

GAHC010273502018



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

Case No. : WA/367/2018

SMTI ASHA RANI BRAHMA
W/O SRI MRIDURAJ BASUMATARY,
R/O VILL. NORTH SUKANIPAA,
P.O. KHAGRABARI, PIN 783380,
DIST. CHIRANG, BTAD, ASSAM.

.....**Writ Appellant**

-Versus-

1. SMTI BINIKA GOYARI,
D/O SRI KATIMAL GOYARY,
R/O VILL. BORIPARA, P.O. BOROBABAR, P.S. BIJNI,
PIN 783393, DIST. CHIRANG, BTAD, ASSAM.

2:THE STATE OF ASSAM,
THROUGH THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM,
HIGHER EDUCATION DEPTT.,
DISPUR, GUWAHATI 06

3:THE DIRECTOR OF HIGHER EDUCATION, ASSAM,
KAHILIPARA, GUWAHATI 19

4:THE BODOLAND TERRITORIAL COUNCIL, KOKRAJHAR,
REPRESENTED BY ITS PRINCIPAL SECY. BODAFANWGW,
P.O. AND DIST. KOKRAJHAR, BTAD,
ASSAM, PIN 783370

5:THE DEPUTY SECY. EDUCATION,
BODOLAND TERRITORIAL COUNCIL,
EDUCATION P.O. AND DIST. KOKRAJHAR BTAD,
ASSAM, PIN 783370

6:THE DIRECTOR OF EDUCATION,
BODOLAND TERRITORIAL COUNCIL,

P.O. AND DIST. KOKRAJHAR BTAD,
ASSAM, PIN 783370.

7:THE UNIVERSITY GRANT COMMISSION,
BAHASUR SHAH JAFAR MARG,
NEW DELHI 02.

8:THE SELECTION COMMITTEE FOR SELECTION OF ASSTT. PROFESSOR
BODO,
REPRESENTED BY ITS CHAIRPERSON,
BIJNI COLLEGE,
P.O.AND P.S. BIJNI,
DIST. CHIRANG,
BTAD, ASSAM.

9:THE GOVERNING BODY, BIJNI COLLEGE
REPRESENTED BY ITS PRESIDENT, BIJNI COLLEGE,
P.O. AND P.S. BIJNI,
DIST.CHIRANG, BTAD, ASSAM.

10:THE PRINCIPAL,
BIJINI COLLEGE,
P.O.AND P.S.BIJNI,
DIST. CHIRANG, BTAD, ASSAM.

..... **Respondents**

– BEFORE –

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUMAN SHYAM

For the Appellant: Mr. K.N. Choudhury, Senior Advocate assisted by Mr. A. Upadhyay and Mr. N. Gautam, Advocates.

For the respondent(s): Mr. U.K. Nair, Senior Advocate assisted by Mr. R. Dhar, Mr. R. Majumdar and Mr. B.C. Mushahary, Advocates for respondent No.1.

Mr. S. Das, Standing Counsel, Higher Education Department, Assam for respondent Nos.2 & 3.

Ms. R.B. Bora, Standing Counsel, BTC for respondent Nos.4, 5 & 6.

Mr. S.D. Roy, Advocate on behalf of Mr. A. Chamuah,
Standing Counsel, UGC for respondent No.7

Date of Hearing : 23.03.2023.

Date of Judgment : 28.04.2023.

JUDGMENT & ORDER

[Sandeep Mehta, CJ]

This intra-court writ appeal is directed against the judgment/final order dated 08.11.2018 passed by the learned Single Judge in WP(C) No.2072/2017 whereby, the writ petition preferred by the respondent No.1 was accepted and the selection of the appellant herein (respondent No.10 in the writ petition) as an Assistant Professor, Department of Bodo pursuant to the advertisement dated 06.10.2015 issued by the Principal, Bijni College (Provincialised) was set aside.

2. The writ appellant (respondent No.10 in the writ petition) was placed at merit position No.1 whereas the respondent No.1/writ petitioner was placed at merit position No.2 pursuant to interviews held by the Selection Committee on 24.02.2016.

