



GAHC010158472020

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

Case No. : WP(C)/4690/2020

YAMIN HASSAN
S/O LATE EMDADUL HAQUE, R/O COLLAGE NAGAR, P.O. AND P.S.
MANKACHAR, DIST. SOUTH SALMARA MANKACHAR, ASSAM.

VERSUS

THE STATE OF ASSAM AND 6 ORS
THROUGH THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM,
HIGHER EDUCATION DEPTT., DISPUR, GUWAHATI 781006

2:THE DIRECTOR OF HIGHER EDUCATION
ASSAM
KAHILIPARA
GUWAHATI 781019

3:THE UNIVERSITY GRANT COMMISSION
REPRESENTED BY ITS SECY.
BAHADUR SHAH JAFAR MARG
NEW DELHI 110002

4:THE GAUHATI UNIVERSITY
REPRESENTED BY VICE CHANCELLOR
JALUKBARI
GUWAHATI 781014

5:THE ACADEMIC REGISTRAR
THE GAUHATI UNIVERSITY
JALUKBARI
GUWAHATI 781014

6:THE GOVERNING BODY
PRAMATHESH BARUAH COLLEGE



GAURIPUR
P.O. AND P.S. GAURIPUR
DIST. DHUBRI
ASSAM.

7:THE SELECTION COMMITTEE FOR SELECTION OF PRINCIPAL
PRAMATESH BARUAH COLLEGE
GAURIPUR
REPRESENTED BY ITS CHAIRMAN
P.O. AND P.S. GAURIPUR
DIST. DHUBRI
ASSAM

Advocate for the Petitioner : MR DEBA KUMAR DAS

Advocate for the Respondent : SC, HIGHER EDU

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

Date : 22-02-2022

JUDGMENT & ORDER (ORAL)

Heard Mr. RP Sharma, learned senior counsel for the petitioner, and Mr. K Gogoi, learned counsel for the respondents No. 1 and 2 being the authorities in the Higher Education Department of the Government of Assam, Mr. B Konwar, learned counsel for the respondent No. 3 being the University Grants Commission, Mr. PJ Phukan, learned counsel for the respondents No. 4 and 5 being the authorities in the Gauhati University and Mr. C Baruah, learned counsel for the respondents No. 6 and 7 being the authorities in the Governing Body of Pramathesh Baruah College, Gauripur.

2. The petitioner Dr. Md. Yamin Hasan had offered his candidature for the

post of Principal of Pramathesh Baruah College, Gauripur, pursuant to the advertisement dated 12.09.2020, which was published in the local daily newspaper namely The Assam Tribune as well as another news paper namely Asomiya Pratidin.

3. In course of the selection process, the authorities in the Governing Body of the Pramathesh Baruah College, Gauripur by the Resolution No.2 dated 10.10.2020 resolved that 5 Nos. of applications were received pursuant to the aforesaid advertisement and an unanimous resolution was taken that the 5 Nos. of applications be sent to the Vice Chancellor of the Gauhati University at the earliest for screening and for holding the interview as per the guidelines laid down by the Director of Higher Education Assam. Accordingly, the President of the Governing Body was requested to forward the said decision to the Vice Chancellor of the Gauhati University for his approval and for necessary steps to complete the process of selection. Consequent thereof, the President of the Governing Body by the communication dated 12.10.2020, requested the Vice Chancellor of Gauhati University that necessary steps be taken for assessing the API score of the applicants and also to hold the interview for selection of the regular Principal of the College at the earliest. In furtherance thereof, the Academic Registrar of the Gauhati University by the communication dated 02.11.2020 informed the President-cum-Principal Secretary, Selection Committee of Pramathesh Barua College Gauripur that upon scrutiny four of the applicants have acquired the requisite API score and have been found eligible as per the *UGC Regulations On Minimum Qualifications For Appointment of Teachers and Other Academic Staff in Universities and Colleges and Other Measures for the Maintenance of Standards in Higher Education, 2018* (for

short, the UGC Regulations of 2018) and therefore be recommended for appearing before the Selection Committee. It is taken note that five applications were forwarded to the Gauhati University for determining the API score and in response thereof, the Gauhati University had found that four of the candidates have the requisite API score and were declared to be eligible for appearing before the Selection Committee in doing so the petitioner Dr. Md. Yamin Hassan had been left out.

