



GAHC010077162021

Page No.# 1/9



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

Case No. : WP(C)/2937/2021

SAMSUL ALAM
S/O ABDUR RAHIM, VILL. HELAPAKHRI, P.O. BALADMARI CHAR, DIST.
GOALPARA, ASSAM.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECY. TO THE GOVT. OF
ASSAM, EDUCATION (HIGHER) DEPTT., DISPUR, GUWAHATI 6

2:THE COMMISSIONER AND SECY.

EDUCATION (HIGHER) DEPTT.
DISPUR
GUWAHATI 6

3:THE DIRECTOR OF HIGHER EDUCATION

ASSAM
KAHILIPARA
GUWAHATI 19

4:THE DEPUTY DIRECTOR

HIGHER EDUCATION CUM DDO
WEST GOALPARA COLLEGE
KAHILIPARA
GUWAHATI 19

5:THE DEPUTY COMMISSIONER

DIST. GOALPARA



6:ABDUL WAHAB MIAH

I/C PRINCIPAL
WEST GOALPARA COLLEGE
VILL. AMBARI
P.O. BALARBHITA
DIST. GOALPARA
PIN 78312

Advocate for the Petitioner : MRS. R DEVI

Advocate for the Respondent : SC, HIGHER EDU

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

Date : 14-07-2021

JUDGMENT & ORDER (ORAL)

Heard Mrs. R Devi, learned counsel for the petitioner. Also heard Mr. K Gogoi, learned standing counsel for the Higher Education Department and Mr. G Pegu, learned counsel for the respondent No.5 being the Deputy Commissioner, Goalpara.

2. The petitioner Samsul Alam describes himself as a social worker and a person of repute and initiates this proceeding for issuing a writ in the nature of quo-warranto for removing the respondent No.6 Abdul Wahab Miah from the post of in-charge Principal of West Goalpara College, Goalpara on the ground that the petitioner had earlier lodged a complaint against the respondent No.6 that his qualifications are doubtful and that he was involved in certain financial irregularities. The petitioner refers to the complaint lodged by him dated



13.07.2020 addressed to the Minister of Higher Education Assam. As per the complaint lodged by the petitioner, the respondent No.6 was appointed as a Tutor in the subject Education at West Goalpara College in the year 1991 and that when the West Guwahati College was brought under the deficit system in the year 1996 the post of the respondent No.6 was initially not approved by the Director of Higher Education, Assam, but subsequently approved with a condition that the respondent No.6 Abdul Wahab Miah to obtain his MA degree in Education. Accordingly, the respondent No.6 obtained his MA degree in Education from the Aligarh Muslim University which is located outside the State of Assam. In the circumstance, the petitioner raised the allegation that the respondent No.6 had not taken any leave from the competent authority for undertaking the MA degree nor he could produce any migration certificate from the Gauhati University, which according to the petitioner is a mandatory requirement for pursuing a degree from outside the State. The petitioner also seeks to raise certain allegations in his complaint that the respondent No.6 had withdrawn a large amount of money in the name of printing and publishing the prospectus of the college, where as on the other hand, no such prospectus was published. Apart from the above, certain other allegations were also raised by the petitioner in his complaint dated 13.07.2020. We have also taken note that the respondent No.6 was subsequently made the in-charge Principal of the West Goalpara College.

3. On being asked, the petitioner has stated that while the respondent No.6 was continuing as a lecturer in the college, no such grievance against the manner in which the respondent No.6 had obtained his MA degree was raised by the petitioner. In the circumstance we are to understand that the grievance



of the petitioner against the respondent No.6 had arisen only when he was made the in-charge Principal of the college concerned. The said aspect will have its relevance as the subject matter of the complaint of the petitioner that the respondent No.6 had obtained his MA degree without taking leave from the departmental authorities would also have been equally relevant to assail the holding of the post of lecturer by the respondent No.6. Secondly, the only allegation regarding his post graduate qualification is that the respondent No.6 had done his MA degree from a University outside the State without obtaining any leave from the competent authority and also could not even produce his migration certificate.

4. The petitioner also refers to an enquiry report dated 11.02.2021 submitted by the Additional Deputy Commissioner, Goalpara, the Finance and Accounts Officer, Goalpara and the Assistant Commissioner, Goalpara which was conducted pursuant to the complaint filed by the petitioner. The penultimate paragraph of the said report dated 11.02.2021 is relied upon to be the basis of this writ petition to raise the submission that the petitioner could not produce any migration certificate that may have been issued in his favour.

5. On the aforesaid background of facts, this writ petition is instituted for a writ in the nature of quo-warranto. The petitioner seeks to question under what authority of law, the respondent No.6 is continuing as the in-charge Principal of the West Goalpara College and also for taking appropriate action against the respondent No.6 by way of a writ in the nature of mandamus. The petitioner could not explain his locus standi as to in what manner his legal right is affected and nor is this writ petition a PIL. The petitioner submits that the petition is

primarily for a writ in the nature of quo-warranto and therefore even a member of the public can institute the petition. As regards the prayer for a writ of quo-warranto, the petitioner relies upon the enquiry report dated 11.02.2021 of the Additional Deputy Commissioner in his complaint petition to make the submission that the MA degree of the respondent No.6 was obtained fraudulently and, therefore, he is not qualified to be an in-charge Principal of the college.

