

GAHC010293202023



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

Case No. : WA/9/2024

BIREN BORA
S/O LATE UMARAM BORA, R/O NARAYANPUR, WARD NO. 1,
P.O.- DIKRONG, P.S.- NARAYANPUR, DIST.- LAKHIMPUR, ASSAM.

.....**Writ Appellant**

-VERSUS-

1. THE STATE OF ASSAM AND 6 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, EDUCATION (SECONDARY) DEPTT.,
DISPUR, GUWAHATI- 6, ASSAM.

2:THE DIRECTOR OF SECONDARY EDUCATION
KAHILIPARA, GUWAHATI- 19, ASSAM.

3:THE INSPECTOR OF SCHOOLS
NORTH LAKHIMPUR DISTRICT CIRCLE
NORTH LAKHIMPUR, ASSAM- 787001

4:NATIONAL COUNCIL FOR TEACHER EDUCATION
EASTERN REGIONAL COMMITTEE
N-2/82, VILL.- MAYAPALLI
BHUBNESWAR- 751015 REPRESENTED BY REGIONAL DIRECTOR.

5:DIBRUGARH UNIVERSITY
REPRESENTED BY THE VICE-CHANCELLOR
DIBRUGARH, ASSAM, PIN 786004.

6:BIHPURIA PGT COLLEGE
REPRESENTED BY THE PRINCIPAL
P.O. AND P.S.- BIHPURIA,
DIST.- LAKHIMPUR PIN- 784161.

7:BIREN SAIKIA
S/O LATE SONARAM SAIKIA
VILL.- TALOCHIBARI, P.O.- BARBALI
P.S.- BIHPURIA, DIST.- LAKHINPUR
ASSAM, PIN- 784163

..... **Respondents**

– BEFORE –
HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE SUMAN SHYAM

For the Appellant : Mr. S.K. Das, Advocate.
: Mr. R. Karim, Advocate.

For the respondent(s) : Mr. N.J. Khataniar, Advocate for respondent Nos.1, 2
& 3.
: Mr. I. Alom, Standing Counsel, NCTE for respondent
No.4.
: Mr. D. Deka, Advocate for respondent No.7.

Date of Hearing & Judgment : 23.04.2024

JUDGMENT & ORDER

[Vijay Bishnoi, CJ]

This writ appeal is preferred by the appellant being aggrieved with the judgment and order dated 05.12.2023 passed by the learned Single Judge in WP(C) No.3166/2021, whereby the learned Single Judge, while disposing of the writ petition has remanded the matter to the Director of Secondary Education, Assam to examine the claim of the respondent No.7 herein/writ petitioner for his appointment as regular Principal of Kherajkhat Senior Secondary School, Lakhimpur.

2. The learned Single Judge has observed that, while entertaining the claim of the respondent No.7/writ petitioner, due hearing shall also be given to the appellant. It is further observed that the requirement of considering the acceptability of the B.Ed. degree of the respondent No.7/writ petitioner be done by the Director within a period of 2(two) months and whatever decision be taken shall be strictly in terms of all applicable laws including the principle of natural justice in respect of all the parties.

3. The brief facts of the case are that, on 14.12.2018, an advertisement was issued inviting application from the eligible candidates for appointment on the post of Principal of Kherajkhat Senior Secondary School, Lakhimpur. The appellant as well as the respondent No.7/writ petitioner have applied pursuant to the said advertisement. However, vide order dated 07.02.2020, the appellant was appointed as the regular Principal of the said school. The claim of the respondent No.7/writ petitioner for appointment on the post of Principal of the said school was negated on the ground that the B.Ed. degree possessed by him is not a valid degree under the law.

4. Being aggrieved with the same, the respondent No.7/writ petitioner preferred WP(C) No.2057/2020 before this Court challenging the appointment of the appellant as the Principal of the Kherajkhat Senior Secondary School as well as the action of the respondent State of not recognizing his B.Ed. degree as valid degree.

5. The aforesaid writ petition, i.e. WP(C) No.2057/2020 came to be disposed of by the learned Single Judge of this Court vide order dated 03.12.2020, whereby the Regional Director of Eastern Regional Committee of the NCTE was directed to decide the question regarding the validity of the B.Ed. degree of the respondent No.7/writ petitioner within a period of 3(three)

months.

6. Upon receiving an application filed by the respondent No.7/writ petitioner, the matter was taken up by the Eastern Regional Committee in its 289th meeting held on 15.02.2021 and the Committee decided to refer the matter to the Secretary to the Department of Education, Government of Assam and to the Registrar of the Dibrugarh University, who is the concerned affiliating body, to take a decision regarding the validity of the B.Ed. degree of the respondent No.7/writ petitioner.

7. The Secondary Education Department, vide order dated 16.03.2021 has opined that the B.Ed. degree possessed by the respondent No.7/writ petitioner is invalid as per the NCTE Act, 1995. However, the Registrar, Dibrugarh University has communicated to the Regional Director, Eastern Regional Committee, NCTE that the B.Ed. degree possessed by the respondent No.7/writ petitioner be treated as valid.

8. Being aggrieved with the opinion dated 16.03.2021 given by the Secondary Education Department, Government of Assam, the respondent No.7/writ petitioner had filed WP(C) No.3166/2021 before the learned Single Judge which came to be disposed of as observed in the earlier part of this order.

9. Assailing the impugned order dated 05.12.2023, Mr. S.K. Das, learned counsel appearing for the appellant has submitted that the respondent No.7/writ petitioner took admission in the B.Ed. course offered by Bihpuria PGT College in August, 1996 in the academic session 1996-97. However, the application filed by Bihpuria PGT College before the NCTE came to be rejected by the NCTE in December, 1996. It is further contended that though the respondent No.7/writ petitioner appeared in the B.Ed. examination held at the end of the academic

session 1996-97 but has failed to clear the same and later on appeared in the said examination in the year 1998 and has passed the B.Ed. examination in the year 1999.

10. It is contended by learned counsel for the appellant that since the application for granting recognition, filed by Bihpuria PGT College came to be rejected in the year 1996, the B.Ed. degree obtained by the respondent No.7/writ petitioner who took admission in the academic session 1996-97 cannot be said to be valid. It is further contended that the learned Single Judge has erred in giving a finding that the B.Ed. degree obtained by the respondent No.7/writ petitioner from Bihpuria PGT College cannot be termed as invalid under the law. It is also contended that the learned Single Judge has erred in placing reliance on the decision of the Hon'ble Supreme Court rendered in the case of ***State of Uttar Pradesh & Ors. Vs. Bhupendra Nath Tripathi & Ors.***, reported in ***(2010) 13 SCC 203***, the ratio of the decision has no application on the facts of the present case.

11. Learned counsel for the appellant has relied upon the decisions rendered by the Hon'ble Supreme Court in ***Maa Vaishno Devi Mahavidyalaya Vs. State of UP***, reported in ***(2013) 2 SCC 617***; ***Adarsh Shiksha Mahavidyalaya & Ors. Vs. Subhash Rahangdale & Ors.***, reported in ***(2012) 2 SCC 425*** and ***National Council for Teacher Education Vs. Venus Public Educational Society***, reported in ***(2013) 1 SCC 223***.

12. Learned counsel for the appellant has, therefore, prayed that the impugned judgment and order passed by the learned Single Judge may kindly be set aside and the writ petition [WP(C) No.3166/2021] filed by the respondent

No.7/writ petitioner be kindly ordered to be dismissed.

13. *Per contra*, Mr. D. Deka, learned counsel appearing for the respondent No.7 herein has supported the impugned decision dated 05.12.2023 rendered by the learned Single Judge and has argued that though the respondent No.7/writ petitioner took admission in the B.Ed. course offered by Bihpuria PGT College, Lakhimpur in August 1996 in the academic session 1996-97, the application filed by Bihpuria PGT College for granting recognition before the NCTE was rejected only in December, 1996. It is argued that as per the law laid down by the Hon'ble Supreme Court in the case of **Bhupendra Nath Tripathi** (supra), even in case of refusal of recognition, the courses offered by a college cannot be discontinued till the end of the academic session and the institution offering training or course is entitled to award degree or certificate as the case may be.

It is further argued that later on the NCTE has granted recognition to Bihpuria PGT College for offering B.Ed. course in the year 2001 and once the said recognition is granted, it would relate back to the date when the application is filed by the institution. It is contended that in the present case, Bihpuria PGT College has applied for granting recognition before the NCTE in 1996 itself and with the grant of recognition by the NCTE in the year 2001, all the B.Ed. degrees awarded by the said College in between the period running from 1996 to 2001 would be deemed to be recognized automatically.

14. It is contended by the learned counsel for the respondent No.7 that though the application filed by the Bihpuria PGT College came to be rejected in December, 1996 but the Eastern Regional Committee, NCTE, pending consideration of the application for granting recognition of the said College, has

allowed Bihpuria PGT College to continue for the session with an intake as approved by the University/State Government/Board as the case may be. Learned counsel for the respondent No.7 has referred to a letter of this effect issued by the Eastern Regional Committee, NCTE on 24.06.1998. It is, therefore, contended that the learned Single Judge has not committed any illegality in passing the impugned order dated 05.12.2023.

15. Learned counsel appearing for respondent Nos.1, 2, 3 and 4 have stucked to the stand taken by the Department before the learned Single Judge but admittedly have not challenged the impugned order by way of filing separate writ appeal(s).

16. Heard the learned counsel appearing for the parties and perused the material available on record.

17. The facts which are not in dispute that the respondent No.7/writ petitioner took admission in the B.Ed. Course offered by Bihpuria PGT College in August, 1996 when the application filed by the said college for recognition before the NCTE was pending. Subsequently the said application came to be rejected in December, 1996 but thereafter the NCTE has granted recognition to the B.Ed. course offered by the said college in the year 2001.

18. The Hon'ble Supreme Court in the case of **Bhupendra Nath Tripathi** (supra), while dealing with such a situation has clearly held that even in case of refusal of a recognition to any institution, the course offered by the said institution may have to be discontinued, only at the end of the academic session and the institution offering training or course is entitled to award degree or certificate as the case may be.

In such circumstances, though the application for recognition filed by

Bihpuria PGT College was rejected in December, 1996 but the ongoing academic session 1996-97 could not have been discontinued till the end of the academic session i.e. till 1997. Moreover, the respondent No.7/writ petitioner has cleared the said B.Ed. course in the year 1999 and it cannot be ignored that subsequently the NCTE has granted recognition to Bihpuria PGT College for running the B.Ed. course in the year 2001.

19. In our view, the recognition granted by the NCTE to Bihpuria PGT College for offering B.Ed. course would relate back to the date when the application was filed by the said institution. If any other view is adopted then this would lead to a situation where the persons, who have obtained degree from an Institution during the pendency of the application before the NCTE for recognition, would be placed at a disadvantageous position for no fault on their part.

Apart from that, it is to be noted that despite rejection of the application filed by Bihpuria PGT College in December, 1996, the Eastern Regional Committee of NCTE has allowed the said institution to run the B.Ed. course for the academic session 1998-1999, with the approved intake, and for subsequent academic sessions also.

20. So far as regarding the judgments rendered by the Hon'ble Supreme Court of which the learned counsel for the appellant has placed reliance are concerned, the learned Single Judge has dealt with all the said judgments in detail and has rightly distinguished the same while placing reliance on the decision of the Hon'ble Supreme Court rendered in ***Bhupendra Nath Tripathi*** (supra).

21. In view of above discussion, we do not find any case for interference

with the impugned judgment and order dated 05.12.2023 passed by the learned Single Judge in WP(C) No.3166/2021. Hence, the writ appeal is dismissed. No costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant