

GAHC010213252021



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

Case No. : WP(C)/6883/2021

DEBENDRA NATH DEKA
S/O LATE KARUNA RAM DEKA, R/O VILLAGE AND P.O- BEZERA,
DISTRICT- KAMRUP, ASSAM AND ASSISTANT TEACHER AT BEZERA HS
SCHOOL, BEZERA

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, SECONDARY EDUCATION DEPARTMENT, DISPUR, GUWAHATI-
781006

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

3:THE INSPECTOR OF SCHOOLS KAMRUP DISTRICT CIRCLE
AMINGAON DADARA PIN- 781104 ASSAM

4:DISTANCE EDUCATION BUREAU
A BUREAU UNDER UNIVERSITY GRANT COMMISSION (UGC)
35 FEROZE SHAH ROAD
NEW DELHI- 110001 AND IS REPRESENTED BY THE JOINT SECRETARY

5:THE GLOBAL OPEN UNIVERSITY
WOKHA NAGALAND- 797111 REPRESENTED BY THE VICE CHANCELLOR

6:SMTI. PRANATI KALITA ASSISTANT TEACHER
BEZERA HS SCHOOL BEZERA VILLAGE AND PO- BEZERA KAMRUP- 78111

Advocate for the Petitioner : MR. S HAZARIKA, MR D DEKA

Advocate for the Respondent : SC, SEC. EDU., MR T R SEN (R-6),MR. LENTSO (R-6),MR H
KALITA (R-6),MR. A SARMA (R-6),SC, U G C

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

Date of hearing : 05.08.2024

Date of Judgment : 05.08.2024

Judgment & order(Oral)

Heard Mr. S. Hazarika, learned counsel appearing on behalf of the petitioner. Also heard Mr. U. Sarma, learned standing counsel, Secondary Education Department, appearing on behalf of respondents No. 1, 2 & 3; Mr. A. Chamuah, learned standing counsel, University Grants Commission(UGC) and Ms. K. Borpujari, learned counsel, appearing on behalf of respondent No. 4; and Mr. K. Kalita, learned counsel, appearing on behalf of respondent No. 6. However, none had appeared on behalf of respondent No. 5.

2. The petitioner by way of instituting the present proceeding, has presented a challenge to an order, dated 02.09.2021, wherein, the Director, Secondary Education Department, Assam, had held the petitioner ineligible for consideration of appointment as in-charge Principal of Bezera Higher Secondary School on the ground that the MA Degree as obtained by him from Global Open University, Nagaland, through Open Distance Learning mode; was not valid.

3. As projected in the writ petition, the petitioner, herein, was appointed as an Assistant Teacher at Bezera Higher Secondary School on 23.04.1988 and he was authorized the graduate scale of pay w.e.f. 22.11.1993. It is contended that the petitioner in pursuance of the permission received in this connection from the Principal of the said school, had got himself admitted to pursue his MA Degree from the Global Open University, Nagaland. The petitioner enrolled

himself in the said University in the year 2013 under the Open Distance Learning mode and had acquired the MA Degree in English in the year 2015.

It is the contention of the petitioner, herein, that although initially such Degrees were being recognized by the departmental authorities for the purpose of recruitment to the post of Headmaster/Principal; however, in terms of the stipulation as contained in an Office Memorandum, dated 08.01.2020, issued by the Commissioner & Secondary to the Government of Assam, Secondary Education Department, the authorities of the Secondary Education Department were not recognizing the Degrees obtained through distance education mode/off-campus mode, from Universities offering such courses beyond their territorial jurisdiction, as valid Degrees. Accordingly, it was contended that the case of the petitioner, herein, was not being so considered for appointment as in-charge Principal of Bezera Higher Secondary School, on the ground of, he, having obtained his MA Degree from Global Open University, Nagaland; the same would not be a valid Degree.

The petitioner, herein, being aggrieved by the deprivation meted out to him and also the consideration sought to be extend to the respondent No. 6, herein, for appointment as the in-charge Principal of the said school; had approached this Court by way of instituting a writ petition being WP(c)1613/2021. This Court, vide order, dated 02.08.2021, on noticing the issues so arising in the matter, was pleased to dispose of the said writ petition by directing the Director, Secondary Education Department, Assam, to grant a fresh consideration of the issues, raised in the matter, and after affording an opportunity of hearing to the petitioner, herein, as well as the private respondent No. 6, herein; to pass a reasoned order in the matter.

It is seen that after the said directions were passed by this Court vide the order, dated 02.08.2021, in the above-noted writ petition; the matter was duly considered by the Director, Secondary Education Department, Assam, and after hearing the petitioner and the respondent No. 6, herein; proceeded to issue the speaking order, dated 02.09.2021, and therein, held the Master Degree obtained by the petitioner from the Global Open University, Nagaland, to be invalid and accordingly, his claim for being appointed as the in-charge Principal of the said school, was so rejected.

4. Being aggrieved; the petitioner, herein, has instituted the present proceeding.

5. Mr. Hazarika, learned counsel for the petitioner, by reiterating the facts as noticed hereinabove, has submitted that the MA Degree as obtained by the petitioner from the Global Open University, Nagaland, was so obtained through the Open Distance Learning mode and he had not pursued the said course from any off-campus institution situated in the State of Assam, rather, he had appeared in the examinations conducted by the said Global Open University, Nagaland, at Dimapur.

6. Mr. Hazarika, learned counsel, has submitted that the manner in which the petitioner had pursued the MA Degree, in question; he cannot be brought within the purview of the Office Memorandum, dated 08.01.2020, in-as-much as, the petitioner had not pursued the said MA Degree beyond the territorial jurisdiction of the said University and accordingly, the said MA Degree as obtained by the petitioner from Global Open University, Nagaland, herein, has to be held to be valid.

7. Mr. Hazarika, learned counsel, has further submitted the said Global Open University, Nagaland, being a State University recognized by the University Grants Commission (UGC); the MA Degree as conferred by such University cannot be held to be invalid by the authorities of the Secondary Education Department and accordingly, the learned counsel has contended that the respondent authorities is required to be directed to consider the MA Degree so acquired by the petitioner from the Global Open University, Nagaland, herein, and thereafter, by reckoning his seniority, appoint him as the in-charge Principal of Bezera Higher Secondary School.

8. Mr. Hazarika, learned counsel for the petitioner, has submitted that the private respondent No. 6, herein, having come on transfer to Bezera Higher Secondary School; her seniority in the said school would only be now reckoned from the date of her joining in the said school and the services rendered by her before joining the school, in question, cannot be reckoned for the purpose of assigning to her, seniority in Bezera Higher Secondary School.

9. Mr. Chamuah, learned standing counsel, appearing on behalf of the University Grants Commission(UGC), has submitted that as per the decisions arrived at by the University Grants Commission(UGC) in the matter, a University established or incorporated by or under a State Act, is required to operate only within the territorial jurisdiction allotted to it under the Act and in no case, beyond the territory of the State of its location.

10. The learned standing counsel, University Grants Commission(UGC), has further submitted that the Global Open University, Nagaland, is required to ensure that the Courses as offered by it, are not so offered to candidates beyond the territory of the State of its location and also do not offer such Courses through off-campus centres, not recognized by the University Grants

Commission(UGC).

11. Mr. Sarma, learned standing counsel, Secondary Education Department, has submitted that the present writ petition would not be maintainable in view of the fact that the prescription as made in the speaking order, dated 02.09.2021, is in tune with the provisions as contained in the Office Memorandum, dated 08.01.2020.

12. Mr. Sarma, learned standing counsel, Secondary Education Department, has further submitted that under the provisions of Rule 12 of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, while providing for the minimum requisite educational qualification and training for appointment to the post of Principal; it was provided that such educational qualification is required to be acquired by the candidate concerned from any recognized University.

13. Mr. Sarma, learned standing counsel, Secondary Education Department, has also submitted that the Office Memorandum, dated 08.01.2020, was so issued to clarify the matter pertaining to the acquisition of the requisite educational qualification by the candidate being considered for appointment to the post of Principal and accordingly, it was clarified that the term "recognized University" would not bring within its sweep, the Degrees acquired by the candidate by way of distance education mode/off-campus mode offered by a University/institution beyond its territorial jurisdiction.

14. Mr. Sarma, learned standing counsel, Secondary Education Department, has further referred to the provisions of Assam Secondary Education

(Provincialized Schools) (Amendment) Service Rules, 2021, by which the provisions of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, was amended and by amending Schedule III; it was brought on record that the Degrees obtained from off-campus mode and distance education mode, shall not be considered as valid.

15. Mr. Sarma, learned standing counsel, Secondary Education Department, accordingly, has submitted that the provisions of the Office Memorandum, dated 08.01.2020, as well as the amendment effected to the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, not being under challenge in this writ petition; the challenge as presented by the petitioner in the present proceeding to the order, dated 02.09.2021, would not be sustainable.

16. I have heard the learned counsels appearing for the parties and also perused the materials available on record.

17. At the outset, it is to be noted that the manner of recruitment to the post of Principal is provided under the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, and therein, under Rule 12(3); the minimum qualification for appointment to the post of Principal in a Higher Secondary School and/or a Senior Secondary School, is provided for. The minimum educational qualifications prescribed, is a MA/M.Sc./M.Com with B.Ed./B.T. from any recognized University.

18. The provisions of Schedule III lays down the requisite qualification for recruitment to the post of Post Graduate Teacher/Graduate Teacher and other posts. It is to be noted that for recruitment to the post of Principal, the intending candidate must be a Post Graduate Teacher and/or a Graduate

Teacher. A perusal of the provisions of Schedule III which has been enacted under the provisions of Section 10(1) and (2) of the said Assam Secondary Education (Provincialized Schools) Service Rules, 2018, provides that the Degrees obtained from off-campus centres and through distance education mode, would not be considered to be valid.

