

GAHC010181932023



2024:GAU-AS:8502

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

Case No: WP(C)/4255/2023

SWAPNA SIKHA CHOUDHURY
W/O- SANKAR RANJAN PATOWARY
R/O- JITENDRA NAGAR
WARD NO. 7
MANGALDOI
DIST. DARRANG
ASSAM

VERSUS

THE STATE OF ASSAM AND 13 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM
DEPARTMENT OF ELEMENTARY EDUCATION
DISPUR
GUWAHATI-6.

2:THE SECRETARY TO THE GOVT. OF ASSAM
DEPARTMENT OF SCHOOL EDUCATION
DISPUR
GUWAHATI-6.

3:THE DIRECTOR

STATE COUNCIL OF EDUCATIONAL RESEARCH AND TRAINING
ASSAM
KAHILIPARA
GUWAHATI-781019.

4:SIMANTA BARTHAHAKUR
SENIOR LECTURER AND PRINCIPAL I/C
DIET

GOALPARA
DUDHNOI
DIST. GOALPARA
PIN- 783124.

5:ANANTA GOGOI
SENIOR LECTURER AND PRINCIPAL I/C
DIET
JORHAT
DIST. JORHAT
PIN- 785632.

6:RAJEN DUTTA
S/O- LATE DHANIRAM DUTTA
R/O- NITAIPUKHURI
SIVASAGAR
P.S.- DIMOW
DISTRICT- SIVASAGAR
SONARI

7:NASIMUDDIN AHMED
S/O- LATE MUHIBUDDIN AHMED
R/O- BEHIND RAJDHANI MASJID
DISPUR
DIST.- KAMRUP(M)

8:BIMAN CH. DUTTA
S/O- LATE RATNESWAR DUTTA
R/O- SIVASAGAR BISHNU NAGAR
P.S. AND DIST.- SIVASAGAR
DISTRICT- SONARI
SIVASAGAR.

9:LABANYA KR. DAS
S/O- LATE PRANESWAR DAS
R/O- VILL. TITKAGURI
PATHSALA
DISTRICT- BARPETA.

10:MRINAL CHOUDHURY
S/O- LATE DEBENDRA NATH CHOUDHURY
R/O- KRISHNAGAR
PATHSALA
DIST.- BARPETA.

11:RUP NATH DAS
S/O- LATE RAJENDRA NATH DAS
R/O- VILL. KOLBARI

P.O.- BHABANIPUR
DISTRICT- BARPETA.

12:KISHOR KR. DAS
S/O- SRI LAKSHMI KANTA DAS
R/O- HOUSE NO.2
2 NO. MATHGARIA CABIN STOPPAGE
ZOO NARENGI ROAD
DIST.- KAMRUP(M)
GUWAHATI.

13:ALAKESH DUTTA
S/O- LATE UMESH CH. DUTTA
PRESENTLY RESIDING AT SAMGURI
NAGAON AND POSTED AS SENIOR LECTURER AT DISTRICT INSTITUTE OF
EDUCATIONAL TRAINING
SAMAGURI
NAGAON DISTRICT.

14:DAISY GOGOI
D/O- LATE DR. HEMA KANTA GOGOI
R/O- H. NO.-2 RAJGARH
BYE LANE-5
DISTRICT- KAMRUP(M)
GUWAHATI.

Advocate for : MR. U K NAIR
Advocate for : SC
EDU appearing for THE STATE OF ASSAM AND 13 ORS.

Link Case No. : WP(C)/4963/2023

DR. JIBENDU DUTTA
S/O- LATE MAKHAN LAL DUTTA, SENIOR LECTURER, DISTRICT INSTITUTE
OF EDUCATION AND TRAINING, CACHAR, UDHARBOND, R/O- FLAT NO. 3E,
THE PEARL LINK VIEW, 1ST LINK ROAD, SILCHAR, DIST.- CACHAR,
ASSAM, PIN- 788006

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE SECRETARY, TO THE GOVT. OF ASSAM,
DEPARTMENT OF SCHOOL EDUCATION, (ELEMENTARY EDUCATION),
DISPUR, GUWAHATI, ASSAM, PIN- 781006

2:THE DIRECTOR OF SCERT
ASSAM
KAHILIPARA
GUWAHATI- 78101

Advocate for the Petitioner : MR. B PURKAYASTHA, MR. B ZAMAN

Advocate for the Respondent : SC, ELEM. EDU, SC, SCERT, ASSAM

BEFORE
HON'BLE MR. JUSTICE KALYAN RAI SURANA

In WP(C) 4255/2023:	
For petitioner	Mr. H.K. Das, Mr. U. Pathak, Mr. N.K. Sarma, Advocates
For respondent nos. 1 & 2	Mr. B. Kaushik, S.C., Elementary Education.
For respondent no.3	Mr. P. Nayak, S.C., SCERT.
For respondent nos. 4 & 5	Ms. D. Borgohain, Mr. P. Gohain, Ms. M. Sarmah, Advocates.
For respondent nos. 6 – 14	Mr. K.N. Choudhury, Sr. Adv. Mr. S. Hazarika, Ms. A.M. Dcosta, Advocates.
In W.P.(C) 4963/2023	
For petitioner	Mr. B. Purakayastha, Mr. A.K. Dutta, Advocates.
For respondent no.1	Mr. B. Kaushik, S.C., Elementary Education.
Dates of hearing	14.05.2024, 06.06.2024
Date of judgment & order	29.08.2024

I N D E X

Particulars	Paragraphs
Brief facts:	2
Stand of the respondent no. 2, in brief, in the affidavit-in-opposition:	3 – 4

Stand of the petitioner, in brief, in the affidavit-in-reply:	5
Stand of the SCERT (respondent no.3), in brief, in the affidavit-in- opposition:	6
Stand of respondent nos. 6 to 14, in brief, in their affidavit-in-opposition:	7 – 8
Stand of respondent nos. 4 & 5 in W.P.(C) 4255/ 2023:	9
Submissions by counsel/ senior counsel for the parties:	10 – 13
Pleadings on record:	14 - 15
Points of determination:	16
Reasons and decision: [Point of determination no.(i) and point of determination no. (ii):	17 – 34.

JUDGMENT AND ORDER

(CAV)

Heard the learned senior counsel/ counsel for the parties.

Brief facts:

2) The petitioner in both the writ petitions project that they are holding Ph.D. degree and are serving as senior lecturers in District Institute of Educational Training (DIET for short). The petitioner in W.P.(C) 4255/23 is serving in DIET, Dalgaon, Cachar. The petitioner in W.P.(C) 4963/2023 is serving in DIET, Udharbond, Cachar. It is the case of the petitioners that as they have the Ph.D. Degree and they both are otherwise in the zone of consideration for being considered for promotion to the post of Principal, DIET. The Selection Board by its minutes dated 07.07.2023, had recommended names of 17 senior lecturers serving in DIETs in the State of Assam for filling up 17 (seventeen) vacant posts of Principal of DIETs in Assam. The State Government, through its

Department of Education, has accepted the recommendations of the Selection Board minutes dated 07.07.2023. Accordingly, by filing these two writ petitions under Article 226 of the Constitution of India, the petitioners have laid challenge to the selection on the ground that the senior lecturers whose names were recommended by the Selection Board did not have Ph.D. Degree and M.Ed Degree with 55% which is the requirement under the guidelines of the National Council for Teacher Education (NCTE for short), which is projected to be mandatory.

Stand of the respondent no.2, in brief, in the affidavit-in- opposition:

3) In the affidavit-in-opposition filed by the Secretary to the Govt. of Assam Department of School Education (respondent no.2) in connection with W.P.(C) 4255/ 2023, it has been stated, amongst others, that pursuant to direction contained in (i) the order dated 02.09.2022, passed by this Court in W.P.(C) 5761/2022 - *Md. Taj Uddin Laskar v. State of Assam*, and (ii) order dated 12.03.2021, passed by this Court in W.P.(C) 1667/2021 – *Eusob Ali Sheikh v. State of Assam*, a fresh provisional gradation list in respect of cadre of senior lecturers of DIETs in Assam was published vide Govt. notification dated 18.03.2023. The objections/ grievances of 12 (twelve) incumbents was considered and resolved vide order no. AEE.12/2023/196 dated 30.06.2023.

4) It has further been stated that the minimum qualification for the post to be filled up by direct recruitment through Assam Public Service Commission (APSC for short) was revised. However, revision of the educational qualification was not made for the post of Principal of DIETs in Assam, which is the promotional post. It is projected that for the promotional post of Principal, the feeder posts are the post of Vice-Principal and the post of Senior Lecturer, having not less than 10 (ten) years experience as per the provisions of the

Assam District Institute of Education and Training Service Rules, 2010 (hereinafter referred to as the "Assam DIET Rules, 2010"). The Selection Board meeting for the post of Principal of DIETS in Assam was held on 12.02.2021 instead of 04.02.2021, and no resolution was taken by DPC with regard to Ph.D. Degree. Accordingly, based on recommendation by the Selection Board held earlier on 12.02.2021, promotion was given by Government notification dated 25.02.2021. Thereafter, Selection Board in its meeting held on 07.07.2023, had recommended 17 (seventeen) names for filling up 17 posts of Principals in DIETs in the State.

Stand of the petitioner, in brief, in the affidavit-in-reply filed in W.P.(C) 4255/2023:

5) Amongst others, the petitioner has taken a stand that the action taken by the respondent authorities in respect of her representation dated 24.04.2023 was improper and that the complaints were not redressed. It was stated that DIETs in Assam impart training of teachers i.e. B.Ed. course and therefore, it is implied that the Principal of DIETs in Assam must have Ph.D. Degree as mandated in NCTE Regulations, 2014 and in this regard, reliance was placed on the DIET Guidelines of November, 1989, issued by the Govt. of India, Ministry of Human Resource Development, Department of Education. It was also stated that vide (i) NCTE notification dated 29.05.2017, (ii) SCERT letter dated 27.03.2019, and (iii) Govt. of Assam notification dated 05.12.2020, Ph.D. Degree has been made mandatory for filling up the post of lecturer, which is the feeder post of the post of Principal of DIETs in Assam. Accordingly, it was stated that it was inconceivable that Principal of DIETs in Assam will have lower qualification than that of the lecturers in DIETs in the State of Assam. Accordingly, it has been stated that the writ petition deserves to be allowed.

Stand of the SCERT (respondent no.3), in brief, in the affidavit-in- opposition filed in W.P.(C) 4255/2023:

6) The stand of the respondent no.3, amongst others, is to the effect that in the Assam DIET Service Rules, 2010, the qualification for the post of lecturer is prescribed, where requirement of Ph.D. for the post is not mentioned. However, it has been stated that the Director, SCERT has issued letters to DIET/ CTE's for fulfilling the NCTE requirement for introduction/ continuation of B.Ed./ D.El.Ed. programmes.

Stand of respondent nos. 6 to 14, in brief, in their affidavit-in- opposition:

7) It has been stated that on 27.11.2014, the Elementary Education Department has issued a final gradation list of lecturers in DIETs in Assam after approval from the Cabinet and APSC, as well as in compliance of (i) the order dated 03.03.2014, passed by this Court in W.P.(C) 3201/ 2013 – *Dr. Anusmita Baruah v. State of Assam*, and (ii) order dated 12.03.2013, passed by this Court in W.P.(C) 1386/ 2021 – *Ratul Neog v. State of Assam*, and as per Rules 21 and 23 of the Assam DIET Service Rules, 2010. It has been stated that in the said final gradation list as on 27.11.2014, the names of respondent nos. 6 to 14 are at serial nos. 47, 51, 83, 88, 85, 100, 84, 63 and 98 respectively, and the name of Swapna Sikha Choudhury, the petitioner in W.P.(C) 4255/2023 is at serial no. 256. It is seen that in the said final gradation list as on 27.11.2014, the name of Jibendu Dutta, the petitioner in W.P.(C) 4963/2023 appears as serial no. 131. Thus, it was stated that the petitioners were much junior to the private respondent nos. 6 to 14 in W.P.(C) 4255/2023. By referring to the DIET Service Rules, 2010, it has been stated that the said rules do not contain requirement of Ph.D. as prescribed qualification for the post of Principal, DIETs in the State and that 10 years service as Vice Principal/ Senior Lecturer in DIET is the

requirement for being in the zone of consideration for promotion to the post of Principal of DIETs in Assam.

8) It has been pleaded that during the pendency of the writ petition, the respondent no. 6 has superannuated from the post of Principal of DIET on 31.10.2023 and the respondent no. 7 has also superannuated from the post of Principal of DIET.

Stand of respondent nos. 4 and 5 in W.P.(C) 4255/2023:

9) The respondent nos. 4 and 5 have not filed their affidavit-in-opposition.

Submissions by counsel/ senior counsel representing the parties:

10) The respective counsel for the parties and the learned senior counsel for the respondent nos. 6 to 14 have made their respective submissions in support of the stand taken in the respective pleadings of the parties. The relevant submissions have been dealt with in paragraphs under the heading "reasons and decision".

11) In support of his submissions, the learned counsel for the petitioner in W.P.(C) 4255/2023, has relied on the case of *Maa Vaishno Devi Mahila Mahavidyalaya v. State of U.P.*, (2013) 2 SCC 617. It may be stated that the learned counsel for the petitioner in W.P.(C) 4963/2023 has adopted the submissions made by the learned counsel for the petitioner in W.P.(C) 4255/2023.

12) Per contra, the learned senior counsel for the respondent nos. 8 to 14 has cited the case of (i) *Kalyani Mathivanan v. K.V. Jeyaraj & Ors.*, (2015) 6 SCC 363, and (ii) *Prof. Archana Sharma v. University Grants Commission (UGC) and ors.*, (2019) 0 Supreme (Gau) 1008 (DB).

13) The learned standing counsel for the School Education Department and the learned standing counsel for the SCERT have submitted that as same issue of facts and law arise in both the writ petitions, they intend to rely on the affidavit-in-opposition filed in W.P.(C) 4255/2023.

Pleadings on record:

14) In connection with W.P.(C) 4255/2023, the following pleadings are on record, viz., (i) writ petition; (ii) affidavit-in-opposition filed by respondent no.2; (iii) affidavit-in-reply filed by the petitioner; (iv) affidavit-in-opposition filed by respondent no.3; (v) affidavit-in- opposition filed by respondent nos. 6 to 14.

15) In connection with W.P.(C) 4963/2023, no affidavit-in-opposition has been filed by the only parties arrayed as respondent nos. 1 and 2 therein.

Points of determination:

16) In the considered opinion of the Court, the following two points of determination arise in these two writ petitions:-

- i. Whether the petitioners in both the writ petitions were within the zone of consideration for promotion to the post of Principal of DIETs in Assam?
- ii. Whether the Selection Board minutes dated 07.07.2023, recommending names of 17 persons for promotion to the post of Principal of DIETs in Assam is liable to be interfered with?

Reasons and decision:

Point of determination no. (i):

17) It is not in dispute that in the final gradation list as on 27.11.2014, the name of Dr. Jibendu Dutta, the petitioner in W.P.(C) 4963/2023 appears at

serial no. 131 and that in the final gradation list as on 31.05.2023, his name appears at serial no. 36.

18) It is also not in dispute that in the final gradation list as on 27.11.2014, the name of Dr. Swapna Sikha Choudhury, the petitioner in W.P.(C) 4255/2023 appears at serial no. 256 and that in the final gradation list as on 31.05.2023, her name appears at serial no. 128.

19) In the final gradation list as on 27.11.2014, the names of respondent nos. 6 to 14 in W.P.(C) 4255/2023 appear at serial nos. 47, 51, 83, 88, 85, 100, 84, 63 and 98 respectively. Moreover, in the final gradation list as on 31.05.2023, their names appear at serial nos. 1, 2, 6, 18, 7, 8, 14, 10 and 9 respectively.

20) As per the Selection Board minutes dated 07.07.2023, which was held for promotion to the cadre of Principal of DIETs, there were 17 (seventeen) vacancies, out of which 14 posts were for unreserved category, 2 posts were reserved for SC category, and 1 post was reserved for ST(P) category.

21) The learned senior counsel for the respondent nos. 6 to 14 in W.P. (C) 4963/2023 has submitted that 68 incumbents in order of seniority in their respective category in the final gradation list came within the zone of consideration in the ratio of 1:4 in accordance with the number of available vacancies. The said submission has not been disputed at the Bar. Accordingly, the respondents have successfully been able to demonstrate before the Court that as per the gradation lists as on 24.11.2014 and 31.05.2023, the names of (i) Dr. Jibendu Dutta, the petitioner in W.P.(C) 4963/2023, and (ii) Dr. Swapna Sikha Choudhury, the petitioner in W.P.(C) 4255/2023, were placed below the names of the private respondent nos. 6 to 14 in W.P.(C) 4255/2023. The

petitioners have not been able to show how they would bye-pass the respondent nos. 6 to 14 and become entitled for consideration for selection and consequent appointment as Principals of DIETs in Assam. The said aspect is not pleaded by the petitioners. It is also not the case of the petitioners that though the respondent nos. 6 to 14 were placed below them in the final gradation lists as on 27.11.2014 and 31.05.2023, but they have been selected and recommended for being appointed to the promotional post of Principals of DIET in Assam.

22) The petitioners in both the writ petitions have not laid any challenge to the seniority position of the parties arrayed as respondent nos. 6 to 14 in W.P.(C) 4255/2023, as disclosed in the two final gradation lists as on 27.11.2014 and 31.05.2023 respectively.

23) Thus, the Court is inclined to hold that the petitioners in both the writ petitions could not have been within the zone of consideration for promotion from the post of senior lecturers in DIETs in Assam to the promotional posts of Principal of DIETs in the State of Assam.

24) The point of determination no. (i) is thus, answered in the negative and against the petitioners.

Point of determination no. (ii):

25) As per Rule 5(i) of the Assam DIET Service Rules, 2010, the post of Principal is a promotional post. However, as per Rule 5(iii), the post of Lecturer in DIETs in Assam is required to be filled up by way of direct recruitment. The legality of the said Rules has not been assailed by the petitioners.

26) As per notification dated 05.12.2020, which is annexed to the writ

petition, the Government of Assam had revised the minimum educational qualification for the post of lecturers in DIETs in Assam. The said notification is not found to have altered the minimum educational qualification prescribed for being appointed to the promotional post of Principal in DIETs in the State of Assam.

27) Therefore, the petitioners have failed to demonstrate that there was any fault whatsoever with the decision taken by the Selection Board in its minutes dated 07.07.2023, thereby recommending names for filling up of 17 posts of Principals in DIETs in Assam. The Court is inclined to hold that neither the Assam DIET Service Rules, 2010 nor any notification issued by the State Government prescribe Ph.D. Degree to be the minimum educational qualification for being selected and appointed to the post of Principal of DIETs in the State of Assam. Therefore, the resultant decision of the State, if any, to promote 17 recommended names for the post of Principal of DIETs in Assam is not found to be vitiated for any reason whatsoever.

28) Therefore, the Court is inclined to accept the submissions made by the learned senior counsel for the respondent nos. 6 to 14 in W.P.(C) 4255/2023 that in a collateral proceeding the Court ought not to declare the Assam DIET Service Rules, 2010 to be repugnant to the NCTE notifications and guidelines, if any, prescribing Ph.D. Degree as the minimum educational qualification for being appointed to the post of Principals of DIETs in Assam. The learned counsel for the petitioners has not been able to show that that repugnancy of any Act or Rules can be either presumed by the Court in the absence of pleadings or be declared without any express challenge to the same. Therefore, the case of *Maa Vaishno Devi Mahila Mahavidyalaya (supra)* is not found to help the petitioner in any way and therefore, no purpose would be

served to burden this order with discussion on the said decision.

29) The learned senior counsel for the respondent nos. 6 to 14 in W.P. (C) 4255/2023 had cited the case of *Kalyani Mathivanan (supra)*. Para 62 thereof is quoted below:-

“62. In view of the discussion as made above, we hold:

62.1 To the extent the State Legislation is in conflict with Central Legislation including sub-ordinate legislation made by the Central Legislation under Entry 25 of the Concurrent List shall be repugnant to the Central Legislation and would be inoperative.

62.2 The UGC Regulations being passed by both the Houses of Parliament, though a subordinate legislation has binding effect on the Universities to which it applies.

62.3 UGC Regulations, 2010 are mandatory to teachers and other academic staff in all the Central Universities and Colleges thereunder and the Institutions deemed to be Universities whose maintenance expenditure is met by the UGC.

62.4 UGC Regulations, 2010 is directory for the Universities, Colleges and other higher educational institutions under the purview of the State Legislation as the matter has been left to the State Government to adopt and implement the Scheme. Thus, UGC Regulations, 2010 is partly mandatory and is partly directory.

62.5 UGC Regulations, 2010 having not adopted by the State Tamil Nadu, the question of conflict between State Legislation and Statutes framed under Central Legislation does not arise. Once it is adopted by the State Government, the State Legislation to be amended appropriately. In such case also there shall be no conflict between the State Legislation and the Central Legislation.”

30) Thus, in the case of *Kalyani Mathivanan (supra)*, the Supreme Court of India has held that the UGC Regulations, 2010 was partly directory in respect of higher educational institutions that are under the purview of the State Legislation. The petitioners have not been able to show that DIETs in Assam are not regulated under the State laws.

31) Accordingly, the Court is of the considered opinion that the Selection Board minutes dated 07.07.2023, by which recommendations were

made for promoting senior lecturers to 17 vacant posts of Principal of DIETs in Assam is not liable to be interfered with. Thus, the point of determination no. (ii) is answered in the negative and against the petitioners.

32) Accordingly, both the writ petitions are found without any merit and the same are dismissed.

33) Interim orders, if any, passed in these two writ petitions are revoked and thus, stand vacated. Resultantly, there shall be no impediment for the State Government to take an appropriate decision on the basis of recommendations made vide Selection Board minutes dated 07.07.2023, as it may deem appropriate.

34) The parties are left to bear their own cost.

JUDGE

Comparing Assistant