4. Being aggrieved, this writ petition is instituted.

5. The selection for the post of Principal of provincialised colleges is governed by *Assam College Employees (Provincialisation) Rules, 2010* (for short, the Rules of 2010). Rule 5 of the Rules of 2010 provides for the method of recruitment and Rule 5(1) provides that the appointment to the post of Principal shall be by direct selection and for the purpose the Governing Body shall constitute a Selection Committee which shall select a person on the basis of an interview from amongst the eligible candidates who shall apply in response to an open advertisement in newspapers and thereupon the Governing Body shall recommend the selected candidate to the Director, who shall issue orders of appointment.

6. Rule 7 of the Rules of 2010 provides that for recruitment all appointments, either by direct recruitment or by promotion, shall be made by the Director on the basis of recommendations of the Governing Body based on the recommendations of the Selection Committee/Departmental Promotion

Committee and for the purpose, the Selection Committee may hold such test of interview for all posts as may be considered necessary. It is further provided that for the post for which the UGC has prescribed norms, no candidate shall be recruited without having the required norms.

7. The provisions of Rule 5 and Rule 7 of the Rules of 2010 are extracted below:

“5. Method of Recruitment: Recruitment shall be made in the manner prescribed hereinafter.

(1) Appointment to the post of Principal shall be by direct selection. For this the Governing Body shall constitute a Selection Committee, which shall select a person on the basis of an interview from amongst eligible candidates who apply in response to an open advertisement in newspapers. The Governing Body shall recommend this candidate to the Director, who shall issue orders of appointment.”

“7. Direct Recruitment:

(a). All appointment either by direct recruitment or by promotion shall be made by the Director on the basis of recommendations of the Governing Body based on the recommendations of the Selection Committee/Departmental Promotion Committee duly constituted;

(b). The Director shall communicate his orders within thirty days;

(c). The Selection Committee may hold such test of interview for all posts as may be considered necessary. For posts for which UGC has prescribed norms, no candidate shall be recruited without having the required norms;

(d). All fresh appointments shall be made on receipt of police verification report.”

8. A reading of the provisions of Rule 5 and Rule 7 of the Rules of 2010

makes it discernible that all the appointments are to be made by the Director of Higher Education on the basis of the recommendation of the Governing Body which again would be based on the evaluation that may be made by the Selection Committee constituted for the purpose. In other words, the Selection Committee alone is the competent authority under the Rules to make a selection, although there may be a further role on the part of the Governing Body as well as the Director of Higher Education, Assam to process the matter further.

It is stated that for the purpose of evaluating the candidates, the Selection Committee constituted by the Governing Body is also required to follow the provisions of the UGC Regulations of 2018.

We do not express any view on the said submission, if the procedure requires that the Selection Committee is also required to follow the provisions of the UGC Regulations of 2018, it may do so, in doing so, it cannot be construed that the provisions of Rule 5 and 7 of the Rules of 2010 would stand diluted.

9. By the *the Assam College Employees (Provincialisation) (Amendment) Rules, 2017* (for short, the amendment Rules of 2017), the constitution of the Selection Committee for the purpose is provided which is as extracted:

"(A) There shall be a Selection Committee for selection to the post of Principals by direct recruitment in the various Provincialised Colleges. The Selection Committee shall consist of the following:-

- | | | |
|------|---|-------------------------|
| (i) | <i>Vice-Chancellor of the Affiliating University :</i> | <i>Chairman</i> |
| (ii) | <i>President of the Governing Body of the College :</i> | <i>Member Secretary</i> |

- (iii) *One nominee of the Vice-Chancellor who shall be a Higher Education expert:*
Member
- (iv) *One nominee of the Governing Body of the College who shall be an expert in academic administration:*
Member
- (v) *Three experts consisting of the Principal of a College, a Professor and accomplished educationists not below the rank of a Professor (to be nominated by the Governing Body of the College) out of a panel of six experts approved by the relevant statutory body of the University concerned:*
Member
- (vi) *An academican not below the rank of a Professor shall be nominated by the Vice-Chancellor, if there are candidates/applicants to the post of Principal belonging to SC/ST/OBC/Minority/Women/Differently-abled categories and there are no members representing that category in the Selection Committee :*
Member

Provided, that at least five members including two experts from (v) above, shall constitute the quorum."