19. The provisions of the said Assam Secondary Education (Provincialized Schools) Service Rules, 2018, as it stood on its enactment, barred the consideration of a candidate for recruitment to the post of Principal who had acquired his requisite educational qualification from an institution through distance education mode and/or from unrecognized off-campus centres. The said position was further clarified by the Office Memorandum, dated 08.01.2020, wherein, the following prescriptions was so made:

“.....therefore the Government in Secondary Education Department has decided that the Degrees obtained through Distance Education Mode / Off Campus Mode beyond the Territorial Jurisdiction of the Universities / Institutions without authorization by UGC (DEB) cannot be accepted or recognized as valid for the purpose of employment / promotion to higher post in Secondary Education Department.”

20. It is seen that the respondent authorities, thereafter, proceeded to amend the provisions of Schedule III of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, and in place of the earlier provisions; the following amendments came to be so substituted:

“but the degrees/diplomas obtained from off-campus and distance education institutions having recognized study centre in the State of Assam which are duly recognized by Distance Education Council under University Grants Commission shall be considered valid for the purpose of employment under Secondary Education Department, Government of Assam. However, in respect of those institutions located outside the State of Assam but having a study centre in the State which is not recognized by Distance Education Council (DEC) under University Grants Commission (UGC), the degrees/certificates issued by such Institutions shall not be considered valid for the purpose of employment under Education Department, Government of Assam.

(emphasis added)

Further, the Degrees/Diplomas and Certificate under distance education mode conferred by Krishna Kanta Handique State Open University (KKHSOU), Indira Gandhi National Open University (IGNOU), Institute of Distance and Open Learning (IDOL) under Gauhati University and Distance Education under Dibrugarh University shall be considered at par with the Degrees, Diplomas and Certificates awarded by State, Central Universities and Private Universities duly established as per law. Such degrees/diplomas and certificates shall be considered valid for the purpose of employment under Education Department, Government of Assam".

21. A perusal of the provisions of Schedule III as it stands today after its amendment, goes to reveal that the Diplomas and Degrees as obtained from institutions located outside the State of Assam, but, having study centres in the State, which is not recognized by the Distance Education Council under the University Grants Commission(UGC); the Degrees/ Certificates issued by such institutions shall not be considered valid for the purpose of employment under the Education Department, Government of Assam. The Degrees and Diplomas of the institutions through the Distance Education mode, recognized for the purpose for recruitment under the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, was also specified therein.

22. Having noticed the provisions of the said Rules, it is to be now noted as to whether the MA Degree as acquired by the petitioner, herein, by pursuing a course of study from Global Open University, Nagaland; would satisfy the requirements of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, in-as-much as, even for holding of the post of Principal on in-charge basis, the candidate must possess the requisite educational qualification for appointment against the said post on regular basis.

23. Considering the submissions made by the parties and also on perusal of the materials available on record, it is seen that the Global Open University, Nagaland, was set-up by an Act of the State of Nagaland. Accordingly, in

terms of the prescription made in this connection by the University Grants Commission(UGC) authorities; the territorial jurisdiction of the said University extends to only the territorial boundaries of the State of Nagaland and not beyond.

24. It is the categorical contention of the learned standing counsel for the respondents University Grants Commission(UGC) that a University established and/or incorporated by or under a State Act, shall be required to operate only within the territorial jurisdiction allotted to it under its Act and in no case, beyond the territory of the State of its location.

25. It is seen that the Global Open University, Nagaland, had offered courses to candidates residing in the State of Assam and as such, admittedly, had operated beyond its territorial jurisdiction.

26. The above being the position; it is to be held that the MA Degree as obtained by the petitioner from the Global Open University, Nagaland, does not conform to the eligibility conditions as now put in place in connection with recruitment to the post of Principal under the provisions of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018(as amended).

27. The provisions as incorporated in the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, at the time of its enactment and also after the amendment effected in the year 2021 to it, not being under challenge; this Court would not entertain a challenge to the order, dated 02.09.2021, in-as-much as, the conclusions drawn by the Director, Secondary

Education Department, Assam, is in tune with the provisions of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, as well as the Office Memorandum, dated 08.01.2020.

28. In view of the above position and also the settled position with regard to the impermissibility of a State University to offer Courses beyond its territorial jurisdiction; this Court is of the considered view that the MA Degree as obtained by the petitioner from Global Open University, Nagaland, cannot be held to be in satisfaction of the educational qualifications as prescribed under the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, for the purpose of recruitment against the post of Principal and accordingly, the speaking order, dated 02.09.2021, would not call for any interference.

29. Consequently, the claim of the petitioner for being permitted to hold the post of Principal of Bezera Higher Secondary School, on in-charge basis, cannot be acceded to. This Court having held that the petitioner, herein, does not meet the requisite eligibility criteria for recruitment to the post of Principal on in-charge basis of the said school, the conclusions as reached by the Director, Secondary Education Department, Assam, in respect of the services of the respondent No. 6, herein; is not interfered with.

30. In that view of the matter; this writ petition is held to be devoid of merit and accordingly, stands dismissed. However, there shall be no order as to costs.

JUDGE

Comparing Assistant