



GAHC010124892014

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

**Case No. : WP(C)/2891/2014**

MAHAMMAD AZAD  
S/O LT. AFAZ ALI, R/O MURMALA, P.O. MURMALA, DIST- BAKSA, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS  
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.  
OF ASSAM, EDUCATION HIGHER DEPARTMENT, DISPUR, GHY-6

2:THE DIRECTOR OF HIGHER EDUCATION  
ASSAM  
KAHILIPARA  
GHY-19

3:THE GOVERNING BODY OF BARKHETRI COLLEGE  
MUKALMUA  
P.O. KUKALMUA  
PIN-781126  
DIST- NALBARI  
ASSAM  
REPRESENTED BY ITS PRESIDENT

4:DILIP CH. HALOI  
ASSTT. PROFESSOR OF GEOGRAPHY  
DEPARTMENT OF GEOGRAPHY  
BARKHETRI COLLEGE  
MUKALMUA  
P.O. MUKALMUA  
PIN-781126  
DIST- NALBARI  
ASSAM

5:SHEIKH MOBAROQUE HUSSAIN  
S/O LT. ADAR ALI



R/O MUKALMUA  
P.O. and P.S. MUKALMUA  
DIST- NALBRI  
ASSAM  
PIN-78112

**Advocate for the Petitioner** : MR.R KALITA

**Advocate for the Respondent** : MR. J H SAIKIAR-3

**BEFORE  
HONOURABLE MR. JUSTICE KARDAK ETE**

**JUDGMENT & ORDER (CAV)**

**Date : 02-04-2024**

Heard Mr. B.D. Konwar, learned Senior Advocate assisted by Mr. H. Agarwala, learned counsel for the petitioner. Also heard Mr. K. Gogoi, learned standing counsel for the Higher Education Department, appearing for respondent Nos.1 & 2, Mr. K.K. Mahanta, learned Senior Advocate assisted by Mr. S. Hoque, learned counsel for the respondent No.4 and Mr. Z.H. Saikia, learned counsel for the respondent No.5.

**2.** By instituting this Writ Petition, the petitioner assails the impugned order vide Memo. No.PC/HE/Misc.35/2011/Pt./1/160, dated 07.04.2014, passed by the Director of Higher Education, Assam whereby petitioner is placed junior to the respondent No.4, Sri Dilip Ch. Haloi, in their inter-se-seniority on the basis of the date of birth as the date of joining in the services of petitioner and respondent No. 4 is on the same date i.e. on 10.11.2000. The petitioner has also prayed for a direction to grant the benefit of provincialisation of his service under the Assam Venture Educational Institution (Provincialisation of Services) Act, 2011 (now repealed), by assigning the petitioner his rightful position above

the respondent No.4, in order of seniority of the teaching staff of Barkhetri College, Mukalmua.

**3.** The case of the petitioner, in brief, is that he was appointed as Lecturer (now Assistant Professor) in the Department of Geography in Barkhetri College, Mukalmua in Nalbari District on 09.11.2000 and he has joined on 10.11.2000. There were two other Lecturers (Assistant Professors) in the Geography Department, who had joined earlier than the petitioner. According to the petitioner, the respondent No.4, namely, Sri Dilip Ch. Haloi joined the Barkhetri College as a Lecturer (Assistant Professor) in the Geography Department on 20.07.2002.

**4.** The Barkhetri College, Mukalmua is a venture Educational Institution (Degree College), eligible for provincialisation of services of its employees under the Assam Venture Educational Institution (Provincialisation of Services) Act, 2011 (here-in-after referred to as 'the Act of 2011'). The petitioner is aggrieved by the order being Memo. No.PC/HE/Misc.35/2011/Pt./1/160, dated 07.04.2014, passed by the Director of Higher Education, Assam whereby the inter-seniority of the Assistant Professors of Barkhetri College has been determined, wherein the petitioner has been placed at Serial No.25, below the respondent No.4, who is placed at Serial No.24, thereby the petitioner is shown to be holding the 4<sup>th</sup> post of Assistant Professor in the Geography Department. The date of appointment and joining of the petitioner and the respondent No.4 are shown to be on the same date i.e. on 09.11.2000 and 10.11.2000 respectively and the respondent No.4 has been placed above the petitioner by reason of he being older in age.

