



GAHC010080082023

Page No.# 1/13



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

Case No. : WP(C)/2066/2023

KALYAN DAS
SON OF SRI GIRISH DAS,
RESIDENT OF VILL.- BARKHALA,
P.O.- K.P. BARKHALA,
P.S.- GHAGRAPAR,
DIST.- NALBARI, ASSAM,
PIN- 781350.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM,
SECONDARY EDUCATION DEPARTMENT,
DISPUR, GUWAHATI-06,
DISTRICT- KAMRUP(M), ASSAM.

2:THE SECRETARY
DEPARTMENT OF SECONDARY EDUCATION
DISPUR
GUWAHATI-06
DISTRICT- KAMRUP(M)
ASSAM.

3:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19
DISTRICT- KAMRUP(M)
ASSAM.

4:THE INSPECTOR OF SCHOOLS
NALBARI DISTRICT CIRCLE
NALBARI



COLLEGE ROAD
RAJ BARUAH COMPLEX
NALBARI. PIN- 781335.

5:NAREN CH. DEKA
S/O- PARASURAM DEKA
RESIDENT OF VILL.- KUWARIKUCHI
KUNDAR GAON
P.O.- DAKSHIN GAON
P.S.- GHAGRAPAR
DIST- NALBARI
ASSAM
PIN- 781350

Advocate for the Petitioner : MR. R HAZARIKA

Advocate for the Respondent : SC, SEC. EDU.

BEFORE
HONOURABLE MR. JUSTICE KARDAK ETE

JUDGMENT

Date : 27-02-2024

Heard Mr. J. Roy, learned Senior Counsel assisted by Mr. D. Das, learned counsel for the petitioner. Also heard Mr. U. Sarma, learned Standing Counsel, Higher Education Department for the respondent Nos.1, 2, 3 & 4 and Ms. D. Borgohain, learned counsel for the respondent No.5.

2. The challenge made in this Writ Petition is the order under No. GB-EST/Apptt/FP/24/2022/206, dated 30.03.2023 issued by the Director of Secondary Education, Assam by which the respondent No. 5, namely, Sri Naren Ch. Deka is allowed to hold the charge of In-charge Principal of the P. B. Dhirdutta Higher Secondary School in the Nalbari District, under FR 49(C) by way of temporary arrangement.

3. The petitioner was appointed as an Assistant Teacher in the P. B. Dhirdutta

Higher Secondary School on 16.09.1998 and joined on 17.09.1998 and Sri Naren Ch. Deka, the respondent No.5, joined in his service as an Assistant Teacher of the said School on 06.11.1998. Both the petitioner and the respondent No.5 are having the qualification of M.A. and B. Ed.

4. The contention of the petitioner is that the petitioner is senior to the respondent No.5. As per the seniority list, the name of the petitioner appeared at Sl. No.1 and the name of the respondent No.5 at Sl. No.2. The petitioner being the senior and having all the requisite qualification and fulfilled all eligibility criteria, as prescribed under Rule 12 of the Assam Secondary Education (Provincialised Schools) Service Rules, 2018 (in short 'the Service Rules of 2018') is more deserving a teacher to hold the charge of In-Charge Principal than respondent No.5. However, the respondent authority has issued the impugned order dated 30.03.2023, in favour of the respondent No.5, who is junior to the petitioner, whereby he has been allowed to hold the charge of In-charge Principal of the P. B. Dhirdutta Higher Secondary School, in violation of the provisions of the Service Rules of 2018.

5. Mr. J. Roy, learned Senior Counsel submits that it is not disputed that as per the seniority list, the petitioner is senior to the respondent No.5, having all the requisite qualification and eligibility in terms of the provision under Rule 12 of the Service Rules of 2018, which provides that a candidate must be M.A./M.Sc./M.Com., with B.T./B.Ed. Degree from any recognized University.

6. Mr. Roy, learned Senior Counsel submits that petitioner obtained his M.A. degree from the Gauhati University under the IDOL Study Center at Nalbari College on 06.06.2022, and also obtained the B. Ed. Degree. He further submits that the petitioner has completed his M.A. Degree after due permission from the Principal of P. B. Dhirdutta Higher Secondary School, after obtaining NOC for

pursuing the Post Graduate course in the distance learning center under IDOL, Gauhati University. A certificate has been issued by the Principal to the effect that as per record at the relevant period the petitioner was on deputation. The petitioner took admission in M.A. in Education on 02.08.2019 and accordingly, completed his M.A. course on 29.10.2021.

7. The learned Senior Counsel further submits that without considering the petitioner who is having all the eligibility criteria as per Rule 12 of the Service Rules of 2018, the impugned order dated 30.03.2023, passed in favour of the respondent No.5, who is junior to the petitioner, is in total violation of the Rules and thus not sustainable.