10. A reading of the constitution of the Selection Committee as provided in the Amendment Rules of 2017 would again make it discernible that it is the Vice Chancellor of the affiliating University who would be the Chairman of the Selection Committee. Accordingly, for the selection for the post of Principal of Prathamesh Baruah College, the Selection Committee was constituted as per the communication dated 04.11.2020 of the President of the Governing Body of the college, which is extracted as below:

- “1. Sjt. Pratap Jyoti Handique : Chairperson
Hon’ble V.C. Gauhati University
- 2. Sri Dhirendra Nath Roy



President, G.B., P.B. College, :
Gauripur

Member Secretary

3. Prof. N.G. Mahanta
Dept. of Political Science, G.U. :

Member, as a
Higher Education
Expert,
nominated by
the G.U.

4. Sri Nripendra Nath Das :
Retd. Associate Professor, B.N. College,
Dhubri a G.U. nominee to the G.B., P.B.
College, Gauripur

Member, as an
expert in
Academic

Administration,

nominated by the
G.B., P.B. College
Gauripur

5. Dr. Bharat Bhushan Mahanty, :
Principal, Chilarai College, Golakganj

Member, as an
expert, being the
Principal of a
College

6. Prof. Dwipen Bezbaruah :
Department of Anthropology, G.U.

Member, as a
Professor

7. Prof. Rudra Kanta Deka :
Department of Mathematics, G.U.

Member, as an
accomplished
educationist

8. Prof. Dilip Bora :
Department of MIL & LS, G.U.

Member, as an
Academician

nominated
by the Vice-
Chancellor, G.U.”

11. A reading of the constitution of the Selection Committee shows that Sri Pratap Jyoti Handique, the Vice Chancellor of the Gauhati University was the Chairman. The communication of the President of the Governing Body dated 12.10.2022 requesting the Vice Chancellor of the Governing Body to take necessary steps for assessing the API score of the applicant/candidates and also to hold the interview for selection of the regular Principal of the college at the earliest would have to be viewed from the perspective of the constitution of the Governing Body made as per the communication dated 12.10.2022.

12. True, the Vice Chancellor of the Gauhati University is the Chairman of the Selection Committee. The Vice Chancellor, being made the Chairman of the Selection Committee as per the prevailing Rules and procedures made applicable would not *ipso facto* be entrusted with the authority and powers that are vested on the Vice Chancellor under the Gauhati University Act. In other words, for the purpose of discharging his duties as the Chairman of the Selection Committee, the Vice Chancellor being the Chairman would have to act as the Chairman of the Selection Committee and would not carry along with him all the powers that are vested on the Vice Chancellor under the Gauhati University Act. From the said perspective, when we look at the communication of the President of the Governing Body requesting the Vice Chancellor to take necessary steps for assessing the API score of the applicant and also to hold the interview for selection of a regular Principal of the college, we have to

understand that such request was made to the Vice Chancellor in his capacity as the Chairman of the Selection Committee and not the Vice Chancellor simpliciter of Gauhati University.

13. It is further submitted by both Mr. K Gogoi, learned counsel for the Higher Education Department and Mr. PJ Phukan, learned standing counsel, Gauhati University that for the purpose of determining the API score, the procedure to be adopted is a complicated procedure and the Selection Committee as such may not be competent for the purpose. In order to mitigate the situation, the procedure adopted in the selection is that the requirement of evaluating the API score is entrusted to the authorities under the Gauhati University who is stated to be having the necessary expertise for determining the API score. It is submitted that such procedure adopted is also not inconsistent with the provisions of Clause 6.0 VII of the UGC Regulations of 2018.