**5.** According to the petitioner, when he joined in Barkhetri College, there

were only two Lecturers in the Geography Department and as such, he occupied the third post in the Geography Department. The respondent No.4 has joined on 20.07.2002 and occupied the 4<sup>th</sup> post of Lecturer in Geography Department. It is contended that at the time of the petitioner's appointment and joining, one Sk. Mobaraque Hussain (respondent No.5 herein) was the founder Principal of the college and upon his retirement on superannuation, Md. Lokman Ali, a Lecturer of the college was given the charge of the post of Principal.

**6.** It is the contention of the petitioner that the respondent No.4 was not in the service of the college in the Department of Geography prior to 20.07.2002, which is evident from the relevant contemporaneous documents pertaining to the college relating to that period, as his name did not figure in the resolution of the General Meeting held on 04.03.2001, wherein the names of the teaching and non-teaching staff of the college are mentioned. The name of the respondent No.4 does not find place in other documents.

**7.** In the year 2004, the Governing Body of the College submitted the particulars of the college including the names of teaching and non-teaching staff, as required by the Respondent No.2, vide letter dated 22.09.2004. The name of the Respondent No.4 appeared in the said list of teaching staff of the college by showing the date of his joining as 20.07.2002. Surprisingly, in the Year 2010, the then Principal of the College submitted another set of particulars vide letter dated 09.06.2010, wherein the name of the Respondent No.4 was shown to have been appointed by an appointment letter bearing No. BCM/APP/2007/558(B), dated 09.11.2000 and his date of joining was shown as 10.11.2000. The Respondent No.5, the retired founder Principal of the College, who was then a member of the Governing Body of the College as nominee of the University, on coming to know about the appointment order of the

Respondent No.4, raised the issue in the meeting of the Governing Body dated 18.12.2011, as the appointment letter of the Respondent No.4 is shown to have been issued during his tenure as the Principal of the College, by showing the same date of appointment and joining with that of the petitioner. Thereafter, the respondent No.5 has filed an F.I.R. before the Officer-in-Charge of Mukalmua Police Station, alleging that the appointment order said to have been issued on 09.11.2000 as forged one, clearly stating that during his tenure, Respondent No.4 was never been appointed by him and no such appointment letter was issued, with further allegation that one Lokman Ali, the next In-Charge Principal has issued the said appointment letter, by forging his signature with dishonest intention for his illegal gain. Accordingly, the F.I.R. was registered as the Mukalmua P.S. Case No.374/2011, under Sections 467/468 I.P.C., 1860.

**8.** During this juncture, the Respondent No.2 initiated the process of provincialisation of services of the employees of the College under the Act of 2011 in the prescribed pro-forma, enclosed with the letter dated 19.12.2011 for provincialisation of services of the employees of the college, wherein the date of joining as Lecturer of the Respondent No. 4 is shown correctly as 20.07.2002. Thereafter, on 08.08.2012 also, same date of joining was shown in respect of the Respondent No.4.

**9.** When the question of inter-se-seniority of the teaching staff of the College has arisen, some persons have approached this Court by filing a batch of Writ Petitions i.e. WP(C) No.5834/2006, WP(C) No.2398/2011, WP(C) No.4073/2011, WP(C) No.2198/2013, WP(C) No.2787/2013 and WP(C) No.3180/2013. Those Writ Petitions were disposed of by this Court on 09.12.2013, by the common judgment and order, whereby this Court remanded the matter to the State authorities, directing to take decision thereon, on the

basis of records without being influenced from any corner.

**10.** Pursuant to this Court's order in the above Writ Petitions, the Respondent No.2 passed the impugned order dated 07.04.2014, whereby the inter-se-seniority of the teaching staff of the college is determined, wherein, *inter alia* the Respondent No.4 is shown to have been appointed on the same date with the petitioner, i.e. on 09.11.2000 and joined on the same date with the petitioner, i.e. on 10.11.2000 and placed the Respondent No.4 at Serial No.24 above the petitioner on the basis of date of birth.

**11.** It is noticed that the respondent No.4 has filed the affidavit-in-opposition on 19.06.2004. But the respondent No.4 has raised an objection that the said affidavit-in-opposition was not authorized by the respondent No.4 by disowning the said affidavit-in-opposition and the affidavit subsequently filed on behalf of the respondent No.4 has been admitted to have been filed by him.

**12.** This Court had caused an enquiry by the Registrar (Judicial) and accordingly the Inquiry Report was submitted before this Court, which could be discernable that the affidavit-in-opposition filed on 19.06.2004 has not been filed by the respondent No.4. Accordingly, the said affidavit-in-opposition was admitted to have been taken out from the record and not to be a part of the proceeding any further, vide order dated 16.12.2023.

**13.** Mr. B.D. Konwar, learned Senior Counsel for the petitioner submits that as per the order of this Court dated 09.12.2013, the Respondent No.2 was required to examine the records and decide the issue. However, it appears that the Respondent No.2 did not examine the records fully and apply his mind in the matter. Had he done so, the records would have revealed that the Respondent No.4 joined in the college only on 20.07.2002 and prior to that date, he had not

been serving there. The records also would have revealed that the retired founder Principal of the college had denied having given appointment to the Respondent No.4 during his tenure and that, his signature on the purported appointment letter was a forged one. As such, the he submits that the impugned decision was arbitrary and contrary to what is borne out by the records. Mr. Konwar, learned Senior Counsel, submits that alternatively it is possible that the Governing Body of the college may not have furnished all relevant records to the Respondent No.2. The documents might have been withheld from the Respondent No.2 by the Governing Body. Moreover the Respondent No.2 may not have been aware of lodging of the F.I.R. dated 29.12.2011, relating to the purported appointment of the Respondent No.4.

**14.** Mr. Konwar, learned Senior Counsel, further submits that the petitioner was appointed on 09.11.2000 and he joined in the post on 10.11.2000, whereas the Respondent No. 4 joined much later, i.e. on 20.07.2002 and prior to that date, he had never been serving in the college. As such the petitioner is senior to the Respondent No.4 in service and he is holding the 3<sup>rd</sup> Post of Assistant Professor in Geography Department. The learned senior counsel further submits that as a result of the impugned order, the petitioner has been relegated to the 4<sup>th</sup> Post in the Geography Department of the college and as such, the petitioner, at the relevant point of time, had an apprehension that his right to provincialisation of service under the Assam Venture Educational Institutions (Provincialisation of Services) Act 2011, would be jeopardized. He submits that in any view of the matter the impugned order, in so far as it concerns the petitioner is arbitrary, unreasonable and contrary to the records and is in violation of the fundamental rights of the petitioner guaranteed under Article 14 of the Constitution as well as the Principles of Natural Justice, equity and fair

play.

**15.** Mr. B.D. Konwar, learned Senior Counsel for the petitioner placed reliance on the following judgments to project that even if alternative remedy is available, the Writ Petition is maintainable depending upon the facts and circumstance of each case:

(1) **Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and others**, reported in **(1998) 8 SCC 1**, and

(2) **Godrej Sara Lee Ltd. vs. Excise and Taxation Officer-cum-Assessing Authority and others**, reported in **2023 SCC OnLine SC 95**.

