

GAHC010267872023



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

Case No. : WP(C)/6938/2023

MITALI SONOWAL
W/O- DIGANTA MANIKIAL, R/O- TITABOR, SAMUGURI, BABIJAN, P.O. AND
P.S. TITABOR, DIST. JORHAT, ASSAM, PIN- 785630.

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,
DEPARTMENT OF SCHOOL EDUCATION (SECONDARY EDUCATION
DEPARTMENT), ASSAM CIVIL SECRETARIAT, BLOCK-C, DISPUR,
GUWAHATI-6.

2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
CUM MEMBER SECRETARY
STATE SELECTION BOARD
ASSAM
KAHILIPARA
GUWAHATI-19.

3:THE REGISTRAR
DIBRUGARH UNIVERSITY
DIST. DIBRUGARH
PIN- 786004.

4:THE INSPECTOR OF SCHOOL

JORHAT DISTRICT CIRCLE
JORHAT K.K. HANDIQUE PATH
JORHAT
ASSAM-785001

Advocate for the Petitioner : MR. S K DAS

Advocate for the Respondent : SC, SEC. EDU.

**BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA**

ORDER

Date : 05.12.2023

Heard Mr. S.K. Das, learned counsel for the petitioner and Mr. S. Neogi, learned counsel for the respondents No. 1, 2 and 4, being the authorities in the Secondary Education Department. Also heard Mr. N.C. Das, learned senior counsel for the respondent No. 3, being the Registrar, Dibrugarh University.

2. The petitioner seeks to be the In-charge Principal of Padma Ram Sarmah Higher Secondary School, Madhapur, Titabor in the Jorhat district stating that otherwise for all purpose the petitioner has the requisite qualification and eligibility as per Rules 12 and 18 of the Assam Secondary Education (Provincialised Schools) Service Rules, 2018 for being a regular Principal of the school. The petitioner is aggrieved by the order dated 04.10.2023 of the Director of Secondary Education, Assam, wherein while considering the claim of the petitioner to be the In-charge Principal, it stood rejected by providing that the petitioner had obtained her Master's degree from Dibrugarh University during her service period without prior/previous permission from the appointing authority and as such, her MA degree is found to be unacceptable in law. The relevant provision of the order dated 04.10.2023 in respect of the petitioner is extracted as below:

“Moreover, Smti. Mitali Sonowal, Assistant Teacher acquired her Master Degree from Dibrugarh University under Distance Learning mode during her service period without prior/previous permission from the appointing authority. As such, her MA degree is also not found as per rule.”

3. Upon reading the reason provided in the order dated 04.10.2023, it is discernible that the petitioner had been refused to be the In-charge Principal of the school concerned on the ground that she had acquired her MA qualification from Dibrugarh University without obtaining prior/previous permission from the appointing authority.

4. It is no longer res-integra that even if a qualifying degree is obtained by a Government employee without obtaining prior/previous permission from the appointing authority, the same at the best may be a misconduct, but it cannot be a reason that the degree itself will be an invalid degree. In this respect, reliance is placed on the judgment and order dated 28.09.2023 of this Court rendered in I.A.(Civil) No. 2615/2023 and accordingly, by relying upon the proposition laid down in the judgment and order dated 28.09.2023 in I.A.(Civil) No. 2615/2023, the conclusion of the Director in refusing to accept the MA degree of the petitioner to be a valid degree and accordingly rejecting the petitioner for being the In-charge Principal is incorrect and contrary to the provision of law.

5. In view of the above, the reasoning of rejecting the claim of the petitioner for being the In-charge Principal by the order dated 04.10.2023 is set aside and the matter is remanded back to the Director of Secondary Education, Assam for a fresh consideration on the claim of the petitioner to be the In-charge Principal of Padma Ram Sarmah Higher Secondary School. In doing so, the Director shall take note of the proposition of law laid down by this Court in its judgment and order dated 28.09.2023 in I.A.(Civil) No. 2615/2023 that an MA degree, even if obtained without prior/previous permission from the appointing authority, the same would not make the degree itself to be an invalid degree. Secondly, it is stated by Mr. S.K. Das, learned counsel for the petitioner that the petitioner had

in fact obtained permission from the Inspector of Schools which is annexed as Annexure 2 page 20 to the writ petition.

6. While considering the claim of the petitioner as directed above, the Director to also take note of the stated fact relied upon by the petitioner that she had obtained prior permission from the Inspector of Schools. The required order be passed by the Director within a period of 15 (fifteen) days from the date of receipt of certified copy of this order, if necessary, by giving a hearing to the petitioner.

Writ petition stands disposed of as indicated above.

JUDGE

Comparing Assistant