

GAHC010171242024



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

Case No. : WP(C)/4305/2024

DR. MURALI KRISHNA SARMA
S/O- LATE BIJOY KRISHNA SARMA, R/O AND P.O. KAMAKHYA DHAM, P.S.
JALUKBARI, GUWAHATI- 781010, ASSAM (ASSISTANT PROFESSOR,
DEPARTMENT OF FINANCE, K.C. DAS COMMERCE COLLEGE,
CHATRIBARI, GUWAHATI- 781008)

VERSUS

THE STATE OF ASSAM AND 4 ORS
(THROUGH THE COMMISSIONER AND SECRETARY TO THE GOVT. OF
ASSAM, HIGHER EDUCATION DEPARTMENT, DISPUR, GUWAHATI- 781006)
2:THE DIRECTOR OF HIGHER EDUCATION

KAHILIPARA

GUWAHATI- 781019

ASSAM

3:THE GOVERNING BODY

K.C. DAS COMMERCE COLLEGE

CHATRIBARI

GUWAHATI- 781008

ASSAM (THROUGH THE PRESIDENT OF THE GOVERNING BODY)

4:THE PRINCIPAL AND SECRETARY

K.C. DAS COMMERCE COLLEGE

CHATRIBARI

GUWAHATI- 781008

ASSAM

5:DR. BHABABHUTI SARMA

VICE PRINCIPAL

K.C. DAS COMMERCE COLLEGE

CHATRIBARI

GUWAHATI- 781008

ASSA

Advocate for the Petitioner : MR. P J PHUKAN,

Advocate for the Respondent : SC, HIGHER EDU, MS R DAS (R-3 AND 4),MS

M.CHAKRABORTY (R-3 AND 4),MR A SHARMA (R-3 AND 4),MR J DAS (R-3 AND 4),MR A TALUKDAR (R-3 AND 4),MR. A KHOOND (R-3 AND 4),MS B BORA (R-3 AND 4),MS. N CHOUDHURY (R-3 AND 4),MR. A K BHUYAN (R-3 AND 4),MS. B BHUYAN (R-3 AND 4)

**BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR**

ORDER

Date : 26.09.2024

Heard Mr. P. J. Phukan, learned counsel for the petitioner. Also heard Mr. S. Bhuyan, learned standing counsel, Higher Secondary Education Department for the respondent Nos. 1 and 2; Ms. B. Bhuyan, learned senior counsel assisted by Ms. B. Bora, learned counsel for the respondent Nos. 3 and 4 and Mr. S. Bhuyan, learned counsel for the respondent No.4.

2. The petitioner was initially appointed as a part time Teacher of K.C Das Commerce College, Chatribari, Guwahati in the year 1989. Thereafter, on the basis of a resolution passed by the Governing Body in its meeting held on 29th of September, 1997, the petitioner was regularized as whole-time Founder Teacher in the Department of Commerce w.e.f 24.08.1990 by an Office Order dated 01.10.1997, issued by the Secretary, K.C Das Commerce College, Chatribari, Guwahati.

3. The petitioner is aggrieved by the communication dated 30.11.2021, issued by the Principal of K.C Das Commerce College, whereby, on the basis of resolution No.2 of the Governing Body meeting held on 27th of November, 2021, the respondent No.5 was appointed as the Vice Chairman of K.C Das Commerce

College with immediate effect.

4. The learned counsel for the petitioner submits that as the petitioner was appointed as whole-time Founder Teacher w.e.f 24.08.1990, he should have been allowed to discharge the functions of the Vice Principal of the College inasmuch as, the respondent No.5 who joined only on 07.09.1992 and is junior to the petitioner could not have been allowed to function as the Vice Principal of the College. The learned counsel for the petitioner places reliance in Clause-VI of the UGC Notification dated 18th of July, 2018, which provides that an existing senior faculty member may be designated as Vice Principal by the Governing Body of the College on the recommendation of the Principal, for a tenure of 2(two) years, who can be assigned specific activities, in addition to his/her existing responsibilities. He therefore submits that as the petitioner was regularize as a whole-time Founder Teacher w.e.f 24.08.1990, the petitioner should have been allowed to discharge the functions of the Vice Principal of the said K.C Das Commerce College. It is also submitted that the petitioner is retiring on 30th of September, 2024 and as his junior has been allowed to function as Vice Principal of the K.C Das Commerce College, a direction is required directing the authorities in the K.C Das Commerce College to permit the petitioner to function as Vice Principal prior to his retirement i.e., 30.09.2024.

5. Ms. B. Bhuyan, learned senior counsel appearing on behalf of the respondent Nos. 3 and 4 submits that the petitioner has suppressed relevant material facts while filing the writ petition and as the petitioner was sleeping

over his rights and have challenged the appointment of the respondent No.5 as Vice Principal after more than 2(two) years, the writ petition should be dismissed on the grounds of delay and laches. It is also submitted that the Secretary to the Governing Body of the K.C Das Commerce College by a communication dated 18.06.1996 appointed the petitioner as a whole-time Lecturer in the Department of Commerce w.e.f 01.06.1996 as Founder College of the said K.C Das Commerce College. Accordingly, the petitioner joined on the same day and since then the seniority of the petitioner has been reckoned w.e.f 18.06.1996. The learned counsel for the respondent Nos. 3 and 4 also submits that the Government of Assam has not sanctioned/created any post of Vice Principal for provincialised colleges of Assam. She further submits that Clause-VI of the UGC Notification dated 18th of July, 2018 only provides that an existing senior faculty member may be designated as Vice Principal by the Governing Body of the College on the recommendation of the Principal and therefore, the respondent No.5 who is an existing senior faculty of the K.C Das Commerce College was allowed to discharge as the Vice Principal. Therefore, there is no infirmity in the communication dated 30.11.2021, by which the respondent No.5 was appointed as Vice Principal of K.C Das Commerce College.

6. Mr. S. Bhuyan, learned counsel for the respondent No.5 endorses the submissions made by the learned counsel appearing for the respondent Nos. 3 and 4.

7. This Court has considered the submissions made by the learned counsel for the parties.

8. It is to be noted that the communication by which the respondent No.5 was appointed as Vice Principal of K.C Das Commerce College was issued as early as on 30.11.2021. Thereafter, the petitioner made a representation on 01.11.2021, before the President, Governing Body of K.C Das Commerce College which was followed by another representation dated 9th of May, 2023. Thereafter, the petitioner was keeping quiet and he filed the present writ petition only on 20.08.2024.

9. This Court has noticed that the petitioner had approached this Court belatedly i.e., only about one and a half month prior to his date of retirement and therefore, this Court is of the considered opinion that the petitioner was sleeping over his rights for a considerable period of time. Therefore, this Court while exercising the discretionary powers under Article 226 of the Constitution of India have to bear in mind the issue of delay and laches with care and caution. The petitioner should have approached this Court at the earliest possible opportunity. However, this Court has noticed that there was inordinate delay on the part of the petitioner in approaching this Court. Therefore, this Court without entering into the merits of the writ petition is of the considered opinion that the present writ petition is barred by the principles of delay and laches and accordingly, the writ petition being devoid of merit is dismissed.

No order as to cost.

JUDGE

Comparing Assistant