

GAHC010051742024



2024:GAU-AS:11316

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

Case No. : WP(C)/1448/2024

MD.MAINUL ISLAM
S/O- MD. SHER ALI,
R/O- VILLAGE- GORAIMARI PAM,
P.O- BALIKATIA,
P.S- JURIA, DIST- NAGAON, ASSAM, PIN-782122

VERSUS

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

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

3:THE INSPECTOR OF SCHOOLS
NAGAON DISTRICT CIRCLE
NAGAON
ASSAM
PIN-78200

Advocate for the Petitioner : MD. M H CHOUDHURY, R. BARUAH, TANZIM L.
CHOUDHURY, MR. S N AHMED, MR. P CHAKRABORTY, MR MONZUR K CHOUDHURY

Advocate for the Respondent : SC, SEC. EDU.,

**BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR**

ORDER

Date : 19.11.2024

Heard Mr. M. H. Choudhury, learned Senior Counsel assisted by Mr. R. Baruah, learned counsel for the petitioner. Also heard Ms. D. Muchahary, learned Standing Counsel, Secondary Education Department appearing on behalf of all the respondents.

2. It is the case of the petitioner that he is the senior most Assistant Teacher (Hindi) in Alitangani Osmania Higher Secondary School situated in the District of Nagaon. The petitioner received graduate scale of pay w.e.f. 19.11.1991. The petitioner acquired M.A. in Political Science in the year 2018 from the Techno Global University, Madhya Pradesh. The petitioner also acquired M.A. in Hindi from the Mahamaya Technical University, Noida in the year 2023. The case of the petitioner is that he is qualified to hold the post of In-charge Principal of Alitangani Osmania H. S. School in terms of Rule 12 of the Assam Secondary Education (Provincialised Schools) Service Rules, 2018 (Rules of 2018, in short), inasmuch as the petitioner has the required qualification and the petitioner has also rendered more than 15 years of service as a Graduate Teacher. Accordingly, prior to the retirement of the then In-charge Principal of the said Alitangani Osmania H. S. School, he preferred a writ petition which was numbered as WP(C) No. 7351/2023 apprehending that the In-charge Principal would be appointed de hors the Rules of 2018. The said writ petition was disposed of by an Order dated 10.01.2024 holding that the writ petition is pre-mature and is only based on apprehension which is yet to be fortified. However, when the said writ petition was dismissed, this Court also held that the respondent authorities

should not construe the dismissal of the writ petition to be giving liberty to them to fill up the post of Principal in Alitangani Osmania H. S. School, Nagaon, de hors the mandatory provisions of Rule 12 of the Rules of 2018. It was further directed that the respondent authorities were required to fill up the vacancy strictly in compliance with the Rules and by appointing a person who is eligible for such appointment in terms of the provisions of Rule 12 of the Rules of 2018.

3. In the meantime, one Principal Assistant of the Alitangani Osmania H. S. School was allowed to hold the post of In-charge Principal of the said School and accordingly, the petitioner being aggrieved filed another Writ Petition No. 915/2024 before this Court. Pending disposal of the said writ petition, the Director of Secondary Education Department passed an Order dated 22.02.2024, whereby it was held that as the M.A. degrees were obtained by the petitioner from Universities outside the State and without prior approval of the competent authority, the same shall not be considered for allowing him to act as In-charge Principal of the School. Further, in the said Order it was also reflected that the rest of the Teachers of the Alitangani Osmania H. S. School, Nagaon did not fulfill the required criteria of teaching experience in terms of the existing service rules for holding the post of Principal of the School. Accordingly, the Inspector of Schools, NDC, Nagaon was allowed to act as Principal-in-Charge in Alitangani Osmania H. S. School, Nagaon in the greater interest of the School.

4. Being further aggrieved by the Order dated 22.02.2024 the petitioner has approached this Court again by way of the present writ petition.

5. During the pendency of this writ petition, one Md. Mainul Islam (subject teacher) of the said Alitangani Osmania H. S. School also preferred an I.A.(Civil) No. 2358 of 2024 praying for impleadment as a party respondent in the present writ petition on the ground that during the pendency of the present writ petition

the applicant/Md. Mainul Islam has also become eligible for being considered to hold the post of In-charge Principal of the said Alitangani Osmania H. S. School. However, considering the manner in which this Court purposes to dispose of this writ petition, the said Md. Mainul Islam has not been impleaded as a party respondent in the present writ petition.

6. Mr. M. H. Choudhury, learned Senior counsel appearing on behalf of the petitioner submits that any degree obtained by the petitioner cannot be nullified by the Director of Secondary Education, Assam, inasmuch as the degree acquired by the petitioner having been acquired from a recognized university, the said degree is otherwise valid and acceptable in law and accordingly the petitioner should be held to fulfill the eligibility criteria as mandated by the Rules of 2018 for the post of In-charge Principal of the Alitangani Osmania H. S. School, under the Rules of 2018. He also submits that this Court in catena of cases have already held that a university offers a degree in exercise of the powers under Section 22 of University Grants Commission Act, 1956 and taking note of Rule 21 of the General Clauses Act, it is only the University who can declare the degree obtained to be untenable in law or may withdraw it. No other 3rd party can be understood to have any jurisdiction or authority not to accept a degree offered by a University in exercise of the powers under Section 22 of the UGC Act, 1956. Accordingly, the Order dated 22.02.2024 issued by the Director of Secondary Education, Assam should be set aside and a direction be issued to the authorities to consider the case of the petitioner for allowing him to act as In-charge Principal of the said Alitangani Osmania H. S. School, Nagaon.