3. Being aggrieved, the respondent No.1 initially preferred a writ petition, WP(C) No.2564/2016 questioning the award of the first merit position to the writ appellant. The said writ petition, WP(C) No.2564/2016 was disposed of by the learned Single Judge vide order dated 09.12.2016 observing that the recommendations of the Selection Committee had not yet been forwarded by

the Governing Body of the College to the Director of Higher Education, Assam who was expected to take a decision either to accept or negate the recommendation of the Selection Committee based on the relevant laws.

4. Pursuant to receiving the said order, the Director of Higher Education, Assam apprised the writ petitioner/ respondent No.1 that the College fell within the domain of the Bodoland Territorial Council (BTC) and thus, the subject matter was in the domain of the Director of Higher Education, BTC.

5. The respondent No.1/writ petitioner filed a review petition being Review Petition No.3/2017 wherein, the Director, BTC was impleaded as a party and the review petition was disposed of by the order dated 27.01.2017 partially modifying the order dated 09.12.2016 and directing the Director of Higher Education, BTC to take a final decision on the recommendation of the Selection Committee.

6. Pursuant to this direction, Governing Body of the Bijni College and Director of Higher Education, BTC provided opportunity of hearing to all concerned parties and passed the order dated 29.03.2017 approving the recommendations of the Selection Committee and forwarded the same to the BTC authority seeking administrative approval for appointment of the writ appellant as an Assistant Professor.

7. Being aggrieved by the order dated 29.03.2017, the respondent No.1/writ petitioner again approached the High Court by filing the captioned writ petition as WP(C) No.2072/2017 which was allowed by the impugned order dated 08.11.2018 which is assailed in this appeal.

The learned Single Judge held that the writ appellant was wrongly awarded two marks of experience for the period during which she had joined the Junior

Research Fellowship offered by the UGC and the position post reduction of two marks relegated her below the writ petitioner in merit.

8. The core issue calling for adjudication of this Court in this appeal is as to whether the writ appellant who had joined the Junior Research Fellowship (JRF) course offered by UGC on 27.08.2013 could claim 2(two) marks for teaching experience after the date on which she joined such Fellowship.

9. The writ petitioner/respondent No.1, referred to UGC guidelines and contended before the learned Single Judge that the private respondent/writ appellant herein, could not have been awarded 2(two) marks of teaching experience for the year 2013-2014 since she had joined the Junior Research Fellowship (JRF) being offered by the UGC. If 2(two) marks were deducted from the gross marks of the writ appellant/respondent No.10, then she would be placed below the writ petitioner in merit and hence, the appointment of the writ appellant/respondent No.10 as an Associate Professor was illegal and arbitrary.

10. The contention of the writ appellant/respondent No.10 was that despite joining the JRF, she as well as respondent No.1/writ petitioner continued to teach at the Bijni College and as such, she was rightly awarded two marks for experience towards teaching even after joining the JRF.

11. Learned Single Judge, after considering the relevant material available on record, came to conclusion that the UGC guidelines were applicable to the selection process in question. As per these guidelines, the writ appellant/respondent No.10 could not have indulged in teaching activities after joining the JRF and as such, 2(two) marks which was awarded to her towards experience for teaching were directed to be deducted from her gross evaluation. The recommendation of the Selection Committee was reversed/modified to that

extent.

12. Owing to the said reduction, the appellant herein was relegated to position No.2 in merit below the writ petitioner and her selection did not sustain. Under these circumstances, the appellant has approached this Court by way of this intra-Court writ appeal for challenging the impugned order dated 08.11.2018 passed by the learned Single Judge.

13. Learned Senior counsel Mr. K.N. Choudhury representing the appellant vehemently and fervently contended that the UGC guidelines were not applicable to the State of Assam at the relevant point of time and as such, there was no impediment which could have precluded the writ appellant to continue teaching in the Bijni College despite joining the JRF (Junior Research Fellowship) in the year 2013. As a consequence, she was entitled to award of 2(two) marks for teaching experience in the subject selection process.

Learned Senior counsel placed reliance on the Hon'ble Supreme Court Judgment in the case of ***Kalyani Mathivanan Vs. K.V. Keyaraj***, reported in **(2015) 6 SCC 363** and urged that it has been clearly held by Hon'ble Supreme Court that UGC guidelines are mandatory only in the States which have adopted the UGC Regulations whereas the same are directory in the States which have not adopted the UGC Regulations.

