

GAHC010170742023



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

Case No. : WP(C)/4526/2023

SMRITI REKHA KALITA
W/O- AMAR KUMAR DEKA, ASSISTANT TEACHER, MA, B.ED,
MANGALDAI GIRLS HIGHER SECONDARY SCHOOL, R/O- WARD NO.6,
MANGALDAI, DIST.- DARRANG, ASSAM, PIN- 784125

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM,
DEPARTMENT OF SCHOOL EDUCATION (SECONDARY EDUCATION
DEPARTMENT), ASSAM (CIVIL) SECRETARIAT, BLOCK-C, DISPUR,
GUWAHATI, ASSAM, PIN- 781006

2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI
ASSAM
PIN- 781019

3:THE INSPECTOR OF SCHOOLS
DARRANG DISTRICT CIRCLE
MANGALDAI ASSAM

4:SMTI. MOUCHUMI SAHARIA
ASSISTANT TEACHER
CUM I/C PRINCIPAL
MANGALDAI TOWN GIRLS HIGHER SECONDARY SCHOOL
MANGALDAI DIST.- DARRANG
ASSAM PIN- 78412

Advocate for the Petitioner : MR. A K DUTTA

Advocate for the Respondent : SC, SEC. EDU.

Linked Case : I.A.(Civil)/2751/2023

SMRITI REKHA KALITA
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ASSISTANT TEACHER
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MANGALDAI DIST.- DARRANG
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Advocate for : MR. A K DUTTA
Advocate for : SC SEC. EDU. appearing for THE STATE OF ASSAM AND 3 ORS

Linked Case : I.A.(Civil)/2615/2023
SMTI. MOUCHUMI SAHARIA
ASSISTANT TEACHER
CUM I/C PRINCIPAL

MANGALDAI TOWN GIRLS HIGHER SECONDARY SCHOOL
MANGALDAI DIST.- DARRANG
ASSAM
PIN- 784125

VERSUS

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2:THE STATE OF ASSAM
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ASSAM

Advocate for : MR. M DUTTA
Advocate for : SC
SEC. EDU. appearing for SMRITI REKHA KALITA AND 3 ORS.

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

ORDER

Date : 19.01.2024

Heard Mr. B. Purkayastha, learned counsel for the petitioner. Also heard Mr. Bedanta Kaushik, learned standing counsel, Secondary Education Department, appearing on behalf of Respondents No. 1, 2 & 3; and Mr. M. Dutta, learned counsel, appearing on behalf of Respondent No. 4.

2. The petitioner by way of instituting the present proceedings, has presented a challenge to an order, dated 27.07.2023, issued by the Director, Secondary Education Department, Assam, by which the private respondent No. 4, although junior to the petitioner, was allowed to function as the Principal in-charge of Mangaldoi Town Girls Higher Secondary School on the ground that the MA Degree as obtained by the petitioner was so pursued without obtaining No Objection Certificate(NOC) and/or previous permission from the appointing authority in violation of the provisions of Rule 13 of the Assam Civil Services (Conduct) Rules, 1965.

3. The facts as requisite for adjudication of the issues arising in the present proceedings, are noted hereinbelow:

The petitioner had joined the Mangaldoi Town Girls Higher Secondary School on 23.03.1992 and was authorized the graduate scale of pay w.e.f. 30.12.1992. The petitioner in course of her service, had acquired her Masters in Arts Degree

as well as completed her B.Ed. Course. The private respondent No. 4, on the other hand, had joined the said school on 17.03.1994 and was drawing her graduate scale of pay w.e.f. 17.03.1994 itself. By reckoning the dates of joining of the petitioner as well as the private respondent No. 4, the petitioner is senior to the Respondent No. 4 in the cadre of Graduate teacher.

On the incumbent in the post of Principal of Mangaldoi Town Girls Higher Secondary School slated to retire from her service w.e.f. 31.07.2023, on attaining the age of superannuation; a proposal came to be submitted by the jurisdictional Inspector of Schools, vide the communication, dated 24.07.2023, before the Director, Secondary Education Department, Assam, for allowing the next eligible teacher of the school to hold the charge of the post of Principal of the School, in question. In the said proposal, the names of the petitioner and the Respondent No. 4 figured. The Director, Secondary Education Department, Assam, thereafter, on consideration of the proposal as submitted by the jurisdictional Inspector of Schools, proceeded to hold vide the order, dated 27.07.2023, that the petitioner is not eligible to hold the charge of the post of Mangaldoi Town Girls Higher Secondary School in-as-much as she had acquired her MA Degree while in service without obtaining No Objection Certificate(NOC) and/or previous permission from the appointing authority which was held to be in violation of the provisions of the Rule 13 of the Assam Civil Services (Conduct) Rules, 1965. The MA Degree having been found to be invalid; the petitioner was held to not possess the requisite eligibility criterias for holding the charge of the post of Principal of Mangaldoi Town Girls Higher Secondary School. Accordingly, the Director, Secondary Education Department, Assam, allowed the Respondent No. 4 to hold the charge of the post of Principal of

Mangaldoi Town Girls Higher Secondary School, along with financial power under FR 49(c) to draw and disburse salary of the staff, etc.. The said order was to come into force w.e.f. 01.08.2023. The petitioner being aggrieved by the order, dated 27.07.2023, has approached this Court by way of filing the instant writ petition.

4. This Court, while issuing notice in the matter, vide order, dated 09.08.2023, was pleased to suspend the operation of the order, dated 27.07.2023. Being aggrieved, the Respondent No. 4 approached this Court by instituting an interlocutory application being IA(c)2615/2023, praying for vacation and/or modification of this Court's order, dated 09.08.2023, passed in the present proceeding.

5. This Court, vide judgment & order, dated 28.09.2023, passed in IA(c)2615/2023[Smti. Mouchumi Saharia v. Smriti Rekha Kalita], had rejected the said interlocutory application so filed by the Respondent No. 4 holding that the MA Degree as obtained by the petitioner being so obtained from a recognized University; mere violation of Rule 13 of the Assam Civil Services (Conduct) Rules, 1965, would not invalidate such Degree and the same would continue to hold its field.

6. The conclusions as reached by this Court vide judgment & order, dated 28.09.2023, passed in IA(c)2615/2023, being relevant to the issues arising in the present proceeding, is extracted hereinbelow:

“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.

6. 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 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."

7. The judgment & order, dated 28.09.2023, was duly followed by this Court in the case of Tankeswar Nath v. State of Assam & ors. [WP(c)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 follows:

"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.

8. *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, Sarthebari Higher Secondary School, Sarthebari.*

8. Applying the ratio of the decision of this Court in the case of ***Tankeswar Nath***(supra), it is held that the MA 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 criterias as mandated for recruitment to the post of Principal of charge of the post of Principal of Mangaldoi Town Girls Higher Secondary School under the provisions of Rule 12(3) of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018.

9. The petitioner being otherwise senior to the Respondent No. 4, a legal right has accrued to the petitioner to hold the charge of the post of Principal of charge of the post of Principal of Mangaldoi Town Girls Higher Secondary School.

10. Accordingly, the matter stands remanded back to the Director, Secondary Education Department, Assam, who shall now pass appropriate formal order allowing the petitioner to hold the charge of the post of Principal of Mangaldoi Town Girls Higher Secondary School.

11. The Director, Secondary Education Department, Assam, in terms of the observations and directions passed hereinabove; shall now be required to pass the consequential orders within a period of 1(one) month from the date of receipt of a certified copy of this order.

12. With the above directions, the writ petition stands disposed of.

JUDGE

Comparing Assistant