GAHC010247622014

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

Case No. : WP(C)/6534/2014

DR. LOKMAN ALI
S/O MD. SAYED ALI VILL- GHOGA, P.O. LAWTOLA P.S. MUKALMUA DIST. NALBARI, ASSAM.

VERSUS

THE STATE OF ASSAM AND 5 ORS
TO BE REP. BY THE COMMISSIONER AND SECRETRY TO THE GOVT. OF ASSAM, EDUCATION HIGHER DEPARTMENT, DISPUR, GUWAHATI-06.

2:THE DIRECTOR

HIGHER EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19.

3:THE GOVERNING BODY OF BARKHETRI COLLEGE

MUKALMUA
NALBARI TO BE REP. BY ITS PRESIDENT NAMELY SRI AKAN CHANDRA CHOUDHURY
RESIDENT OF VILL- DOULASAL
P.O. DOULASAL IN THE DIST. NALBARI
ASSAM
PIN - 781312

4:THE SELECTION COMMITTEE OF BORKHETRI
COLLEGE
CONSTITUTED FOR THE PURPOSE OF SELECTION OF REGULAR PRINCIPAL
TO BE REP. BY ITS CHAIRMAN

SRI AKAN CH. CHOUDHURY
RESIDENT OF VILL- DOULASAL
P.O. DOULASAL
PIN CODE- 781312 IN THE DIST.OF NALBARI
ASSAM.

5:SRI PRASANNA KUMAR DEKA
I/C PRINCIPAL
BARKHETRI COLLEGE
VILL and P.O. MUKALMUA
PIN- 781126
DIST. NALBARI
ASSAM.

6:MS. MAMONI BHATTACHARJEE
D/O LT. BIJENDRA NATH BHATTA
R/O VILL. and P.O. BARTOLA
P.S. MUKALMUA
DIST. NALBARI
ASSAM. IMPLEADED VIDE H.C.O. DTD. 08.01.2015 PASSED IN M.C. NO. 3504/2014

7:DR. BHASKAR KALITA
54 YEARS
S/O SRI SANTA RAM KALITA
R/O JYOTI PATH
PORUAH CHARIALI
OPP. TO NENA
NEAR TO DON BOSCO HIGH SCHOOL
P.O.- NIKMUL
DIST.- SONITPUR
ASSAM-78411

Advocate for the Petitioner : MR. M A I HUSSAIN, Mr. A Baruah,MR K P PATHAK,MR A R BHUYAN,MR. K N CHOUDHURY,Mr M U Ahmed

Advocate for the Respondent : MR.B D KONWAR, MR. SURAJIT DUTTA(R3),MR G SARMA(R3,5),MR. S DUTTA(R5),D R TALUKDAR,MR. R TALUKDAR,MR. P. J. PHUKAN, SC, G U,MR C KUMAR (R-7),MR H BETALA(R-7),MR. R K AGARWALA(R-7),MR D K DAS(R-7),MR.R SALOI,MR.S CHOUDHURY(R-3),SC, HIGHER EDUCATION,MR.K KALITA,MR.M K MISHRA,MR.R KALITA,MR.R TALUKDAR(R-6&7),MR.A SARMA,MR.D MOZUMDER(R-3),MRS.J M KONWAR,MS.P KHOUND,MS.S BARUAH

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

03.11.2026

Heard Mr. A. R. Bhuyan, learned Senior Counsel assisted by Mr. N. Z. Choudhury, learned counsel for the petitioner. Also heard Mr. S. Dutta, learned counsel for the Respondent No. 3, Mr. S. Das, learned Standing Counsel for the Higher Education.

2. This writ petition is filed by the petitioner, who has assailed before the Court the order dated 03.09.2014, issued by the Director of Higher Education, holding that the petitioner is not entitled to be provincialised in his services as a Principal of Barkhetri College in the District of Nalbari. The petitioner joined in the said College as a Lecturer in the Department of History in the year 1995; since then he has been rendering his services. Subsequently, by a decision taken by the Governing Body, he was appointed as Regular Principal. This decision was taken by the Governing Body, and the petitioner was appointed on 04.06.2011. This appointment of the Principal however was not accepted by the Respondent, Higher Education Department for the purposes of provincialisation of the services of the petitioner as the Principal of the said College as according to the Respondent Department, the petitioner's services could not have been provincialised as a Principal in view of the specific provisions under the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011, wherein under Section 2(h) it was provided that the employees of this Venture Educational Institutions both teaching and non-teaching, who were appointed

by the concerned Venture Educational Institution before the 1st day of January, 2011, their services would be provincialised under this Act. The Director of Higher Education by the said impugned order held that since the decision of the Governing Body was taken beyond the cut-off date specified in the Act of 2011, the services of the petitioner could not be provincialised as a Principal of the Barkhetri College. However, his service was provincialised as an Assistant Professor in the Department of History. It is this order which has been put to challenge by the present writ petitioner.

3. During the pendency of the writ petition, the Act of 2011 came to be declared as unconstitutional by the Division Bench of this Court. Pursuant to which the State enacted the Assam Education (Provincialisation of Services of Teachers and Re-Organisation of Educational Institutions) Act, 2017. The petitioner therefore submitted another representation before the Authority pleading for his case to be considered in terms of the provisions of the new Statute, as the earlier Act was declared to be unconstitutional. Since no orders were passed, the petitioner approached this Court by filing WP(C) No. 6264/2021. This writ petition came to be disposed of by order dated 07.06.2023 with a direction to the Respondents to examine the claim of the writ petitioner and thereafter pass a speaking order.

4. In deference to the directions contained in the order dated 07.06.2023 passed in WP(C) No. 6264/2021, the Commissioner and Secretary to the Government of Assam, Department of Higher Education by an order dated 08.10.2026 has passed a speaking order, whereupon the following findings were recorded:

1. The prayer of Sri Lokman Ali for provincialisation of his service in the post of Principal, Barkhetri College, cannot be accepted. His appointment to the post of Principal was made on 04.06.2011, which is subsequent to the statutory cut-off date of 01.01.2011 applicable under the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011. Under Section 2(j) of the said Act, the employee must have been appointed and joined in the concerned Venture Educational Institution before 01.01.2011. Consequently, his appointment as Principal did not fall within the statutory eligibility contemplated under the Act of 2011.

2. Although, Sri Lokman Ali was selected/appointed as Principal on 04.06.2011 and joined on 06.06.2011, he was thereafter restrained by the Hon'ble Gauhati High Court from functioning as Principal vide order dated 10.08.2011 passed in WP(C) No.4073/2011. The charge of Principal was accordingly entrusted to another incumbent as an interim arrangement. Thus, the record does not establish that Sri Lokman Ali actually discharged the functions of Principal pursuant to the aforesaid appointment.

3. The District Level Scrutiny Committee and the State Level Scrutiny Committee considered his case against the post of Assistant Professor, and not against the post of Principal. Consequently, his service was provincialised as Assistant Professor, vide Directorate's Order dated 12.09.2016. No order has been passed by the competent authority provincialising his service against the post of Principal.

4. Sri Lokman Ali has relied upon a purported Ph.D. degree from Magadh University in support of his academic qualification.

However, pursuant to the direction of the Hon'ble Gauhati High Court, the authenticity of the said degree was examined through an enquiry conducted under the aegis of the University Grants Commission. The Inquiry Report dated 31.10.2023 recorded that the purported Ph.D. degree is not genuine and was not issued by Magadh University.

5. Therefore, the purported Ph.D. degree cannot be treated as a valid academic qualification for determining the eligibility of Sri Lokman Ali for the post of Principal. No statutory or service benefit dependent upon possession of a valid qualification can be founded upon a qualification which has been found, upon due enquiry, not to have been issued by the concerned University.

6. The claim is also not sustainable under the Assam Education (Provincialisation of Services of Teachers and Re-organisation of Educational Institutions) Act, 2017. Section 4(2)(iii) requires six years of continuous service as on 01.01.2017 from the date of joining in the concerned Venture Educational Institution, with such joining being on or before 31.12.2010. Sri Lokman Ali's appointment to the post of Principal was only on 04.06.2011 and, therefore, the statutory requirement cannot be satisfied in respect of his claim to that post.

7. Further, the Act of 2017 requires possession of the prescribed minimum educational and professional qualifications. In the present case, the purported Ph.D. relied upon by Sri Lokman Ali cannot be treated as a valid qualification in view of the finding recorded in the enquiry conducted pursuant to the order of the Hon'ble High Court. Hence, the claim to provincialisation against the

post of Principal is not sustainable on this ground also.

8. The Government of Assam, Higher Education Department, created the post of Principal of Barkhetri College pursuant to the direction of the Hon'ble Gauhati High Court The post was thereafter filled up by direct recruitment following the prescribed statutory procedure. However, the appointed Principal subsequently resigned. Accordingly, the post is now proposed to be filled up afresh by following due process in accordance with the applicable rules.

9. It is further clarified that the provincialisation of his service as Assistant Professor vide Directorate of Higher Education, Assam Order dated 12.09.2016 does not create any entitlement in his favour to claim retrospective provincialisation against a different and higher post, namely Principal, particularly when the statutory conditions and qualification requirements for such post are not fulfilled."

5. The learned Senior Counsel for the petitioner submits that in view of the findings arrived at in the said speaking order it has become necessary to challenge the findings by filing a separate writ petition. Since the case of the petitioner has been elaborately considered and detailed order has been passed by way of a speaking order dated 08.10.2026, it is submitted before the Court that the present writ petition has become infructuous and he be given liberty to file a fresh writ petition putting a challenge to the order dated 08.10.2026, passed by the Commissioner and Secretary to the Government of Assam, Department of Higher Education.

6. Mr. S. Dutta, learned counsel appearing for the College does not object to

the prayer made, as also by Mr. S. Das, learned Standing Counsel appearing for the Higher Education.

7. Considering the same, this writ petition stands disposed of as infructuous, giving liberty to the petitioner to assail the speaking order dated 08.10.2026 by filing a separate proceedings.

8. Interim order(s), if any, stands vacated.

9. Pending I.A(s), if any, are also dismissed.

JUDGE

Comparing Assistant