7. Ms. D. Muchahary, learned Standing counsel, Secondary Education Department, Assam submits that as the petitioner had obtained his M.A. degrees without the prior approval of the competent authority, the Director of

Secondary Education, Assam deemed it fit not to recognize the M.A. degree obtained by the petitioner. She also submits that a Departmental proceeding has been initiated against the petitioner under the Rule 9 of the Assam Services (Discipline & Appeal) Rules, 1964 and a Show Cause notice has been issued to the petitioner on 12.07.2024 and the said Departmental proceeding is presently in process.

8. I have considered the submissions made by the learned counsels for the parties.

9. Insofar as the M.A. degrees obtained by the petitioner is concerned, there is no doubt that the said degrees were obtained without getting prior approval from the competent authority. A Co-ordinate Bench of this Court by Judgment & Order dated 28.09.2023 passed in I.A.(Civil) No. 2615/2023 has held as under :-

“5. A university offers a degree in exercise of the powers under section 22 of the University Grants Commission Act, 1956 and taking note of Rule 21 of the General Clauses Act, it is only the university who can declare the degree obtained to be untenable in law or may withdraw it. No other third party can be understood to have any jurisdiction or authority not to accept a degree offered by a university in exercise of the powers under section 22 of the UGC Act, 1956.

We are unable to accept the view formed by the Director of Secondary Education, Assam in the order dated 27.07.2023 that as because the writ petitioner Smti Smriti Rekha Kalita had obtained the M.A Degree without obtaining NOC or previous permission from the authority, therefore, the M.A Degree of the writ petitioner would be unacceptable as per Rule. From such point of view, the writ petitioner can be said to have made out

a strong prima facie case against the order dated 27.07.2023. If the M.A Degree of the writ petitioner is otherwise valid and acceptable in law, the writ petitioner may have a legal right to be the in-charge Principal and accordingly also has the benefit of the balance of convenience as well as will suffer irreparable loss if the interim order dated 09.08.2023 is vacated.”

10. The Judgment & Order dated 28.09.2023 was also followed by this Court in the case of Tankeswar Nath Vs. State of Assam & Others [WP(C) No. 5419/2023, dated 18.12.2023], wherein, after examining the provisions of Rule 13 of the Assam Civil Services (Conduct) Rules, 1965 and agreeing with the decision of this Court in the case of Mouchumi Saharia (supra) concluded as under :-

“7. On application of the decision of this Court in the case of Mouchumi Saharia(supra); to the issues arising in the present case, it is clear that the petitioner having been validly granted a Masters Degree in Assamese and the said Degree having been obtained from an institution recognized by the University Grants Commission, the respondent authorities do not have the jurisdiction and authority to invalidate the said Degree obtained by the petitioner and such invalidation cannot be done even impliedly.

The effect of the denial of the benefits of holding the charge of in-charge Principal of the said school to the petitioner inspite of being the senior-most Teacher of the school, amounts to an invalidation of the Degree obtained by the petitioner in Krishna Kanta Handique State Open

University, which is impermissible.

Accordingly, the order, dated 30.03.2023, having been issued only on the ground that the petitioner was not eligible to hold the charge of the post of Principal, Sarthebari Higher Secondary School, Sarthebari, on account of he having obtained his M.A. Degree without prior permission from the competent authorities for undergoing such a course; stands interfered with.

9. The M.A. Degree acquired by the petitioner having been so acquired from a recognized University; the said Degree is otherwise valid and acceptable in law and accordingly, the petitioner having fulfilled the eligibility criteria as mandated for recruitment to the post of principal of the school in question, under the provisions of Rule 12(3) of the said Rules of 2018; a legal right has accrued to the petitioner to hold the charge of the post of Principal, Sarthebart Higher Secondary School, Sarthebari.”

11. Applying the ratio of the decisions of this Court in the case of Tankeswar Nath(supra) it is held that the M.A. degree acquired by the petitioner having been so acquired from a recognized University, the said degree is otherwise valid and acceptable in law and accordingly, the petitioner is held to have fulfilled the eligibility criteria for the post of In-charge Principal of the said Alitangani Osmania H. S. School.

12. Further, this Court also cannot ignore the claim of the said Md. Mainul Islam (subject teacher), who claims that he has also acquired the eligibility criteria under the Rules of 2018 for being considered for the post of In-charge

Principal of the Alitangani Osmania H. S. School.

13. Accordingly, this writ petition is disposed of, directing the Director of Secondary Education Assam to consider the claim of the petitioner as well as all other candidates who are eligible for consideration for the post of In-charge Principal of Alitangani Osmania H. S. School and take necessary steps for filling up the said post in accordance with law within a period of 1 (one) month from the date of receipt of a certified copy of the order of this Court.

14. The impugned Order dated 22.02.2024 is accordingly set aside and quashed. This Court however, makes it clear that it is not interfering with the disciplinary proceeding initiated against the petitioner.

JUDGE

Comparing Assistant