

GAHC010244672017



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

Case No. : WP(C)/7603/2017

DR. BARNALI DEKA
W/O DR. TAPAN KALITA FLAT NO. 352, BLOCK NO. 3, SILVER SPRING
APARTMENT, NEAR DTO OFFICE, P.O. UDALBAKRA, P.S. GORCHUK
GUWAHATI- 781034, DIST. KAMRUP M, ASSAM

VERSUS

THE STATE OF ASSAM and 3 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
EDUCATION SECONDARY DEPARTMENT.

2:THE DIRECTOR

HIGHER EDUCATION
ASSAM
KAHILIPARA
GUWAHATI -19.

3:THE GOVERNING BODY

PUB-KAMRUP COLLEGE
REP. BY ITS PRESIDENT
OFFICE OF THE PRINCIPAL
PUB- KAMRUP COLLEGE
P.O. BAIHATA CHARIALI
DIST. KAMRUP
ASSAM
PIN- 781381.

4:THE PRINCIPAL

PUB KAMRUP COLLEGE

P.O. BAIHATA CHARIALI
DIST. KAMRUP
ASSAM
PIN - 781381

Advocate for the Petitioner : MR.D TIWARI

Advocate for the Respondent : MR B P BORAH (R-4)

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

17.05.2023

Heard Mr. M. Biswas, learned counsel for the petitioner. Also heard Mr. D. Upamanyu, learned Standing Counsel for the Higher Education Department appearing for the respondent nos. 1 & 2 and Mr. B.P. Borah, learned counsel appearing for the respondent nos. 3 & 4.

2. The case of the petitioner is that she belongs to Scheduled Caste (Mali) community and she holds her caste certificate dated 11.03.1996 issued by the Deputy Commissioner, Nalbari. The petitioner applied for the sanctioned post of Lecturer in Assamese which was reserved for Schedule Caste candidate in Pub-Kamrup College. She was appointed vide order dated 10.02.2003. After serving the College for 9 (nine) years, the respondent authorities had terminated the service of the petitioner vide order dated 11.12.2012 on the ground that the petitioner does not belong to the Scheduled Caste (Mali) Community.

3. Aggrieved by the said termination, the petitioner had approached this Court earlier by filing WP(C) 6183/2012 and this Court vide order dated

28.02.2013, had set aside the termination order, amongst others, on the ground that the ratio laid down in the case of *Kumari Madhuri Patil & Anr. vs. Addl. Commissioner, Tribal Development & Ors.*, reported in (1994) 6 SCC 241 was not complied with.

4. After some delay, the petitioner was re-instated in service. However, the process was not initiated to give her Selection Grade Pay Scale from Senior Scale. This lead to filing of WP(C) 3043/2015, the said writ petition stated to be still pending for adjudication before this Court.

5. Thereafter, the Governing Body of Pub-Kamrup College, in a meeting held on 25.11.2017 vide resolution No. 4 by referring to order dated 07.03.2013 in WP(C) 6183/2012 took a *prima facie* view that the petitioner does not belong to Scheduled Caste (Mali) Community, but she belonged to General Kalita Caste and accordingly, 15 days show-cause notice was issued to the petitioner vide letter dated 27.11.2017. The said resolution dated 25.11.2017 and letter dated 27.11.2017 have been assailed by the petitioner in this writ petition.

6. Notice of motion was issued in this case vide an order dated 11.12.2017 and as an interim measure, the show cause notice dated 27.11.2017 was suspended. The said interim order has been extended from time to time.

7. When the matter was previously listed on 12.05.2023, the learned counsel for the respondent nos. 3 and 4 had sought for some time to obtain instructions and accordingly, it has been informed to the Court today that till date the process of re-verification of the Scheduled Caste status of the petitioner has not

been done.

8. Accordingly, it is submitted that the liberty to have the caste of the petitioner to be enquired into, be left open.

9. In this case, resolution to issue show-cause notice dated 25.11.2017 and show-cause notice dated 27.11.2017 have been assailed and notice of motion was issued vide order dated 11.12.2017. But till date, none of the respondents have responded to the notice issued by this Court and did not file any affidavit-in-opposition.

10. This Court vide judgment and order dated 28.02.2013 passed in WP(C) 6183/2012, had interfered with the action impugned therein and had directed that the petitioner be re-instated in service. For last 10 years, from date of the order, i.e., 28.02.2013, the respondent authorities, in their wisdom, did not initiate the process of having caste status of the petitioner enquired by the authority competent to do so. Therefore, in the absence of any affidavit-in-opposition in this matter, it *prima facie* appears that the impugned resolution no. 4 dated 25.11.2017 and consequential notice dated 27.11.2017 are actuated out of sense of vengeance and therefore, mala fide.

11. The Court is inclined to hold that in terms of the ratio laid down in the case of *Kumari Madhuri Patil (supra)*, the governing body had no power and authority to take a resolution on the caste status of the petitioner as they are not the authority competent to make such an enquiry and as such an enquiry by the Governing Body runs counter to the law laid down in the said case. The

caste certificate of the petitioner has not been cancelled by the authority competent to do so.

12. Accordingly, the Court has no hesitation to set aside and quash resolution no. 4 dated 25.11.2017 passed by the Governing Body of Pub-Kamrup College as well as the show cause notice dated 27.11.2017 issued to the petitioner by the Principal, Pub-Kamrup College. Having noted that it was the second occasion where the authorities of the Pub-Kamrup College had made an endeavour to take action against the petitioner on questioning her caste certificate, this Court is inclined to permanently restrain the Governing Body of the said Pub-Kamrup College to take any resolution against the petitioner relating to her caste till a final decision is taken by the appropriate authority as already indicated in the judgment and order of this Court dated 28.02.2013, passed in WP(C) 6183/2012.

13. This writ petition stands allowed to be extended as indicated above.

14. There shall be no order as to cost.

15. The petitioner shall produce a certified copy of the order before the Principal, Pub-Kamrup College to bring the order to the notice of the said authority.

JUDGE

Comparing Assistant