14. It was further contention of Mr. Choudhury that the appellant herein voluntarily discontinued to accept the grant under the JRF from the year 2014. Thus, the experience gained by the writ appellant by teaching in the Bijni College entitled her to 2(two) marks under this head.

15. Mr. Choudhury also referred to the judgment rendered by the learned Single Judge of this Court on 30.09.2022 in **WP(C) No.5201/2022 (Krishna**

Chandro Goudo Vs. State of Assam & Ors.) wherein it has been observed that the UGC Regulations have not been adopted by the State Government.

Mr. Choudhury, thus, implored the Court to accept the appeal and reverse the impugned judgment dated 08.11.2018 and affirm the appointment of the writ appellant to the post of Assistant Professor, Bodo in Bijni College.

16. Per contra, Mr. U.K. Nair, learned Senior Counsel assisted by Mr. R. Dhar, learned counsel representing the respondent No.1/writ petitioner vehemently and fervently opposed the submissions advanced by the appellant's counsel.

17. Mr. Nair placed reliance on the Hon'ble Supreme Court judgment in the case of **Gambhirdan N. Gadhvi Vs. State of Gujarat**, reported in **(2022) 5 SCC 195** wherein, it has been held that UGC guidelines are required to be mandatorily followed by all educational institutions.

He referred to the observations made by the Hon'ble Supreme Court in Para 50 of the said judgment wherein it was observed as below.

“50. It cannot be disputed that the UGC Regulations are enacted by the UGC in exercise of powers under Sections 26(1)(e) and 26(1)(g) of the under the said Act, 1956. Even as per the UGC Act every rule and regulation made under the said Act, shall be laid before each House of Parliament. Therefore, being a subordinate legislation, UGC Regulations becomes part of the Act. In case of any conflict between the State legislation and the Central legislation, shall prevail by applying the rule/principle of repugnancy as enunciated in Article 254 of the Constitution as the subject “education” is in the Concurrent List (List III) of the Seventh Schedule to the Constitution. Therefore, any appointment as a Vice-Chancellor contrary to the provisions of the UGC Regulations can be said to be in violation of the statutory provisions warranting a writ of quo warranto.”

18. Mr. Nair also submitted that even in the O.M. dated 14.08.2015 issued by the Government of Assam, there is a clear reference to the UGC guidelines.

He referred to Condition No.3 of the O.M. which reads as below.

“3. Teaching experience shall carry 2 marks for one year of experience of teaching undergraduates in a State Govt. recognized College subject to a maximum of 10 marks. This will be related to actual total hours of teaching imparted by the candidate in the particular year with the standard teaching hours of a regular Asstt. Professor as per UGC guidelines. Further, teaching experience shall be counted only for those candidates and to such extent only who have taught the concerned subject after acquiring the eligibility conditions.”

By referring to the aforesaid Condition No.3, Mr. Nair submitted that for counting the teaching experience, it was essential that the candidate concerned must have imparted actual total hours of teaching in the particular year with the standard of teaching hours of a regular Assistant Professor as per UGC guidelines. He submitted that to qualify the Requirements of Standard of Teaching Hours, the person concerned must impart teaching for 40 hours a week as provided by Clause 15.1 of the UGC Regulations, 2010.

19. Mr. Nair referred to the University Grants Commission (Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and other Measures for the Maintenance of Standards in Higher Education) Regulations, 2010 and more particularly, the Clause No.3.9.0 thereof which stipulates that the period of time taken by candidates to acquire M. Phil. and/or Ph.D. Degree shall not be considered as teaching/research experience to be claimed for appointment to the teaching positions.

20. Mr. Nair further submitted that the writ appellant got inducted into the Junior Research Fellowship Scheme being offered by the UGC in the year 2013 and thus, it does not lie in her mouth to say that the UGC guidelines are not applicable to the State of Assam.

21. He referred to the University Grants Commission Junior Research

Fellowship in Science, Humanities and Social Sciences and more particularly, the Clause 9 thereof, which provides that the fellow with the consent of the guide/head of the department may assist the university/ institution in its academic works etc., provided such work is not likely to hinder the research programme on hand. The total amount of time spent on such activities should not exceed 10 hours a week.

