

GAHC010013442024



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

Case No. : WP(C)/350/2024

ABUL KALAM
S/O LT. ABU BAKKAR SIDDIQUE, VILL-LOCHANABORI, P.O.-
LOCHANABORI, P.S.-MOIRABARI, DIST-MORIGAON, ASSAM, PIN-782126

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, EDUCATION (ELEMENTARY) DEPARTMENT, DISPUR,
GUWAHATI-6

2:DIRECTOR OF ELEMENTARY EDUCATION
KAHILIPARA
GUWAHATI-19

3:DISTRICT ELEMENTARY EDUCATION OFFICER
MORIGAON
P.O. AND DIST-MORIGAON
ASSAM

4:BLOCK ELEMENTARY EDUCATION OFFICER
LAHARIGHAT
DIST-MORIGAON
ASSAM

5:THE HEAD MASTER CUM MEMBER SECRETARY
MADHYA LOCHANABORI L.P. SCHOOL
VILL-LOCHANABORI
P.S.-MOIRABARI
DIST-MORIGAON

ASSAM
PIN-78212

Advocate for the Petitioner : MR. Z HAMMAD,

Advocate for the Respondent : SC, ELEM. EDU,

**BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR**

ORDER

Date : 29.10.2024

Heard Mr. Z. Hammad, learned counsel for the petitioner as well as Mr. P. K. Bora, learned Standing counsel, Elementary Education Department for the respondent Nos. 1 to 4.

2. The Commissioner and Secretary to the Government of Assam, Education (Elementary Department) issued a Notification dated 03.08.2011, notifying the norms for constitution as well as the powers and functions of the School Management Committee of Government/ Provincialised Elementary Schools (L.P., U.P., M.E., Madrassa) of Assam as per Part V of Rule 13 & 14 of the Assam Right of Children to Free and Compulsory Education Rules, 2011. In the second notification the process for removal of president/members of SMC and filling up all vacancies is also provided.

3. In terms of the guidelines contained in the notification dated 03.08.2011, a general meeting was held for the purpose of constitution/election of School Management Committee of the Madhya Lochanabori L. P. School, Morigaon. Thereafter, the District Elementary Education Officer by an order dated 26.12.2023 approved & allowed the petitioner to act as President of SMC, Madhya Lochanabori L. P. School.

4. However, while the petitioner was functioning as such, the District Elementary Education Officer, Morigaon by an order dated 06.01.2024 withdrew the order dated 26.12.2023 on the ground of allegations lodged by the local public and allowed the Block Elementary Education Officer, Laharighat to act as President of SMC of the said Madhya Lochanabori L. P. School. Being aggrieved, the petitioner is before this Court by way of the writ petition.

5. Learned counsel for the petitioner submits that the removal of the petitioner as president of the SMC, Madhya Lochanabori L. P. School was done in violation of the guidelines provided in the Notification dated 03.08.2011 inasmuch as no enquiry was conducted with regard to the said allegations made by the public and the District Elementary Education Officer, Morigaon proceeded to remove the petitioner as President of SMC of the said School.

6. The respondent No. 2, i.e., Director of Elementary Education Assam has filed affidavit contesting the writ petition. In the said affidavit, a detailed report in respect of the petitioner made by the District Elementary Education Officer, Morigaon, Assam is annexed as Annexure A-1.

7. A perusal of the said report would clearly indicate that no enquiry was conducted prior to the removal of the petitioner as President of SMC of the said School inasmuch as it is stated that the enquiry of the allegation is under process.

8. Mr. P. K. Bora, learned Standing counsel, Elementary Education has also furnished a communication dated 24.10.2024 written by the Director of Elementary Education, Assam, wherein, it is submitted that the District Elementary Education Officer, Morigaon has already submitted the enquiry report in connection with the petitioner which was conducted by the Sub-

inspector of Schools, Laharighat. However, the report submitted by the Sub-inspector of Schools, Laharighat is not satisfactory as the enquiry did not cover the main allegations based on which the petitioner was removed from the Presidentship of the SMC of the School inasmuch as the complainants has alleged that the petitioner was involved in misappropriation of Government money during his tenure as President of the SMC.

9. Annexure A-1, annexed to the affidavit filed by the respondent No. 2 as well as communication dated 24.10.2024, clearly indicates that no enquiry was conducted by the authorities prior to removal of the petitioner as President of SMC of the said School.

10. The notification dated 03.08.2011 also provides the guidelines for removal of president/members of the SMC and filling up of vacancies. Therein, Clause- 5 (ii) provides that a person shall not be qualified to be a President, Vice President or Member of SMC and can be removed by the SMC through a resolution signed by atleast $2/3^{\text{rd}}$ members present in the meeting of the committee which should not be less than or equal to 50% of the total member of the committee or by the District Elementary Education Officer after satisfying himself/herself of the facts through an enquiry.

11. The respondent has failed to show that there was an SMC resolution signed by atleast $2/3^{\text{rd}}$ members present in the meeting for removal of the petitioner as President of the said SMC. Further, as discussed hereinabove, there was no enquiry prior to the removal of the petitioner as President of SMC by the District Elementary Education Officer before issuance of the order dated 06.01.2024.

12. In view of the observations and discussions made hereinabove, the order

dated 06.01.2024 is interfered with and same is accordingly set aside and quashed. The respondents are directed to forthwith re-instate the petitioner as President of Madhya Lochanabori L. P. School.

13. However, this Court makes it clear that it is not interfering with the enquiry process that is being held against the petitioner. The respondents are directed to complete the enquiry against the petitioner as early as possible but not later than 1 (one) month with effect from the date of passing this order. Thereafter, if the enquiry report is against the petitioner then appropriate actions against the petitioner maybe taken by the authorities, however, with accordance with law.

14. With the above observations and discussions, this writ petition is disposed of.

JUDGE

Comparing Assistant