

GAHC010131242024



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

Case No. : WP(C)/3388/2024

PRITI BHAJAN BYAKTI
S/O-PYARI MOHAN DAS, R/O- VILL.- CHOTOKONA, P.O. GAMARIA, DIST.
KARIMGANJ, ASSAM, PIN- 788156.

VERSUS

THE STATE OF ASSAM AND 4 ORS
TO BE REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVT. OF ASSAM, HIGHER EDUCATION DEPARTMENT, DISPUR,
GUWAHATI-06.

2:THE DIRECTOR OF HIGHER EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19.

3:THE DEPUTY COMMISSIONER
KARIMGANJ CUM PRESIDENT
GOVERNING BODY
PANDIT DEENDAYAL UPADHYAYA ADARSHA MAHAVIDYALAYA (PDUAM)
ERALIGOOL
DIST. KARIMGANJ
ASSAM

4:THE PRINCIPAL
PANDIT DEENDAYAL UPADHYAYA ADARSHA MAHAVIDYALAYA (PDUAM)
ERALIGOOL
DIST. KARIMGANJ
ASSAM

5:COTTON UNIVERSITY
REPRESENTED BY ITS REGISTRAR
PANBAZAR
GUWAHATI

ASSAM-781001

Advocate for the Petitioner : MR. M H LASKAR, MR. S ROY,M. HOSSAIN

Advocate for the Respondent : GA, ASSAM, SC, HIGHER EDU

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

ORDER

Date : 13.11.2024

Heard Mr. M.H. Laskar, learned counsel for the petitioner and Mr. A.R. Tahbildar, learned Standing counsel for the respondent Nos. 1, 2 and 4. Also heard Mr. N. Sarma, learned Government Advocate for the respondent No. 3.

2. In this petition, under Article 226 of the Constitution of India, the petitioner, Dr. Priti Bhajan Byakti has put to challenge the legality of the letter, **Annexure-6, dated 07.06.2024**, issued by the Principal, Pandit Deendayal Upadhyaya Adarsha Mahavidyalaya, Eraligool, respondent No. 4. It is to be noted here that vide impugned letter dated 07.06.2024, No Objection Certificate (NOC) applied for by the petitioner, was rejected.

3. Mr. Laskar, learned counsel for the petitioner submits that the petitioner is working as an Assistant Teacher (Physics) in Pandit Deendayal Upadhyaya Adarsha Mahavidyalaya, Eraligool in the Karimganj district. And pursuant to an advertisement, **Annexure-3**, dated 11.03.2024, for appointment to various teaching positions including three posts of Associate Professor in Physics by the Cotton University, the petitioner has applied for the same. As per Clause 13 of the General Instructions and Terms Conditions of the advertisement, dated 11.03.2024, the candidates have to produce NOC from their employer. Mr.

Laskar submits that having applied for such post; the petitioner has applied for NOC to the Principal of Pandit Deendayal Upadhyaya Adarsha Mahavidyalaya, Eraligool, Karimganj vide letter, **Annexure-5**, dated 03.04.2024. However, vide impugned letter No. PDUAM/ERA/Misc/10/17-18/3102, dated 07.06.2024, **Annexure- 6**, the Principal of the College had informed the petitioner that the Governing Body of the College, in its resolution dated 31.05.2024, has decided not to issue No-Objection Certificate to the petitioner in the greater interest of the students of the college. Mr. Laskar also submits that by denying NOC to the petitioner vide impugned letter dated 07.06.2024, the Governing Body and the Principal has not only violated Rule 24 of the Assam College Employees (Provincialisation) Rules, 2010 but also violated the right of the petitioner. Therefore, it is contended to issue necessary direction to the respondent Nos. 3 and 4 to issue NOC to the petitioner, so that he can participate in the interview process.

4. Mr. Tahbildar, learned Standing Counsel for the respondent Nos. 1, 2 and 4, having obtained necessary instruction from the concerned respondents, submits that the services of the petitioner is governed by Assam College Employees (Provincialisation) Rules, 2010, and Rule 24 of the said Rules provides that the Governing Body has to issue NOC to the college employees for applying for other jobs. Producing a letter, No. E.Comp. 550356/2024/1, dated 18.10.2024, of the Deputy Director of Higher Education, Assam, Kahilipara, Guwahati, Mr. Tahbildar submits that this position is re-affirmed by said letter and in view of Rule 24, the Governing Body of a College has to issue NOC to the college employees for applying for other jobs and for admission to courses to higher studies, and this Rule has to be adhered to by all concerned. In view of above facts and circumstances, Mr. Tahbildar submit, there is no reason to refuse NOC

to the petitioner and that the respondent Nos. 1, 2 and 4 have no objection in the event of allowing this petition.

5. Mr. N. Sarma, the learned standing counsel for the respondent No.3 also adopted the submission of Mr. Tahbildar.

6. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the letter, dated 18.10.2024, issued by the Deputy Director of Higher Education, Assam, Kahilipara, Guwahati. It appears that in the said letter a clear direction was issued to the Governing Bodies and also to the Principals of the Colleges for issuing No-Objection Certificate adhering to Rule 24 of the Assam College Employees (Provincialisation) Rules, 2010.

7. It is to be noted here that Rule 24 of the Assam College Employees (Provincialisation) Rules, 2010 is read as under:

“The Governing Body shall issue No Objection Certificate to the college employees for applying for admission to courses of higher studies and for other jobs.”

8. In view of the aforementioned Rule 24 and the letter, dated 18.10.2024, of the Deputy Director of Higher Education, Assam, Kahilipara, Guwahati, the Governing Body and the Principals of a College has no other option but to issue NOC to the employees for applying for admission to courses of higher studies and for other jobs. This is the mandate of law. The discretion to disobey the mandate of law is not available to any authority and that there can be no island of insubordination to the rule of law. This is well settled proposition, laid down in the case of **J.P. Kulshrestha (Dr.) v. Allahabad University, (1980) 3 SCC 418** and also in the case of **K. Shekar vs. Indiramma and Others'** reported in **2002(3) SCC 586**.

9. In the case in hand, the Governing Body and the Principal of Pandit Deendayal Upadhyaya Adarsha Mahavidyalaya, Eraligool has not only flouted the Rule 24 of the Assam College Employees (Provincialisation) Rules, 2010, but also flouted the clear instruction in the letter, dated 18.10.2024, issued by the Deputy Director of Higher Education, Assam, Kahilipara, Guwahati. This is undoubtedly a reprehensible conduct on their part, which is impermissible.

10. Thus, having tested the impugned letter, dated 07.06.2024, issued by the respondent No. 4, whereby NOC was denied to the petitioner, on the touchstone of the principles discussed herein above, this court is of the considered opinion that the same failed to withstand the legal scrutiny.

11. In the result, I find sufficient merit in this petition and accordingly, the same stands allowed. The impugned letter, **Annexure-6**, dated 07.06.2024, issued by the respondent No. 4, stands set aside and quashed.

12. By a mandamus of this court, the respondent Nos. 3 and 4 are directed to issue NOC to the petitioner. And this exercise has to be carried out within a period of 15 (fifteen) days from the date of receipt of a certified copy of this order. The petitioner shall obtain certified copy of this order and place the same before the respondent Nos. 3 and 4.

13. In terms of above, writ petition stands disposed. The parties have to bear their own cost. The letter dated 18.10.2024, issued by the Deputy Director, Higher Education, Assam, so produced by Mr. Tahbildar shall be part of the record.

J U D G E

Comparing Assistant