22. Mr. Nair also drew the Court's attention to the O.M. dated 25.06.2012 issued by the Assam Higher Education Department laying down the procedure for selection of Lecturer (Assistant Professor)/Librarian in provincialized College of Assam. He submitted that this O.M. prescribes the qualifications in terms of the UGC Regulations dated 30.06.2010. Furthermore, there is a clear prohibition in Clause (vii) of the said O.M. that the period of time taken by the candidates to acquire M. Phil. and/or Ph.D. Degree shall not be considered as teaching/research experience to be claimed for appointment to the positions (Clause-3.9.0).

23. Mr. Nair further submitted that as the guidelines for JRF proscribe the candidate pursuing a fellowship to spare more than 10 hours a week for activities beyond research, the appellant herein could not have taught for the period of 40 hours mandatorily required under Clause 15.1 of the UGC Guidelines dated 28.06.2010 to count as teaching experience in the process for selection to the post in question. He thus implored the Court to affirm the judgment of the learned Single Judge and to dismiss the appeal.

24. We have given our thoughtful consideration to the submissions advanced at the Bar and have gone through the impugned order and the material on record.

25. Firstly, we will take up the submission of Mr. K.N. Choudhury, learned senior counsel representing the appellant that the UGC Regulations not having been adopted by the State of Assam are not applicable to the controversy at hand.

In this regard, we may first refer to the O.M. dated 14.08.2015 issued by the Government of Assam, Education Department laying down the guidelines for selection of Assistant Professors and description of marks for ranking of candidates. This O.M. *inter alia* provides that the same was being issued as per the UGC Guidelines.

Clause No.3 of the O.M. dated 14.08.2015 providing that teaching imparted for 1(one) year would entitle the candidate to 2(two) marks of experience further stipulates that the teaching should have been imparted by the candidate in a particular year with the standard teaching hours of a regular Assistant Professor as per UGC guidelines.

26. In the case of ***Gambhirdan N. Gadhvi Vs. State of Gujarat*** (supra), the Hon'ble Supreme Court has laid the controversy to rest by holding that UGC guidelines are mandatory for all educational institutions.

27. In addition thereto, we may note that the appellant herein got herself inducted for Junior Research Fellowship which in turn is a scheme offered by UGC. Thus, there is no scope for accepting the argument of Mr. K.N. Choudhury, learned senior counsel representing the appellant that the UGC guidelines do not apply to educational institutions in Assam.

28. Under Clause No.9 of the UGC JRF guidelines, the fellow can undertake activities other than the research programme only with the consent of the Guide/Head of the Department. No such consent accorded by the Head of the

Department prior to the selection process in question was placed on record by the writ appellant. Even if the said aspect is ignored for the sake of arguments in order to claim benefit of 2(two) marks by virtue of teaching experience, the appellant would have to establish that she taught for minimum period of 40 hours per week in terms of Clause No.15.1 of the UGC guidelines. However, Clause No.9 of the UGC JRF Research guidelines clearly prohibits a research fellow from undertaking activities other than the research for more than 10 hours a week.

Thus, there was no possibility that the writ appellant could have indulged in teaching activities for 40 hours a week so as to accept her claim for 2(two) marks towards teaching experience under the said advertisement.

Clause No.3.9.0 of the UGC guidelines clearly stipulates that the period of time taken by the candidates to acquire M. Phil. and/or Ph.D. degree shall not be considered as teaching/research experience to be claimed for appointment to the teaching positions. A fortiori, the appellant was clearly precluded from award of marks towards teaching experience in the subject selection process.

29. By the O.M. dated 25.06.2012 issued by the Government of Assam, the Government of Assam adopted the Clause No.3.9.0 of the UGC guidelines and thus, there is no merit in the argument of Mr. K.N. Choudhury, learned senior counsel for the appellant that UGC guidelines do not apply to the State of Assam.

30. As a consequence, we grant our full imprimatur to the view taken by the learned Single Judge in WP(C) No.2072/2017 by order dated 08.11.2018 whereby, the writ petition preferred by the respondent No.1 was accepted.

31. The appeal thus lacks merit and is dismissed as such.

32. No order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant