



GAHC010135902017

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

**Case No. : WP(C)/4544/2017**

PHULTOLI M.E. MADRASSA and ANR.  
REP. BY IT'S IN-CHARGE HEAD MASTER CUM MEMBER SECRETARY OF  
THE SMC, VILL. PHULTALI BAZAR, P.S. LANKA, DIST. HOJAI, ASSAM.

2: ZAKIR HUSSAIN

THE I/C. HEAD MASTER CUM SECRETARY OF PHULTALI M.E. MADRASSA  
S/O. MD. MAHIBUR RAHMAN  
VILL. SING GAON  
P.O. UDALI BAZAR  
P.S. LANKA  
DIST. HOJAI  
ASSAM

VERSUS

THE STATE OF ASSAM and 7 ORS.  
REP. BY THE COMM. and SECY., GOVT. OF ASSAM, SECONDARY  
EDUCATION DEPTT., DISPUR, GHY.-06.

2:THE DIRECTOR

SECONDARY EDUCATION  
ASSAM  
KAHILIPARA  
GHY.-19.

3:THE DIRECTOR

ELEMENTARY EDUCATION  
ASSAM  
KAHILIPARA  
GHY.-19.



4:THE ADDL. DY. COMMISSIONER

IN CHARGE EDUCATION CUM CHAIRMAN  
DIST. LEVEL COMMITTEE  
HOJAI  
DIST. HOJAI  
ASSAM.

5:THE DIST. ELEMENTARY EDUCATION OFFICER  
CUM BLOCK LEVEL COMMITTEE  
LANKA EDUCATIONAL BLOCK  
DIST. HOJAI  
ASSAM.

6:THE DIST. ELEMENTARY EDUCATION OFFICER

HOJAI  
DIST. HOJAI  
ASSAM.

7:THE INSPECTOR OF SCHOOLS

HDC  
HOJAI  
ASSAM.

8:THE BLOCK ELEMENTARY EDUCATION OFFICER

LANKA  
DIST. HOJAI  
ASSAM

**Advocate for the Petitioner : MRC KALITA**

**Advocate for the Respondent :**

**BEFORE  
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA**

**JUDGMENT & ORDER (ORAL)**

**Date : 26-11-2020**

Heard Mr. M. U. Mahmud, learned counsel for the petitioner. Also heard Ms. P.



Chakravarty, learned counsel for the Secondary Education Department and Mr. B. Kaushik, learned Standing counsel for the Elementary Education Department of Government of Assam.

2. The petitioner no. 1 Phultoli M.E. Madrassa is aggrieved by the order dated 24.02.2017 of the Commissioner & Secretary to the Government of Assam in the Secondary Education Department by which the Phultoli M.E. Madrassa was amalgamated with the Phultoli High School under Siksha Khetra Scheme for amalgamation of schools. The petitioners raise the issue that the petitioner being a Madrassa Institution cannot be amalgamated with a regular High School under the Scheme, more particularly with reference to Clause 13 of the Memorandum containing the Shiksha Khetra Scheme dated 22.09.2016

3. Being aggrieved, the petitioners as provided under Clause 7 of the Memorandum dated 22.09.2016, had preferred an appeal before the Government of Assam under the Secondary Education Department assailing the decision to amalgamate the two schools.

4. The grievance raised in this writ petition is that the appeal so filed has not been given its final consideration but at the same time, the petitioner is enjoying the benefit of an interim order by which the amalgamation has been suspended.

5. The appeal filed by the petitioner before the Government of Assam, Secondary Education Department is made available at Annexure 1 of the additional affidavit of the petitioner filed on 28.02.2019. Ordinarily, the situation requires a simple order to be passed that the appellate authority gives a consideration to the appeal instituted by the petitioner and pass a reasoned order thereon. But we have taken note of that the order of amalgamation impugned in the writ petition has been passed by the Commissioner & Secretary to the Government of Assam in the Secondary Education Department and on the other hand the appeal is also addressed to the Commissioner & Secretary to the Government of Assam in the Secondary Education Department. On the question being asked as to what is the meaning of the Clause 7 of the memorandum providing for the appellate provision which



provides that appeal has to be preferred before the Government, it is responded by the Secondary Education Department that the Commissioner & Secretary to the Government of Assam in the Secondary Education Department is the appellate authority. We are unable to accept such a situation.

6. Fundamentally against any order passed by any authority whether administrative or judicial authority, an appeal would not be maintainable before the same authority. By following such principle, we clarify Clause 7 of the office memorandum to be understood to be any authority who would be higher to the Commissioner & Secretary to the Secondary Education Department. It is stated in the Secondary Education Department that the Principal Secretary would be above the Commissioner & Secretary.

7. In the situation, we clarify the provision of Clause 7 of the office memorandum dated 22.09.2016 that whenever the order of amalgamation is passed by the Commissioner & Secretary of the Department, an appeal would be maintainable before the Principal Secretary and not the Commissioner & Secretary.

8. In the circumstance, the appeal filed by the petitioner on 22.02.2019 under Clause 7 of the office memorandum dated 22.09.2016 and annexed as Annexure 1 of the additional affidavit, be now treated to be an appeal addressed to the Principal Secretary to the Government of Assam in the Secondary Education Department.

9. The Commissioner & Secretary to place such appeal before the Principal Secretary for necessary consideration. The Principal Secretary upon the appeal being placed shall consider the grievance raised by the petitioner and pass a reasoned order thereon. The requirement of placing the appeal of the petitioner before the Principal Secretary be done within a period of seven days from the date of receipt of certified copy of the order and thereafter, the Principal Secretary shall decide the appeal of the petitioner and pass a reasoned order thereon within a period of one month thereafter.



10. Any order to be passed be communicated to the petitioner. Till such final order be passed, the status-quo be maintained as on today as regards amalgamation of the petitioner school.

**JUDGE**

**Comparing Assistant**