¹/₂ hours. It has been submitted that the petitioner had received RTI reply dated 24.10.2017 from the respondent no. 3 to the effect that the respondent no. 5 had undertaken B.Ed. course as a regular student and had not taken any official permission from his employer. Moreover, it has been submitted that the petitioner had also received RTI reply dated 31.05.2019 from the Principal of *DPGTT* informing that there was no record of providing no objection certificate, formal departmental order and release order in respect of the respondent no. 5 for pursuing B.Ed. course. It has also been submitted that the respondent no. 5

had been taking classes in the month of June, 1998. However, after the respondent no. 5 took charge of the post of Principal of *CHS School*, he had manipulated the attendance register and by applying whitener over certain dates, and had written "CL" i.e. casual leave instead. The learned senior counsel for the petitioner has heavily relied on the copy of letter under Memo no. E-17/BT/87/58/PT-II/25/2632-2732 dated 27.02.2011, issued by the Inspector of Schools, Dhubri (respondent no. 3), wherein it is prescribed that the post-graduate/graduate teacher who have completed 5 (five) years of continuous regular service shall be recommended to undergo B.Ed. degree in order of seniority.

4. The learned standing counsel for the Secondary Education Department and the learned counsel for the respondent no. 5 have been heard.

5. From the materials available on record, it appears that while the petitioner had obtained his B.Ed. degree in the year 2017, the respondent no. 5 had acquired his B.Ed. degree in the year 1998. The recruitment advertisement soliciting applications for the post of Principal of *CHS School* was published on 23.06.2016 and the interview for the said post was held on 10.12.2016 and the respondent no.5 was appointed on 02.05.2017 and joined on 03.05.2017. However, the petitioner claims to have been released from the Govt. BT College, Goalpara on completion of his B.Ed. Examination. However, the respondent no. 5 claims that the respondent no. 5 had passed his B.Ed. examination on 14.12.2017. The petitioner has not disputed such a stand taken by the respondent no. 5 to the effect that the petitioner had acquired B.Ed. degree after about 7 (seven) months after the date of appointment of the respondent no.5 as Principal of *CHS School*. The learned standing counsel for the

respondent nos. 1 to 4 has submitted that as per the provision of Clause (v) of Sub-Rule (3) of Rule 12 of the Assam Secondary Education (Provincialised Schools) Rules, 2018, a candidate must not be more than 57 years as on the first January of the year of recruitment. Thus, the underlying point is to the effect that the petitioner, who was 56 years of age as on 09.08.2019, being the date when affidavit in support of the writ petition was sworn, would be around 60 years of age at present and would therefore, not be eligible to hold the post of regularly selected Principal of *CHS School*. Thus, the petitioner would not be benefitted even if he is able to make out a case.

6. The petitioner claims that the respondent no. 5 could not have attended his duty in *CHS School* and attended his B.Ed. classes in *DPGTT College*, which was about 56 km. away from his *CHS School*. This allegation is countered with documents showing that the then Principal of *CHS School* gave no-objection dated 02.01.1997 to the respondent no.5 to obtain B.Ed. degree from *DPGTT College* for the session 1997-98 without hampering his normal classes at school. In his affidavit-in-opposition, the respondent no.5 has annexed a certificate dated 05.01.2017 from the Principal-cum- Secretary of *DPGTT College* to the effect that the respondent no.5 was a student of the said college for the session 1997-98 and that during the session, the college was of evening shift from 4.00 pm to 8.00 pm. The respondent no.5 has also annexed a certificate dated 31.12.1998 from the then Principal of *CHS School* to the effect that in connection with his B.Ed. degree, the respondent no.5 was granted leave on certain dates mentioned therein and that on certain days, he was allowed to leave school for practice teaching after 1.00 pm, and that the respondent no.5 had attended his B.Ed. classes in the evening shift without hampering the normal duties in the school. The copy of school attendance,

annexed by the petitioner in his writ petition has been countered by the respondent no. 5 by annexing an FIR dated 14.10.2019, lodged by the respondent no.5 before the O/C., Fakirganj P.S., stating therein that one school teacher's attendance register for the period of 1993 to 1998 was missing and that while handing over charge of Principal on 03.05.2017, the Ex-Principal did not hand over the said attendance register to him as it was missing. Thus, in this writ petition, the petitioner has raised a highly disputed question of fact, (i) as to whether the respondent no. 5 had attended his B.Ed. classes during 1997-98 sessions in *DPGTT College*, and (ii) whether the respondent no. 5 attended his B.Ed. course without affecting his allotted classes in *CHS School*. Such disputed questions of fact, in the considered opinion of the Court cannot be decided on the basis of affidavits alone and would require determination by the competent Court. Moreover, merely on the basis of projection by the petitioner that it would take about $2\frac{1}{2}$ hours for the respondent no. 5 to travel 56 km from *CHS School* to *DPGTT College*, the Court cannot arrive at a conclusion that the respondent no. 5 did not attend his B.Ed. classes. We cannot discard the certificate dated 05.01.2017, issued by the Principal- cum- Secretary of *DPGTT College*, referred to herein before wherein it was mentioned that the respondent no. 5 was a student of their college for the session 1997-98 when the session was in evening shift from 4.00 pm to 8.00 pm and that he was a active and sincere student. Thus, as the authority under whom the respondent no. 5 had attended B.Ed. course, i.e. *DPGTT School*, has certified that the petitioner was a student of their college, the same cannot be negated without giving the said *DPGTT College* an opportunity of being heard. Thus, the Court is inclined to hold that the petitioner has not been able to dispel that the respondent no. 5 did not attend his B.Ed. classes.

7. One of the prayers in the writ petition is for a direction to the respondent nos. 1 and 2 to initiate departmental proceeding against the respondent no. 5 for misrepresentation and forgery of official school records. The petitioner has not approached the competent court exercising civil or criminal jurisdiction for a determination as to what exactly was the misrepresentation by the respondent no. 5 or as to which school record were involved in forgery by the respondent no. 5. The learned senior counsel for the petitioner has not been able to demonstrate how the writ Court shall determine forgery in the absence of evidence being recorded by examining witnesses. Thus, the Court is of the considered opinion that in light of the nature of defence taken by the respondent no. 5 in respect of allegations of manipulation and forgery of school records, the competent Court exercising civil and/or criminal jurisdiction would be the appropriate Court to determine the correctness or otherwise of the allegations made by the petitioner against the respondent no.5 and that this Court, exercising jurisdiction under Article 226 of the Constitution of India would be a loath to give its opinion on manipulation and/or forgery of school records without evidence, requiring examination of witnesses.

8. An affidavit-in-opposition has been filed on behalf of the respondent no. 2, i.e. the Director of Secondary Education, Assam, wherein it has been clearly stated that as per the report dated 15.05.2019, received from the Inspector of School, DDC, Dhubri the petitioner had obtained B.Ed. Degree in 1997-98 after taking NOC from the authority for pursuing the course in the evening shift from *DPGTT College* without hampering normal classes of the school and that leave was also granted by the then Principal of *CHS School*.

Thus, it is apparent that the respondent no. 3 did conduct an enquiry in respect of the B.Ed. degree obtained by the respondent no.5 and in its report dated 15.05.2019, the respondent no. 3 authority had not cast any aspersion against the respondent no. 5 of acquiring B.Ed. degree otherwise than in accordance with law. The affidavit-in-opposition on behalf of the respondent no. 2 was filed on 31.10.2022, to which the petitioner had filed his affidavit-in-reply on 21.11.2022, but the correctness of the enquiry report dated 15.05.2019 by the respondent no. 3 has not been put to challenge by the petitioner. Therefore, the prayer no. (IV) of the petitioner has been rendered infructuous.

9. The petitioner is relying on letter dated 27.02.2011, issued by the respondent no. 3, but the petitioner has failed to demonstrate how the said letter and/or any other notification, guidelines, circulars or administrative instructions issued after 1997-98 is relevant when it is not in dispute that the respondent no. 5 had acquired his B.Ed. Degree in Session 1997-98. Moreover, in this writ petition, the respondent no. 4 is the Principal of *CHS School*, who is none other than the respondent no. 5 and neither the *CHS School* nor the *DPGTT College* are arrayed as respondents in this writ petition, therefore, there is no way that the issue of whether the respondent no. 5 had attended his B.Ed. classes in *DPGTT College* can be determined in this writ petition in their absence. Similarly, the allegations regarding manipulation and forgery, if any, of the records of *CHS School* also cannot be determined in the absence of the said *CHS School* and/or its Governing Body being impleaded as respondents in this writ petition. Therefore, no case has been made out to direct the respondent nos. 1 and 2 to initiate any departmental enquiry against the respondent no.5 as per prayer (II) of the writ petition and therefore, the said prayer stands rejected. As a sequel thereof, the petitioner is also not entitled to relief in terms

of prayer no. (III) of the writ petition.

10. From the prayers made in this writ petition, as referred to herein before, it is seen that the petitioner has not made any prayer for annulment of the B.Ed. Degree of the respondent no. 5. Therefore, if there is no challenge to the B.Ed. degree of the respondent no.5, it would be a travesty of justice to direct the respondent nos. 1 and 2 to remove the respondent no. 5 as Principal of *CHS School*. Therefore, the petitioner is not found entitled to relief as per prayer (I) of the writ petition.

11. The petitioner was serving in the *CHS School* at the time when the respondent no. 5 was pursuing his B.Ed. course. Even assuming for the sake of argument that the respondent no. 5 was not attending his classes in *CHS School* or not attending his B.Ed. Classes in *DPGTT College* during the session 1997-98, the petitioner never raised his voice at the relevant time and just like the fictional story book character of "Rip Van Winkle", a story authored by Washington Irving and first published in the year 1819, the petitioner has woke up from his slumber after 20 years and this writ petition has been filed on 27.08.2019, questioning the manner in which the respondent no. 5 had acquired his B.Ed. degree in session 1997-98, but the B.Ed. degree acquired by the respondent no. 5 has not been assailed and therefore, there is an acquiescence on part of the petitioner as to the legality and validity of the B.Ed. degree of the respondent no.5. Hence, this is an appropriate case to invoke the legal maxim of "*Vigilantibus non dormientibus jura subveniunt*", meaning that the law will assist only those who are vigilant about their rights and not those who sleep over them.

12. Consequently, in view of the discussions above, the petitioner is

not found entitled to any of the reliefs as prayed for in this writ petition and accordingly, this writ petition stands dismissed.

13. There shall be no order as to cost.

JUDGE

Comparing Assistant