**16.** Mr. K. Gogoi, learned standing counsel for the Higher Education Department, while raising the issue of maintainability of the Writ Petition, submits that admittedly it is a dispute regarding provincialisation of services between the petitioner and the respondent No.4, which involves disputed question of facts and as such, as per the dictum of this Court, in the case of Abdul Gofur Mondal – vs - State of Assam and others, reported in 2015 (2) GLT 337 (FB), the Education Tribunal is the appropriate Forum to adjudicate the dispute involved in the present writ petition. He has referred to the notifications dated 03.12.2015 and 02.06.2016. He further referred to Sections 19 and 24 of the Assam Education (Provincialisation of Services of Teachers and Re-Organisation of Educational Institutions) Act, 2017 (here-in-after referred to as 'the Act of 2017'), to project that the Educational Tribunal has been constituted and in view of Sections 19 and 24, suits and proceedings are barred and any act that has been done is saved after repealing of the Act of 2011. Mr. Gogoi further submits that after the Assam Venture Educational Institutions Provincialisation of Services Act, 2011 (here-in-after referred to as 'the Act of 2011'), has been



struck down on being constitutionally invalid, the prayer of the petitioner for giving the benefit of provincialisation under the Act of 2011, cannot be considered at this stage. Therefore, the present Writ Petition is not maintainable, as the same involves purely disputed question of facts and existence of Education Tribunal, as an alternative remedy.

**17.** In support of her submissions, Mr. K. Gogoi, learned standing counsel for the Higher Education Department, has placed reliance on the following case laws:-

- (1) **Abdul Gofur Mondal – vs - State of Assam and others**, reported in **2015 (2) GLT 337 (FB)**,
- (2) **The State of Manipur and Ors. vs. Surjakumar Okram and Ors.**, reported in **MANU/SC/0126/2022**,
- (3) **WA No.283/2019 (Smti. Purnabati Brahma vs. The State of Assam & others, &**
- (4) **C.B.I. vs. R.R. Kishore**, reported in **2023 SCC OnLine SC 1146**.

**18.** Mr. K.K. Mahanta, learned Senior Counsel for the respondent No.4, while taking this Court to the affidavit-in-opposition filed on behalf of the respondent No.4, submits that the respondent No.4 was appointed as Lecturer (Assistant Professor) in the Geography Department of Barkhetri College, Mukalmua in Nalbari District by the Governing Body of the college on 09.11.2000, by following due procedure. The appointment order was issued by the Principal-cum-Secretary of the College. Accordingly, he joined on 10.11.2000 and the service was approved by the Governing Body by Resolution No.9, dated 25.11.2001. He has referred to some experience certificates issued by the college authority, dated 31.07.2001 and 11.10.2010 to show that on observing

the continuity in service by the respondent No.4 and good performance, such certificates were issued. He submits that the respondent No.4 and the petitioner have joined the college on the same day but the respondent No.4 had joined half an hour prior to the petitioner and as such, he is senior to the petitioner. As such, the respondent No.4 is junior than the petitioner in all aspects. Refuting the allegation of the petitioner, the learned Senior Counsel submits that the same are contradictory and not supported by cogent record.

**19.** Mr. K.K. Mahanta, learned Senior Counsel, further submits that there is a personal enmity between the respondent No.4 and the respondent No.5, namely, Sk. Mobarque Hussain, as many harassment operation was initiated by the respondent No.5 with the help of anti-social elements of the locality for which the respondent No.4 has filed a complaint against the respondent No.5 before the Court of learned Chief Judicial Magistrate, Nalbari. Due to such enmity created between them and as a result the respondent No.5 has denied the appointment of the respondent No.4 made by the respondent No.5. Mr. Mahanta, learned Senior Counsel, refers to the experience certificate dated 31.07.2001, where the respondent No.5 himself had certified that the respondent No.4 has been serving in Barkhetri College since 10.11.2000, as Lecturer in the Geography Department. Mr. Mahanta further submits that the issue relating to the date of joining of the respondent No.4 has been settled by the Governing Body of the College in the year 2011.