8. Mr. U. Sarma, learned Standing Counsel for the Higher Education Department submits that the petitioner is a graduate teacher to the said Higher Secondary School obtained his Master Degree in Arts (Education) from IDOL in distance mode in the year 2019-21, without obtaining NOC from the appointing authority. He further submits that the petitioner has obtained NOC from the then Principal of the P. B. Dhirdutta Higher Secondary School, which is not permissible under Clause 13 of the Assam Services (Conduct) Rules, 1965 (in short 'the Conduct Rules of 1965'). Therefore, he submits that the Master Degree acquired by the petitioner is found to be not in accordance with the Rule of 1965, although he is senior only on the basis of receiving graduate scale of pay i.e. 17.09.1998, for which his case was not considered for allowing him to act as the Principal In-charge of the said Higher Secondary School. Mr. Sarma, learned Standing Counsel, further submits that the respondent No.5 is a graduate teacher of the same school who has received the graduate scale of pay w.e.f. 06.11.1998 and he acquired M.A. from Gauhati University before joining his service and obtained B.Ed. Degree on being duly deputed during his

service period and as such he has been considered in preference to the petitioner and was allowed to hold the charge of the Principal In-Charge of the said Higher Secondary School by the impugned order dated 30.03.2023.

9. Ms. D. Borgohain, learned counsel appearing for the respondent No.5 submits that the M.A. Degree which the petitioner has obtained cannot be accepted unless it is obtained after due permission from the competent authority, as per the Rules.

10. She submits that the petitioner has stated to have obtained the B. Ed. and M.A. Degree simultaneously from two different University which is not permissible under the Rules, more so no permission was obtained as required under the Rules. The respondent No.5 has raised the issue before the competent authority by filing a representation on 04.05.2023. However, as on date, the representation is yet to be considered by the authority. She further submits that unless the degree in M.A. is obtained after due permission from the competent authority, the same is deemed to be invalid and cannot be accepted for the purpose of consideration for appointment as In-charge Principal. Therefore, there is no illegality in the impugned order in as much as the respondent No.5 is having all the requisite qualifications, including the M.A. and B. Ed. Degree, in terms of the relevant Service Rules, 2018, although the respondent No.5 is hardly two months junior in terms of graduate scale of pay.

11. Mr. J. Roy, learned Senior Counsel for the petitioner, replying to the submission of learned counsel for the respondents, has placed reliance on the order of this Court passed on 18.12.2023, in WP(C) No.5419/2023, to project that if a degree had been obtained without prior permission of the appointing authority, the same would be a misconduct under Rule 13 of the Conduct Rules of 1965 and it being a misconduct, the relevant proceedings of law applicable

against the candidate, would be a proceeding against such candidate under the Assam Services (Discipline and Appeal) Rules, 1965. But the same by itself cannot invalidate the otherwise valid degree obtained from the University. Further, any degree obtained from a University is governed by Section 22 of the University Grants Commission Act, 1956. Mr. Roy further submits that since the respondent authorities have taken the refuge of Clause 13 of the Assam Services (Conduct) Rules, 1965, which has been settled by this Court in the aforesaid case, such a defence put forwarded by the State authority cannot be accepted.

12. Due consideration has been given to the rival submissions of learned counsel for the parties and examined the materials available on record.

13. The petitioner was appointed as an Assistant Teacher in the P. B. Dhirdutta Higher Secondary School, Nalbari in the year 1998 and received the graduate scale of pay w.e.f. 17.09.1998. The respondent No.5 received the said graduate scale of pay on 06.11.1998. Therefore, the petitioner is undisputedly senior in terms of the initial entry as graduate teacher as well as in terms of receiving graduate scale of pay.

14. It is noticed that both the petitioner and the respondent No.5 are having the M.A. Degree with B. Ed. The qualification of M.A. Degree obtained by the petitioner, is stated to have been done without due permission from the appointing authority. It is noticed that the petitioner obtained the provisional certificate of M.A. Degree on 06.06.2022, on having passed the M.A. final examination in the year 2021 from the Gauhati University, Institute of Distance and Open Learning (IDOL), Nalbari College Study Centre. It is also noticed that the Principal of Nalbari College has issued a certificate on 23.03.2023, certifying that the petitioner was a student of M.A. Classes of Gauhati University (IDOL),

Nalbari College Study Centre during the session 2019-20 to 2020-21 and passed his M.A. Examination in 2021, by securing first class. The Principal of the P. B. Dhirdutta Higher Secondary School, Nalbari has also issued a NOC dated 05.07.2019, allowing the petitioner to take admission in Post Graduate Course in Education in the Distance Learning Course under the Gauhati University (IDOL). It is further certified by the Principal of the same Higher Secondary School on 10.03.2023, that the petitioner was pursuing B. Ed., on deputation from 27.06.2019 to 26.08.2021 and also certified that during the period of his B. Ed. Deputation, the petitioner also took admission in M.A. in Education under the Gauhati University (IDOL) on 02.08.2019 and completed his M.A. course on 29.10.2021.

