

GAHC010264722023



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

Case No. : WP(C)/6817/2023

NAZRUL ISLAM

S/O- LATE ALHAJ MD. MAHFEL UDDIN, R/O- GAURIPUR TOWN, WARD NO.
12, P.O. GAURIPUR, DIST.- DHUBRI, ASSAM, PIN- 783331

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, EDUCATION DEPARTMENT (SECONDARY),
DISPUR, GUWAHATI-6

2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19

3:THE INSPECTOR OF SCHOOLS
DHUBRI DISTRICT CIRCLE (DDC)
DHUBRI
DISTRICT- DHUBRI
ASSAM
PIN- 78330

Advocate for the Petitioner : MR. T J MAHANTA

Advocate for the Respondent : SC, SEC. EDU.

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

Date : 23-11-2023

JUDGMENT & ORDER (ORAL)

Heard Mr. TJ Mahanta, learned senior counsel for the petitioner and Ms. S

Chutia, learned counsel for the respondents in the Secondary Education Department, Government of Assam.

2. The name of the petitioner Nazrul Islam along with four other teachers of the school were forwarded by the Inspector of Schools to the Director of Secondary Education, Assam for being the in-charge Principal of Agomani Higher Secondary School in the Dhubri district. Accordingly, the matter for appointment of the in-charge Principal was processed and by the order dated 16.10.2023 of the Director of Secondary Education, Assam, it was provided that until further orders, the Inspector of Schools, Dhubri would hold the charge of Principal of Agomani Higher Secondary school along with financial powers. The reason thereof is stated in paragraph 2 of the said order that the petitioner Nazrul Islam, who has the qualification of M.A B.Ed degree is otherwise the senior most teacher of the school and he would have been eligible to be the in-charge Principal. But, the Director had taken note that the petitioner Nazrul Islam had acquired his B.Ed degree from the IGNOU in the year 2014 without obtaining prior permission from the appointing authority and therefore, the provisions of Section 13 of the Assam Civil Services (Conduct) Rules, 1964 (in short Rules of 1964) is violated. The order also records the provision of Rule 13 of the Rules of 1964, which provides that 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 an examination of a recognized Board or University without obtaining prior/previous permission from the appointing authority. Similarly, another teacher of the school Habibar Rahman, who also has the qualification of M.A B.Ed degree, but otherwise second in the order of seniority after the petitioner Nazrul Islam was also refused to be the in-charge Principal on the same ground that he had also

obtained his B.Ed degree from IGNOU without obtaining prior permission from the appointing authority.

3. The implication under the law of obtaining B.Ed degree without obtaining prior permission had been decided by this Court in its judgment dated 28.09.2023 in IA(Civil) 2615/2023 (Smti Mouchumi Saharia –vs- Smtiri Rekha Kalita and others). In Mouchumi Saharia (supra), a proposition had been laid down that if a government employee obtained an educational degree from a board or university without obtaining prior permission from the appointing authority, under Rule 13 of the Rules of 1965, it will be construed to be a misconduct. But, such misconduct cannot render a degree otherwise valid in law awarded by a board or a university to be invalid, so that such degrees cannot be taken into consideration while further assessing the career prospect of such person. A degree awarded by a university would be governed under section 22 of the University Grants Commission Act, 1956 and no other authority would be empowered to either declare such degree to be invalid or not take note of it other than the UGC itself.

4. From such point of view, the order dated 16.10.2023 of the Director of Secondary Education, Assam in refusing to take into consideration the B.Ed degree of the petitioner as because it was obtained without obtaining prior permission from the appointing authority would be unacceptable in law.

5. At the same time, Mr. TJ Mahanta, learned senior counsel for the petitioner has also made a statement that in the instant case, the petitioner Nazrul Islam had obtained the permission from the Principal as well as the Inspector of Schools as per the certificate of the Principal dated 14.07.2011 available at page 19 Annexure-2 to the writ petition and the endorsement of the Inspector of Schools available at Annexure-3 page 20 to the writ petition, which prima-facie

discloses that the permission contemplated under Rule 13 of the Rules of 1965 had been obtained by the petitioner in some manner.

6. In view of such infirmity, upon understanding the implication of Rule 13 of the Rules of 1965 as well as there being a requirement to verify the factual information that whether the petitioner had obtained any prior permission, the order dated 16.10.2023 is set aside and the matter is remanded back to the Director of Secondary Education, Assam for passing a fresh order by taking note of all the attending facts and circumstances as required to be taken as well as those indicated hereinabove.

7. We have also heard Ms. S Chutia, learned counsel for the respondents in the Secondary Education Department, Government of Assam. But instead of issuing notice, we deem it appropriate that the matter requires a final adjudication inasmuch as in the event the order dated 16.10.2023 is stayed, the Agomani Higher Secondary School will be without any in-charge Principal and on the other hand, if it is not stayed, it will be the Inspector of Schools who will be the in-charge Principal along with his other duties he performs as an Inspector, which again may lead to a situation where the school would suffer. Considering the balance of convenience as well as the irreparable loss that the school may suffer, we deem it appropriate to pass a final order as indicated above.

The writ petition is disposed of as indicated above.

JUDGE

Comparing Assistant