

GAHC010205472016



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

Case No: WP(C)/977/2016

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 - 781310.
VERSUS

THE STATE OF ASSAM AND 11 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
HIGHER EDUCATION DEPARTMENT
DISPUR
GUWAHATI- 781006
ASSAM.

2:THE DIRECTOR

HIGHER EDUCATION
ASSAM
KAHILIPARA
GUWAHATI- 781019
ASSAM.

3:THE DEPUTY COMMISSIONER

NALBARI-CUM-CHAIRMAN
DIST. SCRUTINY COMMITTEE
NALBARI
ASSAM PIN - 781335.

4:THE INSPECTOR OF SCHOOLS

NALBARI-CUM-MEMBER SECRETARY
DISTRICT SCRUTINY COMMITTEE
NALBARI
ASSAM
PIN - 781335.
5:THE HEADMASTER

GANGAPUKHURI BARKURIHA HIGH SCHOOL
P.O. BARKURIHA DIST. NALBARI
ASSAM
PIN -781348.
6:THE SECRETARY TO THE GOVT. OF ASSAM

FINANCE ESTABLISHMENT B DEPARTMENT
DISPUR
GUWAHATI- 781006
ASSAM.
7:THE SECRETARY TO THE GOV.T OF A SSAM

PENSION and PUBLIC GRIEVANCES DEPARTMENT
DISPUR
GUWAHATI-781006
ASSAM.
8:THE SUPERINTENDENT OF POLICE

NALBARI
DIST. NALBARI
ASSAM
PIN - 781335.
9:THE ADDL. DIRECTOR GENERAL OF POLICE
VIGILANCE and ANTI CORRUPTION
ASSAM
SRIMANTAPUR
GUWAHATI
PIN - 781032.

10:THE SECONDARY EDUCATION BOARD
OF ASSAM SEBA REP. BY ITS SECRETARY
BAMUNIMAIDAM
DIST. KAMRUP METRO
ASSAM
PIN - 781022.

11:DR. TARUN SARMA
S/O LT. RAM CHANDRA SARMA R/O VILL- BIDYAPUR
BYE LANE NO. 7
NEAR MNC BALIKA MAHA BIDYALAYA P.O.NALBARI P.S. NALBARI DIST.
NALBARI
ASSAM PIN - 781335.
12:THE BRANCH MANAGER

STATE BANK OF INDIA
NALBARI BRANCH
P.O. and P.S. NALBARI DIST.NALBARI
ASSAM
PIN - 781335.

Advocate for : MS.J KALITA

Advocate for : SC

FINANCE R6 appearing for THE STATE OF ASSAM AND 11 ORS

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 and 2; Mr. A. Chaliha, learned standing counsel for the Finance Department, respondent no.6; Mr. G. Pegu, learned Govt. Advocate appearing for the respondent nos.3, 4, 7, 8 and 9; and Mr. P.K. Roy, learned counsel for the private respondent no.11. None appears on call for the respondent nos.5, 10 and 12.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioners have prayed for quashing of the order of provincialisation dated 20.01.2014 (Annexure-D), issued by the Director of Higher Education, Assam in respect of the teaching and non-teaching employees of the Uttar Kampith College (petitioner no.1 college) and directed the respondent nos.1 and 2 to provincialise the service of the respondent no.11 as Principal of the said college w.e.f. 01.01.2013. It may be mentioned that in the cause-title, the petitioner no.1 is referred to as Uttar Kampith Mahavidyalaya (Sr.).