15. Having considered the above certifications and the NOC, issued by the Principal of the P. B. Dhirdutta Higher Secondary School, it is clear that the petitioner has obtained the B. Ed. and M.A. degrees simultaneously and accordingly both the degrees were issued to the petitioner in the year 2021.

16. As per Rule 12(3)(i) of the Assam Secondary Education (Provincialised Schools) Service Rules, 2018, the M.A. Degree is one of the qualification for appointment to the post of Principal. The aforesaid Rule 12(3) is quoted here-in-below:

“(3) The minimum qualifications for appointment to the post of Principal in Higher Secondary School and Senior Secondary School shall be as follows:-

(i) The candidate must be M.A./M.Sc./M.Com with B.T/B.Ed degree from any recognized University having uniform good academic career. In respect of Hindi Teacher having degree qualification, the Hindi 'Parangat' and 'Nishanat' shall be considered instead of B.T/B.Ed;

(ii) The candidate must have rendered at least 15 years of service as Post Graduate Teachers in any of the provincia- lised Higher Secondary/Senior Secondary School; or

(ii) The candidate must have rendered at least 5 years of service as Vice-Principal in any of the provincialised Higher Secondary School; or

(iv) The candidate must have 17 years of teaching experience as Graduate Teacher in any Higher Secondary School;

(v) The age of the candidates must not be more than 57 years as on the first January of the year of recruitment : Provided that the service and teaching experience acquired in a School during provincialised period shall be counted. The period rendered prior to provincialisation of the School shall not be counted;

(vi) The candidate must possess commanding personality, administrative ability, leadership skills and integrity.”

17. On reading of the provisions of the above Rule, the qualification to be appointed as Principal of the Higher Secondary School requires, inter alia, a minimum of graduate teacher having M.A./M.Sc./M.Com with B.T./B.Ed. There is no dispute that the petitioner is an Assistant Teacher having M.A. with B. Ed. Degree and was appointed prior to the respondent No.5. The respondent No.5 is also equally eligible as he has also received the graduate scale of pay having M.A. with B. Ed. Degree. The only difference between the petitioner and the respondent No.5 is the date of receiving the graduate scale of pay and initial entry in the service in as much as the petitioner received the graduate scale of pay on 17.09.1998 and the respondent No.5 on 06.11.1998, which clearly indicates that the petitioner is senior to the respondent No.5.

18. On further perusal of the provision of the Assam Secondary Education (Provincialised Schools) Service Rules, 2018, it is seen that under Rule 12(5), the procedure for recruitment to the post of Principal in the Higher Secondary School is provided, which is reproduced here-in-below:

“12. (5)(i) Before the end of each year, the Inspector of School who is the Member Secretary of the District Selection Committee constituted under Rule 16(2), shall make an assessment of the

number of vacancies to be occurred in the cadres of Principal and to be filled up in the next year within the district;

(ii) The Inspector of Schools shall invite applications from the intending eligible candidates through an advertisement to be published at least in two widely circulated local news papers including School Notice Board;

(iii) On receipt of applications from the eligible candidates the District Selection Committee after scrutiny of the applications, shall hold an interview and prepare a panel of names of three candidates against each vacancy for the district on the basis of qualities such as leadership skills, administrative ability, integrity and commanding personality;

(iv) The panel of names so prepared by the District Selection Committee shall be forwarded to the State Selection Board constituted under Rule 16(3), for preparation of a select list;

(V) After receipt of the panel under sub-clause (iv), the State Selection Board shall prepare a district-wise select list equal to the number of vacancies and publish the same in the office notice Board or in such other places as the Director may consider fit and proper;

(vi) After approval and publication of the select list under sub-clause (v), the Appointing Authority shall appoint the candidates in order of preference in the select list by observing all formalities;

(vii) No appointment in any manner shall be made by any authority except in accordance with the procedure prescribed above;

(viii) The Select list so prepared and approved shall be in force for one year from the date of its approval by the State Selection Board.”