**20.** Mr. K.K. Mahanta, learned Senior Counsel, further submits that pursuant to the order dated 07.12.2010, passed in the WP(C) No.5125/2008, filed by some of the Assistant Professors of the College, the Governing Body, by its resolution dated 14.03.2011, settled the seniority dispute between the respondent No.4 and the petitioner, whereby the respondent No.4 has been

declared to be senior than the petitioner, based on the date of birth. Thereafter, the impugned order dated 07.04.2014 has been passed after considering and verifying the documents of respondent No.4 and the petitioner, whereby the respondent authorities found the position of the respondent No.4 above the petitioner pursuant to the common judgment and order dated 09.12.2013, passed in the batch of Writ Petitions.

**21.** Mr. K.K. Mahanta, learned Senior Counsel has placed reliance on the following judgments, in support of his submissions:

(1) **D.L.F. Housing and Construction Co. (P) Limited – vs – Delhi Municipal Corporation**, reported in **1976 AIR (SC) 386**,

(2) **Sri Francis Dkhar Founder and Ex-Secretary Managing Committee St. Marys RCLP School vs. State of Meghalaya and Ors.**, reported in **2011 Leal Eagle (GAU) 359**,

(3) **Esrafil Ali vs. State of Assam & others**, reported in **2014 Leal Eagle (GAU) 329, &**

(4) **State of Manipur & others vs. Surjakumar Okram & others**, reported in reported in **2022 Leal Eagle (SC) 106**.

**22.** Mr. Z.H. Saikia, learned counsel appearing for the respondent No.5, referring to the affidavit-in-opposition filed by the respondent No.5 submits that the respondent No.5 is the founder as well as former Principal of the Barkhetri College, who has served as a Principal of the College from 01.11.1984 till his retirement on 31.01.2001. The appointment letter dated 09.11.2000 was issued by him in favour of the petitioner at the relevant point of time, when he was the Principal of the College and also admitted the appointment and joining of the

petitioner. Mr. Saikia further submits that the respondent No.5 did not issue any appointment letter to the respondent No.4. When the respondent No.4 came to the knowledge of the fact that Md. Lokman Ali had forged the signature of the respondent No.5, and issued the appointment letter in favour of respondent No.4, he has filed the FIR dated 29.12.2011. It is the categorical statement of the respondent No.5 that he had never issued any such appointment letter in favour of the respondent No.4, during his tenure as Principal of Barkhetri College.

**23.** Due consideration of the rival submissions of learned counsel for the parties have been extended and I have also carefully examined the materials available on record.

**24.** Before adverting to consider the matter on merit, this court deem it appropriate to refer to the relevant case laws relied by the learned counsel for the parties on maintainability of the writ petition.

**25.** In **Whirlpool Corporation (Supra)**, wherein Hon'ble Apex Court has held, which is reproduced here-in-under:-

*"14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".*

*15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."*



“4. Before answering the questions, we feel the urge to say a few words on the exercise of writ powers conferred by [Article 226](#) of the Constitution having come across certain orders passed by the high courts holding writ petitions as “not maintainable” merely because the alternative remedy provided by the relevant statutes has not been pursued by the parties desirous of invocation of the writ jurisdiction. The power to issue prerogative writs under [Article 226](#) is plenary in nature. Any limitation on the exercise of such power must be traceable in the Constitution itself. Profitable reference in this regard may be made to [Article 329](#) and ordainments of other similarly worded articles in the Constitution. [Article 226](#) does not, in terms, impose any limitation or restraint on the exercise of power to issue writs. While it is true that exercise of writ powers despite availability of a remedy under the very statute which has been invoked and has given rise to the action impugned in the writ petition ought not to be made in a routine manner; yet, the mere fact that the petitioner before the high court, in a given case, has not pursued the alternative remedy available to him/it cannot mechanically be construed as a ground for its dismissal. It is axiomatic that the high courts (bearing in mind the facts of each particular case) have a discretion whether to entertain a writ petition or not. One of the self-imposed restrictions on the exercise of power under [Article 226](#) that has evolved through judicial precedents is that the high courts should normally not entertain a writ petition, where an effective and efficacious alternative remedy is available. At the same time, it must be remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the high court under [Article 226](#) has not pursued, would not oust the jurisdiction of the high court and render a writ petition “not maintainable”. In a long line of decisions, this Court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the “maintainability” of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. Though elementary, it needs to be restated that “entertainability” and “maintainability” of a writ petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of. The objection as to “maintainability” goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of “entertainability” is entirely within the realm of discretion of the high courts, writ remedy being discretionary. A writ petition despite being maintainable may not be entertained by a high court for very many reasons or relief could even be refused to the petitioner; despite setting up a sound legal point, if grant of the claimed relief would not further public interest. Hence, dismissal of a writ petition by a high court on the ground that the petitioner has not availed the alternative remedy without, however, examining whether an exceptional case has been made out for such entertainment would not be proper.

5. *A little after the dawn of the Constitution, a Constitution Bench of this Court in its decision reported in*

1958 SCR 595 ([\*State of Uttar Pradesh vs. Mohd. Nooh\*](#)) had the occasion to observe as follows:

*“10. In the next place it must be borne in mind that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy. It is well established that, provided the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by statute, (Halsbury’s Laws of England, 3rd Edn., Vol. 11, p. 130 and the cases cited there). The fact that the aggrieved party has another and adequate remedy may be taken into consideration by the superior court in arriving at a conclusion as to whether it should, in exercise of its discretion, issue a writ of certiorari to quash the proceedings and decisions of inferior courts subordinate to it and ordinarily the superior court will decline to interfere until the aggrieved party has exhausted his other statutory remedies, if any. But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies. \*\*\*”*

**27. In Abdul Gofur Mondal (Supra),** wherein the learned Full Bench of this High Court has held, which is reproduced here-in-under:-

*“48. In view of the above, we issue a writ of mandamus to the State Government to establish Educational Tribunals at the districts to adjudicate disputes relating to the teaching and non-teaching staff of the non-government educational institutions as well as disputes concerning disciplinary action and claim for provincialisation in respect of teaching and non-teaching staff of venture educational institutions. Till establishment of the Tribunals, the State Government shall, within a period of 4 (four) months, in consultation with the High Court, designate the District Courts as the Education Tribunals of the respective districts”*

**28. In D.L.F. Housing and Construction Co. (P) Limited (Supra),** wherein the Hon’ble Apex Court has held, which is reproduced here-in-under:-

*“18. In our opinion, in a case where the basic facts are disputed, and complicated questions of law and fact depending on evidence are involved the writ court is not the proper forum for seeking relief. The rights course of the High Court to follow was to dismiss the writ petition on this preliminary ground, without entering upon the merits of the case. In the absence of firm and adequate factual foundation, it was hazardous to embark upon a determination of the points involved. On this short ground while setting aside the findings of the High Court, we would dismiss both the writ petition and the appeal with costs. The appellants may if so advised, seek their remedy by a regular*

*suit.”*

**29.** Having considered the above case laws with regard to the issue of maintainability of the Writ Petition, raised by the learned counsel for the respondents and considering the facts and circumstances and the above settled proposition of law, I am of the considered view that mere existence of alternative remedy may not be a bar to approach this Court for the grievance of the petitioner, as the issue relates to inter-se-seniority, whereby the respondent authority has decided the matter, on the basis of the documents which prima facie appears to be highly controverted. That apart, relegating the petitioner to the educational Tribunal at this distant point of time would be too harsh and unfair. Thus, the question of maintainability is decided in favour of the petitioner.

**30.** Having held the Writ Petition to be maintainable in view of the settled proposition of law, this Court would now proceed to adjudicate the matter on merit.

