

GAHC010209712023



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

Case No. : WA/352/2023

ANISUR RAHMAN
S/O- LATE SAYEN UDDIN HMED, VILLAGE - JOYBHUM, P.O- CHUNARI,
DIST- GOALPRA, ASSAM

VERSUS

SAIFUL ISLAM AND 6 ORS.
S/O- ALI HUSSAIN AHMED , VILL- SOWARI POITARY P.O- JOYBHUM DIST-
GOALPARA, ASSAM, PIN-783129

2:THE STATE OF ASSAM

REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM
EDUCATION DEPARTMENT
DISPUR
GUWAHATI-781006

3:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-781019

4:THE INSPECTOR OF SCHOOLS

GOALPARA .DISTRICT .CIRCLE.
GOALPARA
P.O. AND P.S.-GOALPARA
DIST-GOALPARA
ASSAM
PIN-783101

5:THE DEPUTY COMMISSIONER

GOALPARA
P.O AND DIST-GOALPARA
ASSAM
PIN-783101

6:THE PRINCIPAL
CHUNARI HIGHER SECONDARY SCHOOL.
P.O- CHUNARI

DIST- GOALPARA
ASSAM
PIN-783129

7:THE SCHOOL MANAGEMENT AND DEVELOPMENT COMMITTEE
OF CHUNARI HIGHER SECONDARY SCHOOL.
REP. BY ITS PRESIDENT
P.O- CHUNARI

DIST- GOALPARA
ASSAM
PIN-78312

For appellant(s) : Mr. D.A. Kaiyum, Advocate.

For respondent(s) : Mr. SMT Chistie, Standing Counsel,
Secondary Education Department and Ms. R.B. Borah, Govt.
Advocates

– BEFORE –

HON'BLE THE CHIEF JUSTICE

HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

18.09.2023

(S.P. Khaund, J)

1. Heard Mr. D.A. Kaiyum, learned counsel for the petitioner as well as Mr. SMT Chistie, learned Standing Counsel, Secondary Education Department and Ms. R.B. Borah, learned Government Advocate.

2. This writ appeal is preferred against the Order dated 12.09.2023 passed by the learned Single Judge in I.A. 1224/2023.

3. Facts of this case in a nutshell are that the appellant herein, Anisur Rahman, was the Vice President of School Management and Development Committee (SMDC for short) of Chunari Higher Secondary School (School in short for easy reference), Goalpara district for the year 2017-2022. He was also entrusted with the charge of President of SMDC vide order dated 23.09.2021 issued by the Inspector of Schools, Goalpara District Circle, Goalpara and he successfully completed his tenure as President without any blemish.

4. The private respondent Md. Saiful Islam, the State of Assam-represented by the Secretary to the Government of Assam, Education Department, The Director of Secondary Education-Assam, The Inspector of Schools-Goalpara District Circle, Goalpara, The Deputy Commissioner- Goalpara, The Principal-Chunari Higher Secondary School, and the School Management and Development Committee of Chunari Higher Secondary School are arrayed as respondent nos. 1 to 7 respectively. The private respondent no. 1, herein was the applicant in I.A. (Civil) No. 1224/2023.

5. The appellant has stated that in pursuance of the order-letter No. PC/SEC/216/2021/8, dated 27.09.2021 issued by the Director of Secondary

Education, Assam, the Inspector of Schools directed the Principal of the school to submit a panel of 2 (two) names for the post of President and Vice President of SMDC, as per guidelines of the Govt. Notification dated 24.06.2016. Thereafter, the Principal held a meeting with the parents/guardians of the students of the said school and the local people. In the meeting, the appellant's name along with the name of another candidate was recommended for the post of President of SMDC of the school. The Principal vide letter dated 30.09.2021 submitted the panel for President and Vice President of the SMDC to the Inspector of Schools.

6. The Inspector vide order dated 16.12.2022, illegally nominated the private respondent No. 1, as the President of SMDC of the said school. This order dated 16.12.2022 was challenged in WP(C) No. 371/2023, on the grounds that the selection and appointment of respondent no. 1 was in deviation of Govt. Notification No. ASE.416/2014/116, dated 24.06.2016 issued by the Secretary to the Government of Assam. The learned Single Judge vide order dated 27.01.2023 stayed the order dated 16.12.2022 issued by the Inspector of Schools.

7. In view of the interim order dated 27.01.2023 in WP(C) 371/2023, the Block Elementary Education Officer, of Lakhipur Education Block was allowed to

function as the President of SMDC of the school. Against the interim order, the respondent no. 1 filed an interlocutory application being I.A. (Civil) No. 1224/2023 with prayer to vacate the interim order dated 27.01.2023 passed in W.P.(C) No. 371/2023. After hearing the parties, the learned Single Judge passed the order dated 12.09.2023, setting aside the order dated 16.12.2022 issued by the Inspector. It is contended that in compliance of the order dated 12.09.2023, the Director has to initiate a proper process for selection and appointment of the President of SMDC through the appropriate authority within a period of two months. It was also further directed that as the respondent no. 1/applicant was already discharging the functions of the President, he would continue discharging the functions of the President, till the appointment of the new President.