6. On the basis of the aforesaid materials relied upon by the petitioner in this proceeding for a writ in the nature of quo-warranto, we are required to examine whether the MA degree of the petitioner can be construed to have been fraudulently obtained or illegal or it is merely irregular. Forgery is defined to be 'an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right'; 'a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury.'

7. Considering the aforesaid meaning of the concept fraud, we take note of that there is neither any material nor any allegation that the MA degree of the petitioner was not duly issued by the University concerned from where he claims to have obtained his qualification. From the said point of view, it cannot be said that the respondent No.6 had committed a fraud on the authorities resulting in an intentional perversion of truth or making any false representation of the matter of fact. As no material is available that the degree was not actually



awarded by the University concerned and it also cannot be said that the materials on record produced before the Court shows that the MA degree of the respondent No.6 was a fraud or that it was illegal. The enquiry report relied upon merely provides that the respondent No.6 may not have taken the leave of the competent authority for pursuing the degree outside the State and that he could not produce the appropriate migration certificate. Such allegation at the best renders the MA degree of the respondent No.6 to be irregular.

8. The materials on record produced before the Court cannot be held to be a sufficient material for issuing a writ in the nature of quo-warranto. A pre-requisite for issuing a writ in the nature of quo-warranto requires a higher standard of material to be on record to establish that the public official had illegally usurped a public office to which he is otherwise not entitled or qualified. A mere question being raised by a member of the public as regards the manner in which a qualification was acquired without there being specific averment and material being produced that the said qualification is an illegal or fraudulent qualification, would not in our view be sufficient for issuing a notice for a writ in the nature of quo-warranto.

9. A submission is also made on behalf of the petitioner that notice may be issued to the respondents for making an enquiry against the respondent No.6 as regards his qualification. We are constrained to observe that the same would not be within the purview of the jurisdiction in a proceeding for a writ in the nature of quo-warranto. As has already been observed, as the required standard of material is unavailable as regards the illegality of the qualification, it would be inappropriate for a Court to go into a roving enquiry in a proceeding for a writ in



the nature of quo-warranto for arriving at a conclusion regarding the illegality of a qualification.

10. In this respect, reference be made to the pronouncement of the Supreme Court in *High Court of Gujarat Vs. Gujarat Kishan Mazdoor Panchayat* reported in (2003) 4 SCC 712 wherein paragraph in 23 it has been held that a writ of quo-warranto can only be issued when the appointment is contrary to the statutory rules. {See *Mor Modern Coop. Transport Society Ltd. v. Financial Commr. & Secy to Govt. of Haryana and Another*, reported in (2002) 6 SCC 269}. In *Statesman Pvt. Ltd. Vs. HR Deb*, reported in AIR 1968 SC 1495 in paragraph 13 it has been held that the High Court in a quo-warranto proceeding should be slow to pronounce upon the matter unless there is a clear infringement of the law.

11. Also the Calcutta High Court in its pronouncement in *BK Sen Vs. Bhattacharya Satyananda* reported in (1959) 63 CWN 590 had held that a writ of quo-warranto may be refused for interfering in a proceeding where the allegation is of irregularity.

12. From the aforesaid propositions of law, it would be discernible that unless there is a clear infringement of the provisions having the force of law or where the infringement of law is clear and such alleged infringement is not merely an irregularity but an illegality, it would not be appropriate to issue a writ in the nature of quo-warranto.



13. In the instant case, the allegation against the respondent No.6 is that he had not taken leave from the departmental authorities for obtaining his MA degree from a University outside the State. No material has been brought before the Court as to which provision having a statutory force of law had been infringed and secondly, whether any such infirmity would lead to a nullity of the MA degree of the petitioner. In the circumstance, taking note of the law relating to the issuance of a writ in the nature of quo-warranto, no clear infringement of law had been made out against the respondent No.6 to sustain a writ in the nature of quo-warranto. If at all, the allegation raised against the respondent No.6 would be correct, it can be a case for a departmental action against the petitioner rather than it being a fit case for a declaration on the illegality of his MA degree qualification.

14. From such point of view, we are not inclined to entertain this writ petition under the jurisdiction of writ in the nature of quo-warranto.

15. But, however, liberty is granted to the petitioner to approach the departmental authorities, if so advised, and it would be up to the departmental authorities to carry the matter further as per their discretion. We, however clarify that this observation should not be construed to be a direction of this Court to take any action against the respondent No.6 and the matter is left to the wisdom of the authorities and neither there is any requirement for the departmental authorities to act against the respondent No.6 on the basis of such observation.



16. Writ petition stands closed with the above observations.

JUDGE

Comparing Assistant