**31.** The challenge made by the petitioner is with regard to the inter-se-seniority between the petitioner and the respondent No.4 on the ground that the petitioner was appointed on 09.11.2000 as a Lecturer (now Assistant Professor) in the Geography Department, whereas the respondent No.4 was appointed on 20.07.2002. According to the petitioner, he is serving as Lecturer (now Assistant Professor) in the Geography Department in Barkhetri College, Mukalmua in Nalbari District since 10.11.2000 and then the respondent No.4 joined as Lecturer in the same Department in the same college on 20.07.2002, much later than the petitioner, the petitioner is holding the third post and respondent No.4 is holding the fourth post of Lecturer (Assistant Professor) in Geography. Pursuant to the order dated 09.12.2013, passed by this Court in a



batch of Writ Petitions, the impugned order dated 07.04.2014 has been passed by the Director of Higher Education, Assam, whereby the inter-se-seniority of the Assistant Professors of Barkhetri College has been determined, wherein, inter-alia, the petitioner has been placed at Serial No.25, below the respondent No.4, who has been placed at Serial No.24. Thereby, it is shown that the fourth post in Geography Department is being held by the petitioner on the premises that the petitioner and the respondent No.4 were appointed on 09.11.2000 and joined on 10.11.2000, on the same day and by the reason of older in age, the respondent No.4 has been placed above the petitioner.

**32.** The contentious and fervent contention of the parties and the controversy involved is the appointment order of the respondent No.4, issued by the Principal and Secretary of the Governing Body of Barkhetri College, Mukalmua in Nalbari District which is annexed as Annexure-I of the affidavit-in-opposition filed by the respondent No.4, wherein it is shown to have been issued on 09.11.2000, under the signature of the respondent No.5. It is seen that the respondent No.5 has filed an FIR on 29.12.2011, before the Officer-in-Charge of Mukalmua Police Station against one Md. Lokman Ali alleging forgery of the signature of respondent No.5 in the appointment letter of respondent No.4, stating that at the relevant point of time i.e. on 09.11.2000, the respondent No.5 was serving as Principal of the Barkhetri College and he never issued any such appointment order in favour of the respondent No.4, namely, Dilip Ch. Haloi during his tenure as the Principal. Accordingly the Mukalmua P.S. Case No.374/2011, under Sections 467/468 I.P.C., 1869 was registered and charge sheet has been filed which is pending trial before the criminal court.

**33.** Considering that the controversy involved with regard to the appointment letter of respondent No.4 and considering that the said





appointment letter dated 09.11.2000, in favour of the respondent No.4 is presently part of the record in a Criminal Proceeding in a Criminal Court at Nalbari, this Court had requested the learned District & Sessions Judge, Nalbari to make available the original of the appointment letter before this Court for examination by its order dated 06.12.2023. Accordingly, the learned District & Sessions Judge, Nalbari has forwarded the original appointment letter issued in favour of the respondent No.4, namely, Dilip Ch. Haloi, Assistant Professor of Geography in Barkhetri College on 01.11.2023.

**34.** The opinion of the Senior Scientific Officer, Question Documents Division, Directorate of Forensic Science, Assam, Kahilipara, has also been brought on record. I deem it appropriate to reproduce the opinion:

GOVERNMENT OF ASSAM  
DIRECTORATE OF FORENSIC SCIENCE: ASSAM  
KAHILIPARA : GUWAHATI

To,  
The Additional Superintendent of Police (H/Q),  
Nalbari, Assam.

OPINION

NO. DrS.QDS: 222/14

DATED 3/12/14

The documents in connection with Mukalmua P.S. Case No. 374/2077 U/S 467/468 IPC have been carefully and thoroughly examined and compared with the supplied standard writings and signatures from the original documents in all aspect of handwriting identification and detection of forgery with the necessary scientific aids available in the Directorate of Forensic Science, Assam Kahitipara, Guwahati-19.

2. The person who wrote the blue enclosed writings and signatures stamped and marked S1 to S5 and A1 to A4 did not write the red enclosed signature stamped and marked Q1.

3. It has not been possible to express a definite opinion regarding the authorship of the red enclosed signature stamped and marked Q1 on the basis of comparison with the materials as hand.

Sd/-

(Tomizuudin Ahmed),

Senior Scientific Officer

Questioned Documents Division,

Directorate of Forensic Science, Assam,

Kahilipara, Guwahati-781019

**35.** It is evident from the above opinion of the Directorate of Forensic Science, Assam that after careful and thorough examination and comparing with the supplied standard writings and signatures from the original documents, the person who wrote the blue enclosed writings and signatures, stamped and marked S1 to S5 and A1 to A4 did not write the red enclosed signature stamped and marked "Q1". It further opined that it has not been possible to express a definite opinion regarding the authorship of the red enclosed signature stamped and marked Q1, on the basis of comparison with the materials.

**36.** Considering that the controversy involves with regard to the appointment letter, alleged to have been issued in favour of the respondent No.4, dated 09.11.2000, which was seized by the police from the respondent No.4, this Court would proceed to compare both the original documents placed by the learned District & Sessions Judge, Nalbari and the photocopy of the said appointment letter issued in favour of the respondent No.4, as annexed and relied by the respondent No.4. It is to be noted that at the time of hearing, this

Court had asked the respondent No.4, for the original copy if any. However, the learned Senior Counsel submits that the original copy has been already seized by the police in connection with the Mukalmua P.S. Case No.374/2011.

**37.** In view of above situation, this Court would proceed to compare the original copy of the appointment letter and the photocopy, annexed and relied by the respondent No.4. On comparison of both the original appointment letter placed by the learned District & Sessions Judge, Nalbari and the photocopy of the said appointment letter annexed and relied by the respondent No.4, this Court finds that both the original and the photocopy, annexed and relied by the respondent No.4 are distinct and different in terms of handwriting as well as the signature. Moreover, the forensic report/opinion also supports the same. Comparison by bare eyes of this Court would show that the person who wrote the writings and signature in both the documents appears to be two different persons as the same does not match. Therefore, in my considered view, the appointment letter of the respondent No.4 prima facie appears to be not genuine, as both the original and the photocopy annexed and relied by the respondent No.4 are completely distinct and different from each other.

**38.** The learned Senior Counsel for the respondent No. 4, Mr. K.K. Mahanta, confronted with above view on comparison of this Court had made a veil attempt to submit that he has nothing to do with the original, which has been placed before this Court, as the original has been seized by the police. Such submission, in my view, is absolutely unacceptable and found to be vague. However, in view of the pendency of the criminal proceedings before the criminal court in respect of the alleged forgery, this court is of the view that it would not be appropriate to decide the genuineness or otherwise of the said appointment letter in this present proceedings.

**39.** I have perused the other case laws cited by the learned counsel for the parties. On careful consideration, I find that the case laws relied above are not applicable to the present case.

**40.** Although, this court, having been compared both the original appointment letter placed by the learned District & Sessions Judge, Nalbari and the photocopy of the said appointment letter annexed and relied by the respondent No.4, found that both the original and the photocopy, annexed and relied by the respondent No.4 are distinct and different in terms of handwriting as well as the signature and the person who wrote the writings and signature in both the documents appears to be two different persons as the same does not match, in my considered view, no relief can be granted to the petitioner as it would not be appropriate to decide the genuineness or otherwise of the said appointment letter in this present proceedings in view of the pendency of the criminal proceedings before the criminal court in respect of the alleged forgery.

**41.** In view of the discussions made herein above, in my considered view, no relief can be granted to the petitioner as prayed for at this stage. However, it is provided that in the event, the appointment letter of the respondent No.4 is proved to be forged one and found not genuine before the appropriate forum/court, the petitioner is at liberty to approach any appropriate forum for redressal of his grievance at any stage.

**42.** Writ petition stands disposed of. No order as to costs.

**JUDGE**

**Comparing Assistant**