

GAHC010010212024



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

Case No. : I.A.(Civil)/155/2024

NASIMUDDIN AHMED,
S/O- LATE MUHIBUDDIN AHMED, R/O- BEHIND RAJDHANI MASJID,
DISPUR, DIST.- KAMRUP(M), GUWAHATI, ASSAM.

VERSUS

SWAPNA SIKHA CHOUDHURY AND 13 ORS.
W/O- SANKAR RANJAN PATOWARY, R/O- JITENDRA NAGAR, WARD NO. 7,
MANGALDOI, DIST. DARRANG, ASSAM.

2:THE STATE OF ASSAM

REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM
DEPARTMENT OF ELEMENTARY EDUCATION
DISPUR
GUWAHATI-6.

3:THE SECRETARY TO THE GOVT. OF ASSAM
DEPARTMENT OF SCHOOL EDUCATION
DISPUR
GUWAHATI-6.

4:THE DIRECTOR

STATE COUNCIL OF EDUCATIONAL RESEARCH AND TRAINING
ASSAM
KAHILIPARA
GUWAHATI-781019.

5:SIMANTA BARTHAKUR
SENIOR LECTURER AND PRINCIPAL I/C

DIET
GOALPARA
DUDHNOI
DIST. GOALPARA
PIN- 783124.

6:ANANTA GOGOI
SENIOR LECTURER AND PRINCIPAL I/C
DIET
JORHAT
DIST. JORHAT
PIN- 785632.

7:RAJEN DUTTA
S/O- LATE DHANIRAM DUTTA
R/O- NITAIPUKHURI
SIVASAGAR
P.S.- DIMOW
DISTRICT- SIVASAGAR
SONARI

8:BIMAN CH. DUTTA
S/O- LATE RATNESWAR DUTTA
R/O- SIVASAGAR BISHNU NAGAR
P.S. AND DIST.- SIVASAGAR
DISTRICT- SONARI
SIVASAGAR.

9:LABANYA KR. DAS
S/O- LATE PRANESWAR DAS
R/O- VILL. TITKAGURI
PATHSALA
DISTRICT- BARPETA.

10:MRINAL CHOUDHURY
S/O- LATE DEBENDRA NATH CHOUDHURY
R/O- KRISHNAGAR
PATHSALA
DIST.- BARPETA.

11:RUP NATH DAS
S/O- LATE RAJENDRA NATH DAS
R/O- VILL. KOLBARI
P.O.- BHABANIPUR
DISTRICT- BARPETA.

12:KISHOR KR. DAS
S/O- SRI LAKSHMI KANTA DAS

R/O- HOUSE NO.2
2 NO. MATHGARIA CABIN STOPPAGE
ZOO NARENGI ROAD
DIST.- KAMRUP(M)
GUWAHATI.

13:ALAKESH DUTTA
S/O- LATE UMESH CH. DUTTA
PRESENTLY RESIDING AT SAMGURI
NAGAON AND POSTED AS SENIOR LECTURER AT DISTRICT INSTITUTE
OF EDUCATIONAL TRAINING
SAMAGURI
NAGAON DISTRICT.

14:DAISY GOGOI
D/O- LATE DR. HEMA KANTA GOGOI
R/O- H. NO.-2 RAJGARH
BYE LANE-5
DISTRICT- KAMRUP(M)
GUWAHATI

Advocate for the Petitioner : MR. K N CHOUDHURY

Advocate for the Respondent : SC, ELEM. EDU

**BEFORE
HONOURABLE MR. JUSTICE KARDAK ETE**

ORDER

Date : 15.02.2024

Heard Mr. K.N. Choudhury, learned senior counsel assisted by Mr. R. Ahmed, learned counsel for the applicant/respondent No.7. Also heard Mr. M.P. Sarma, learned counsel for the opposite party/petitioner and Ms. P. Das, learned counsel for the SCERT.

By filing this application, the applicant has sought for a direction to the State respondents to give effect to the promotion of the applicant as Principal, DIET, Morigaon as per the recommendation of the DPC by way of interim relief.

Vide notification dated 30.06.2023, the inter-se seniority was fixed and accordingly final gradation list of the Senior lecturers of various Districts Institute of Education and Training (DIET) in the State was published. In the said final gradation list of Senior Lecturers of DIET as on 31.05.2023, the name

of the applicant appears at Serial No.2.

It is submitted that in respect of the incumbent at Serial No.1 of the said gradation list namely Sri Rajen Dutta, who has been impleaded as respondent No.6 and was going to retire on 31.10.2023, this Court vide order dated 13.10.2023 has passed an interim order in his favour, which is quoted hereinbelow:-

“5. Accordingly, in the interim it is provided that the recommendation of the DPC selecting respondent no. 6 namely Rajen Dutta may be given effect forthwith and the joining of the respondent no. 6 shall be subject to the outcome of the writ petition meaning thereby that in the event this writ petition is dismissed, the joining of the respondent no. 6 would be construed to be a regular joining in the post and if otherwise, on the writ petition being allowed, appropriate order as per law shall follow.

“6. In respect of the other private respondents, the State authorities are directed not to fill up any post till the next returnable date. In the meantime, the respondent authorities in the SCERT may file their affidavit, if so advised. The affidavit to be filed by the respondents be completed one week prior to the next returnable date and the writ petitioner if so advised, may file their reply so that the matter would be ready for hearing on the next returnable date.”

By referring to the above order of this Court, the learned senior counsel for the applicant submits that the applicant is also on the same footing and is going to retire on 30.04.2024. Therefore, prays that similar order may be passed directing the State respondents to give effect to the promotion of the applicant as Principal as per the recommendation of the DPC.

The challenge in the writ petition is the selection of the respondents including the applicant as Principal DIET on the ground that as per the provisions of the Assam District Institute of Education and Training (DIET) Service Rules, 2010 and the National Council for Teachers Education (Recognition Norms and Procedure) Regulation 2014, there would be requirement of the qualification of Ph.D in order to be selected and appointed as the Principal. But the respondents including the applicant did not have the qualification of Ph.D.

Learned senior counsel for the applicant/respondent No.7 contends that the NCTE Regulations is applicable only to those institutions where the B.Ed degree is being undertaken whereas, the institutions where the respondents including the applicant herein, are appointed as Principals, are imparting D.El.Ed course and not B.Ed Course.

As reproduced herein above, after considering the submissions of the learned counsel for the

parties, this Court on 13.10.2023, in the interim, has provided that the recommendation of the DPC selecting the respondent No.6 namely Rajen Dutta may be given effect forthwith and the joining of the respondent No.6 shall be subject to the outcome of the writ petition, meaning thereby, that in the event, the writ petition is dismissed, the joining of the respondent No.6 shall be construed to be a regular joining in the post and if otherwise the writ petition being allowed, appropriate order as per law shall follow.

Having considered the submissions, I am of the view that the applicant herein namely Nasimuddin Ahmed who has been arrayed as the respondent No.7 in the writ petition, is a similarly situated person with that of the respondent No.6 namely Sri Rajen Dutta, who is due to retire on 30.04.2024.

Thus, I deem it appropriate to allow this interlocutory application. Accordingly, in the interim, it is provided that the recommendation of the DPC selecting the applicant namely Nasimuddinn Ahmed/the respondent No.7 in the writ petition may be given effect forthwith and the joining of the applicant shall be subject to the final outcome of the writ petition.

It is needless to observed that in the event the writ petition is dismissed, the joining of the applicant would be construed to be a regular joining in the post and if the writ petition is allowed, appropriate orders that may be passed shall follow.

I.A. stands allowed and disposed of.

JUDGE

Comparing Assistant