3. The learned counsel for the petitioners has submitted that the District Scrutiny Committee, Nalbari, as per the provisions of section 10 of the erstwhile Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011, had recommended the name of the petitioner no.1 college for provincialisation of service of teaching and non-teaching employees. Accordingly, vide impugned order dated 20.01.2014 issued by the respondent no.2, the services of certain teaching and non-teaching employees, including the petitioner no.2 and respondent no.11 had been provincialized. The learned counsel for the petitioners has submitted that the respondent no.11 had supplied a fake High School Leaving Certificate, 1969, issued by the Board of Secondary Education, Assam, showing his roll number as 576 and aged 14 years 7 months on 01.03.1969, and accordingly, the respondent no.11 had continued in his service till 31.12.2014. It is submitted that as per RTI reply received by the petitioner from the Office of the Headmaster of Gangapukhuri Barkuriha High School vide communication dated 29.09.2015, the respondent no.11 had passed his HSLC Examination in 1967 from the said school and accordingly, his age on 1967 would be 16 years 7 months. Accordingly, it is submitted that as per the disclosure made by the said school, the respondent no.11 should have superannuated on 01.08.2010. Hence, it is submitted that the service of respondent no.11 could not have been provincialized by the impugned order dated 20.01.2014. By referring to the case of *K. Thimmappa & Ors. Vs. Chairman, Central Board of Directors, State Bank of India & Anr., (2001) 2 SCC 259*, the learned counsel for the petitioners has submitted that as constitutional right of the petitioner no.2 has been violated, the writ petition should not be dismissed on the ground of delay and laches.

4. The learned counsel for the respondent no.11 has submitted that the service of the petitioner no.2 was also provincialized by the impugned order

dated 20.01.2014 along with other teaching and non-teaching employees of the petitioner no.1 college. It is also submitted that the petitioner no.2 had also lodged FIR and other proceedings against the respondent no.11 and by referring to the allegations made in the FIR and in the present writ petition, it is submitted that the respondent no.11 could not have been made a better disclosure as it could have been materially affected him in his defence in criminal trial.

5. On a query made at the Bar, the learned counsel for the petitioners as well as the learned counsel for the respondent no.11 has submitted that on superannuation of the respondent no.11 on 31.12.2014, the petitioner no.2 was appointed as Principal In-charge of the petitioner no.1 college.

6. In the present case in hand, it is noted that the impugned order of provincialisation of service of the petitioner no.2 as well as the respondent no.11 was passed on 20.01.2014. From the statement made in the affidavit-in-opposition by the respondent no.11, it appears that an FIR was lodged by the respondent no.2, which was registered as Belsor P.S. Case No. 107/2015, under section 175/409/420/ 468/471 IPC and in course of investigation, the respondent no.11 was arrested and thereafter released on bail. Later on, the present writ petition was filed on 04.02.2016.

7. The Court is unable to find fault with the respondent no.11 in not clearly spelling out his defence as there is every likelihood that any statement made therein could have been used against him in the criminal proceeding, if any, arising out of Belsor P.S. Case No. 107/2015, which would have otherwise infringed the right of the petitioner to remain silent in a criminal proceeding.

8. Having noted that the respondent no.11 is being prosecuted, amongst others, for offence of criminal breach of trust, cheating, forgery and

using as genuine a forged document, which are the essential ingredients of sections 409/420/468/471 IPC, the Court is of the considered opinion that unless the documents produced by the respondent no.11 for seeking employment in the petitioner no.1 college is actually declared to be fake, this Court in exercise of jurisdiction under Article 226 of the Constitution of India would be a loath to express its views on the correctness of a document which is presently in scrutiny before the competent Court exercising jurisdiction under the Code of Criminal Procedure. Therefore, as the purported matriculation certificate of the respondent no.11 is a subject matter of police investigation, this Court is not inclined to entertain this writ petition to adjudicate the issue which is the subject matter of adjudication of trial of Belsor P.S. Case No. 107/2015.

9. Accordingly, this Court is inclined to close this writ petition. However, in the event, the status of document which is being examined in the Belsor P.S. Case No. 107/2015 is found to be fake, it would be open to the petitioner to take appropriate steps as he may be so advised in accordance with law.

10. In view of the discussion above, there is no necessity to deal with the case of *K. Thimmappa (supra)*, cited by the learned counsel for the petitioners.

11. There shall be no order as to cost.

JUDGE

Comparing Assistant