14. Clause 6.0 VII provides that the Internal Quality Assurance Cell (IQAC) shall be established in all Universities/Colleges as per the UGC/ National Assessment Accreditation Council (NAAC) guidelines with the Vice Chancellor, as Chairperson in the case of Universities, and Principal, as Chairperson in case of Colleges. The IQAC shall act as the documentation and record-keeping Cell for the institution including assistance in the development of Assessment Criteria and Methodology Performa based on these Regulations. The IQAC may also introduce, wherever feasible, the student feedback system as per the NAAC guidelines on institutional parameters without incorporating the component of students' assessment of individual teachers in the Assessment Criteria and Methodology Performa. Clause 6.0 VII of the UGC Regulations of 2018 is

extracted as below:

“The Internal Quality Assurance Cell (IQAC) shall be established in all Universities/Colleges as per the UGC/ National Assessment Accreditation Council (NAAC) guidelines with the Vice Chancellor, as Chairperson (in the case of Universities), and Principal, as Chairperson (in case of Colleges). The IQAC shall act as the documentation and record-keeping Cell for the institution including assistance in the development of Assessment Criteria and Methodology Performa based on these Regulations. The IQAC may also introduce, wherever feasible, the student feedback system as per the NAAC guidelines on institutional parameters without incorporating the component of students' assessment of individual teachers in the Assessment Criteria and Methodology Performa.”

15. Accordingly, it is the submission of the learned counsel for the Higher Education Department as well as the Gauhati University that the IQAC of the Gauhati University would have the competence to determine the API score of the applicant/candidate for the post of Principal of the college concerned. We are not inclined to differ with the said submission of the Higher Education Department and the Gauhati University and take on board that the IQAC of Gauhati University would be the competent authority to determine the API score.

16. From such point of view, the request in the communication of the President of the Governing Body of the college dated 12.10.2020 requesting the Vice Chancellor of Gauhati University to take necessary steps for assessing the API score of the applicant/candidates cannot be said to be unsustainable in any manner.



17. But as regards the further request to the Vice Chancellor of the Gauhati University to also hold the interview of selection of the regular Principal of the college at the earliest, we are of the view that the said request would be contrary to the provisions of Rule 7 of the Rules of 2010, where the Selection Committee alone is empowered to make such selection.

18. Pursuant to the request in the communication dated 12.10.2020 of the President Governing Body, the impugned communication of the Academic Registrar, Gauhati University was made whereby in exercise of the procedure adopted by the Gauhati University, the candidature of the writ petitioner Dr. Md. Yamin Hassan stood rejected and only four of the other applicant/candidates were recommended for appearing before the Selection Committee. Having rejected the candidature of the petitioner by the authorities in the Gauhati University pursuant to the steps that may have taken to also hold the interview for selection of the regular Principal of the college concerned, we have to understand that the authorities in the Gauhati University has also adopted for itself, the power and authority to make the selection. Such assumption of power inspite of the communication of the President of the Governing Body of the college dated 12.10.2020, in our view would be in conflict with the provisions of Rule 7 of the Rules of 2010.

19. Upon considering the matter in its entirety as indicated above, we interfere with the communication of the Academic Registrar of the Gauhati University dated 02.11.2020 whereby only four of the applicants for the post of Principal of Prathamesh Baruah College, Gauripur were recommended for appearing before the Selection Committee and while doing so, the candidature of the writ



petitioner Dr. Md. Yamin Hassan was rejected. As concluded above, the authorities in the Gauhati University upon the necessary assessment of the API score may transmit the same to the Selection Committee constituted for the purpose of selection of the Principal of the Prathamesh Baruah College and the Selection Committee may take note of such API evaluation may proceed further with the selection and bring it to its logical end. In doing so, the Selection Committee shall take on board all the five applicants and make their own individual assessment on merit for selection of the candidates.

20. The writ petition stands allowed in the manner as indicated above.

JUDGE

Comparing Assistant