8. It is averred that vide order dated 12.09.2023, the respondent no.1-applicant was illegally and arbitrarily allowed to continue to discharge the functions of the President. It is contended that after the interim order dated 27.01.2023 was passed, the respondent no. 1 was not discharging the functions of the President of SMDC and there was no pleading or prayer in the I.A. to allow the sole respondent no. 1 to continue as the President of SMDC as an interim measure. The appellant has prayed to set aside and quash the impugned order dated 12.09.2023 passed by the learned Single Judge in the

interlocutory application captioned above.

9. Per contra, it is averred that the Education Department vide subsequent notification dated 27.10.2021 modified the earlier Govt. notification dated 24.06.2016. The respondent no. 1 was appointed as the President of SMDC of the school as per the subsequently modified Rules. Therefore, no arbitrariness or illegality on the part of the respondent authorities is discernible.

Submissions

10. The learned counsel for the appellant laid stress in his argument that the selection and appointment of the respondent no. 1 was in deviation to the Govt. Notification dated 24.06.2016, as the Inspector of Schools is not authorised to select the President of SMDC on pick and choose basis.

11. Immediately after the interim order dated 27.01.2023 was passed in the writ petition No. 371/2023, the BEEO of Lakhipur Education Block was allowed to function as the President of the SMDC but vide the impugned order dated 12.09.2023 in the writ petition, the respondent was erroneously allowed to function as the President till the appointment of the new President, on the grounds that the respondent no. 1 was discharging the functions of the President. It is submitted that as the BEEO was already discharging the functions of President of the SMDC in lieu of new President purported to be

appointed, the order directing the respondent no. 1 to continue as the President as he was discharging the functions of the President is not sustainable, more so when there was no such prayer to allow respondent no. 1 to continue as the President. The appellant has therefore prayed to set aside and quash the impugned order dated 12.09.2023 passed by the learned Single Judge in I.A. (Civil) No. 1224/2023.

12. The learned counsel for the respondents have emphasized through their arguments that the impugned order dated 12.09.2023 in the I.A. (Civil) 1224/2023 was appositely passed. It is argued that the guidelines for constitution of the SMDC was modified vide Notification dated 05.04.2017. According to the modified guidelines, the Deputy Commissioner shall approve the list of President and Vice President for formation of the SMDC at his level. The guidelines were again modified vide Notification dated 27.10.2021, whereby, the Deputy Commissioner is empowered to select the President and the Vice President of the SMDC of educational institutions with the approval of the Guardian Minister. It is averred that the appellant has suppressed this factum of modification of notification dated 24.06.2016, when he filed the writ petition and tacitly relied on the Notification dated 24.06.2016. The respondent no. 1 has therefore prayed to dismiss the appeal.

CONSIDERATION OF SUBMISSIONS

13. The controversy whirls around two Notifications i.e. the Notifications dated 24.06.2016 and 27.10.2021. The Notification dated 24.06.2016 (Annexure-5) mandates that the Inspector of Schools after consultation with the Principal/Headmaster and the local people will forward two names to the Director of Secondary Education for selection of President and the Vice President with the recommendation of the Deputy Commissioner within a period of 30(thirty) days and after considering the names, the Director of Secondary Education will nominate the President and the Vice President after comparing the data of the candidates and the Government will approve the candidates.

14. This notification was partially modified vide Notification dated 27.10.2021 (Annexure-E) which mandates that the Deputy Commissioner is empowered to select the President and the Vice President of the SMDC of an educational institution of the concerned district with approval of the Guardian Minister. Thus, it is clear from a conjoint reading of the Notifications dated 24.06.2016 and 27.10.2021 that the process of selection of the President has to be initiated by the Inspector of Schools in consultation with the Principal/Headmaster of the school concerned and not upon the recommendation being made by the

Principal/Headmaster. The Deputy Commissioner of the district concerned will thereafter appoint the President. The letter dated 30.09.2021 (Annexure-C) forwarded by the Principal of Chunari Higher Secondary School clearly reveals that the Principal on his own, recommended the names of Anisur Rahman, appellant and Abdul Biten Ahmed to the Inspector of schools as President of SMDC which is contrary to the mandate of the modified Notification dated 27.10.2021 and the earlier notification dated 24.06.2016. The letter dated 16.12.2022 marked as Annexure-F depicts that the Inspector independently recommended the respondent no.1's name in deviation to the Notifications dated 24.06.2016 and 27.10.2021. Therefore, it is apparent that both the appellant and the respondent no. 1 were recommended dehors the procedural mandate.

15. In the wake of the foregoing discussions, it is thereby held that the order dated 12.09.2023 is apposite and interference is not warranted. It is also held that the order of the learned Single Judge allowing the respondent no. 1 to continue to discharge the function of the President, being a judicial order does not merit interference. We therefore record our concurrence to the decision of the learned Single Judge in I.A. (Civil) 1224/2023 closing the interlocutory application alongwith the writ petition No. 371/2023.

16. Appeal is devoid of merits and is hereby dismissed.

17. No order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant