

GAHC010203572024



2024:GAU-AS:12590

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

Case No. : I.A.(Civil)/3095/2024

GAUHATI UNIVERSITY AND ANR
GOPINATH BORDOLOI NAGAR, GUWAHATI, ASSAM, PIN 781014

2: THE REGISTRAR
GAUHATI UNIVERSITY
GOPINATH BORDOLOI NAGAR
GUWAHATI
KAMRUP (M)
ASSAM
PIN 78101

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, EDUCATION DEPARTMENT (HIGHER), DISPUR, GUWAHATI-
781006.

2:THE COMMISSIONER AND SECRETARY
FINANCE DEPARTMENT
DISPUR
GOVT. OF ASSAM
GUWAHATI-781006

3:THE DIRECTOR OF HIGHER EDUCATION
KAHILIPARA
GUWAHATI-781019

4:SMTI MRIDULA SARMAH
W/O SRI MANOJ KR. SARMA R/O VILL- SANDHYACHAL
LALMATI H.NO. 47
P.O. AND P.S. BASISTHA GUWAHATI - 781029 DIST.KAMRUP (M)

ASSAM.

5:THE COMMISSIONER AND SECRETARY
EDUCATION (SECONDARY) DEPARTMENT
DISPUR
GUWAHATI

Advocate for the Petitioner : MR. P J PHUKAN,

Advocate for the Respondent : SC, HIGHER EDU, SC, FINANCE,MR R DHAR,MR. S
BHUYAN,MR. R MAZUMDAR,SC, SEC. EDU.

BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR

ORDER

Date : 12.12.2024

Heard Mr. P. J. Phukan, learned Standing Counsel, Gauhati University, for the applicants. Also heard Mr. K. Gogoi, learned Standing Counsel, Higher Education Department, for the respondent Nos. 1 & 3; Mr. B. Gogoi, learned Standing Counsel, Finance Department, for the respondent No. 2; Mr. J. I. Borbhuiya, learned counsel for the respondent No. 4/writ petitioner and Mr. N. J. Khataniar, learned Standing Counsel, Secondary Education Department, for the respondent No. 5.

The respondent No. 4/writ petitioner, initially filed a writ petition which was registered as WP(C)/1421/2018 with a prayer for directing the respondent authorities to regularize the service of the petitioner against the existing vacancies and also for payment of regular time scale of pay in terms of Para – 3 of the Rules framed by the Gauhati University with regard to compassionate appointment.

This Court after hearing the parties disposed of the said writ petition by

Order dated 08.11.2019 and the relevant portion is extracted hereinbelow:-

“7. Considering the submissions of the learned counsel for the parties and on perusal of the materials on record, the writ petition is disposed of by directing the respondent authorities, more particularly, respondent No. 2, namely, Registrar, Gauhati University, to do the needful for granting time scale to the petitioner against a permanent vacancy in terms of the Rule referred to above, which is framed by the University Authorities themselves. The petitioner will also be entitled to get regular pay scale with effect from 11.01.2011, i.e., the date of her initial appointment as Assistant Teacher as had been given to others.

8. The above exercise, as directed hereinabove, shall be undertaken and completed by the respondent authorities within a period of three months from the date of receipt of a certified copy of this order.”

Thereafter, the applicant/Gauhati University filed a review petition, which was registered as Review Petition No. 35 of 2020, seeking a clarification with regard to directions issued by this Court in WP(C) No. 1421/2018 on 08.11.2019, particularly with regard to Paragraph - 7. The said review petition was also disposed of by Order dated 01.08.2022, clarifying that the Secondary Education Department as well as the High Education Department will co-ordinate with each other for approval and appointment of the petitioner as proposed by the Gauhati University. The relevant portion of the Order dated 01.08.2022 is also extracted hereinbelow:-

“4. It may be noted that when the said order of direction was issued, it was in presence of the respective counsel for the Higher Education as well as Finance Department of the State and as such, this Court is of the view that there should not be any difficulty on the part of the State Government to give the necessary approval for appointment of the petitioner which has been sought by the Gauhati University authorities vide their letter dated 31.01.2020.

5. Mr. Bhuyan, learned standing counsel for the Higher Education submits that because of change in the allocation of business, the matter relating to appointment of the petitioner will come under the purview of the Secondary Education. This Court would also clarify that when this order was issued on 08.11.2019, it was within the purview of the Secondary Education Department and as such, If there is a change in the allocation of business subsequently, the Secondary Education Department will be the responsible department and it will be incumbent upon the said Secondary Education Department to do the needful, Accordingly, the Secondary Education Department as well as the Higher Education Department will coordinate with each other for approval and appointment of the petitioner as proposed by the Gauhati University. The aforesaid exercise shall be expected to be completed preferably within a period of 2(two) months from the date of receipt of a certified copy of this order.

6. With the above clarification and observation, the present review petition stands disposed of.”

Thereafter, the Registrar, Gauhati University by a Communication dated

06.07.2024 and addressed to the Secretary to the Government of Assam, School/Higher Education Department sought special approval for granting time scale to the petitioner, who was appointed on Compassionate grounds from the date of joining. The Secretary to the Government of Assam, Higher Education Department by a Communication dated 09.07.2024, wrote back to the Registrar, Gauhati University and the relevant portion of the said Communication is also extracted hereinbelow:-

“The Gauhati University Act, 2013 came into force from dated 30/5/2013, as the petitioner was appointed before the commencement of Gauhati University (Amendment) Act, 2013. Therefore, the University may consider the compliance of Hon'ble Gauhati High Court order as per the existing Act during the time of appointment of the petitioner.

However, any appointment after the commencement of Gauhati University (Amendment) Act, 2013 shall be strictly considered as per section 44 of the said Act. The Gauhati University is requested not to refer any appointment proposal to the Government which violates the section 44 of Gauhati University Act, 2013.”

As the authorities in the Gauhati University is unable to implement the Order passed by this Court in view of the Communication dated 09.07.2024, written by the Secretary to the Government of Assam, Higher Education Department, the present I.A. has been filed with the following prayers:

“In view of the aforesaid facts and circumstances, this Hon'ble Court

may be pleased to admit the instant Application and clarify suitably the crucial "approval" aspect as regards the instant matter as per the provision of Section-44 of the Gauhati University (Amendment) Act, 2013 and/or to declare that the financial component is entwined/inherent with the said "approval" aspect and/or to clarify that the said "approval" is to be granted having taken into its zone of consideration all the service credentials of the candidate to the post concerned in tune with the existing laws of the land and/or may be further pleased to pass such other order or direction(s) as may deem fit and proper (including interim order/direction) in the interest of Justice."

After hearing learned counsel for the parties, this Court is not in a position either to modify the Order dated 08.11.2019 passed by a co-ordinate bench of this Court in WP(C)/1421/2018 as well as the Order dated 01.08.2022 passed in Review Petition No. 35/2020. Accordingly, it is clarified that in view of the Order dated 01.08.2022 passed by the co-ordinate bench of this Court in the Review Petition No. 35/2020, it is clarified that the Secondary Education Department as well as the Higher Education Department shall co-ordinate with each other for giving approval of the appointment of the petitioner as proposed by the Gauhati University in consultation with the Finance Department.

With the aforesaid clarifications, this I.A. stands disposed of.

JUDGE

Comparing Assistant