19. On perusal of the aforesaid Rule, it is seen that before the end of each year, assessment of the number of vacancies to be occurred in the cadres of Principal be made for filling up in the next year. Thereafter applications are to be invited from the intending eligible candidates through an advertisement. On receipt of the applications from the eligible candidates, the District Selection Committee shall hold an interview and prepare a panel of names of three candidates, on the basis of qualities, such a leadership skills, etc. Then the

panel of names, so prepared by the District Selection Committee shall be forwarded to the State Selection Committee. Most importantly, it is provided that no appointment in any manner shall be made by any authority, except in accordance with the procedure prescribed in the preceding Rule. Despite such prescriptions under the Rules for appointment to the post of Principal of the Higher Secondary School, the respondent authorities have issued the impugned order dated 30.03.2023, whereby the respondent No.5 has been allowed to hold the charge of In-charge Principal of the P. B. Dhirdutta Higher Secondary School, purportedly under FR 49(C) on purely temporary basis.

20. It is apposite to remind the legal maxim – “Expressio Unius est exclusion alterius”, that if a Statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner and following some other course is not permissible. As noted above, criteria for recruitment of Principal and its procedure are clearly provided in the Service Rules of 2018. However, without recourse to such provision, the authorities have resorted to allow the respondent No.5 to hold the charge of In-charge Principal, without considering the other eligible candidates. It is needless to observed that even for temporary or stopgap arrangement, all the eligible candidates are to be considered in accordance with law.

21. Having not acted in terms of the above provisions of the Service Rules of 2018 and without considering the other eligible candidates, including the present petitioner by the respondent authorities, I am of the view that such act of appointing and allowing the respondent No.5 to hold the charge of In-charge Principal of the P. B. Dhirdutta Higher Secondary School, denying the other equally eligible candidates is clearly arbitrary and illegal.

22. Having regard to the stand of the State respondents that the petitioner

acquired his Master Degree in Education from IDOL, Gauhati University in the year 2019-20 to 2020-21, without obtaining the NOC from the appointing authority, which is not permissible under Clause 13 of the Assam Services (Conduct) Rules, 1965, this Court fully in agreement that such stand has been duly considered in other proceedings by the coordinate Bench of this Court in WP(C) No.5419/2023, vide order dated 18.12.2023, relying on the earlier order of this Court in the case of **Smti Mouchumi Saharia vs. Smti. Smriti Rekha Kalita and 3 others**, whereby it has held that if a Degree had been obtained without prior permission of the appointing authority, the same would be a misconduct under Rule 13 of the Rules of 1965 and it being a misconduct, the relevant proceedings of law applicable against the candidate, would be a proceeding against such candidate under the Assam Services(Discipline and Appeal) Rules, 1965, but the same by itself cannot invalidate the otherwise valid degree obtained from the respective Universities and further, that the Degree obtained from a University is governed by Section 22 of the University Grants Commission Act, 1956.

23. In view of the order of the coordinate Bench of this Court, this issue is no longer *res integra* and in my considered view, the same is squarely applicable in the present case. There is no dispute that the petitioner has been granted the Masters Degree in Education and the said degree having been obtained from an institution, recognized by the University Grants Commission, the respondent authorities do not have the jurisdictional authority to invalidate the said degree obtained by the petitioner and such invalidation cannot be done even impliedly.

24. That apart, on a pointed query to the learned Standing Counsel of the Secondary Education Department to the effect that whether there were any proceedings or consideration before issuance of the impugned order dated

30.03.2023, to which the learned Standing Counsel fairly submits that there was no such consideration or proceedings before passing the impugned order dated 30.03.2023. Thus, the stand taken by the State respondents that the petitioner has obtained the Masters Degree without prior permission from the appointing authority under Rule 13 of the Rule, 1965, is nothing but only in the garb of explanation, without there being any material basis, which is not permissible under the law. More so, such a stand has been already decided by this Court (Supra).

25. Having regard to the submission of learned counsel for the respondent No.5 that the petitioner has obtained the B. Ed. Degree and the M.A. Degree simultaneously from two different Institutes, without due permission from the competent authority under the Rules and the respondent No.5 has already made a representation against such degrees, which is yet to be considered by the respondent authorities, such a submissions are considered only to be rejected, in view of the conclusion rendered herein above. As noted above, until the time the degree obtained by the petitioner is held to be invalid or not genuine by a competent authority, this Court cannot venture into the arena of validity or otherwise of the degree obtained by the petitioner.

26. On the perusal of the materials placed before this Court in the present proceeding, there is nothing on record to show that the Masters Degree obtained by the petitioner is even seemingly invalid, except the bald statement of the learned counsel for the respondents that the same has been obtained without due permission from the competent authority.

27. As noted above, the respondent authority, in my considered view has flagrantly violated the prescribed procedure under the Service Rules of 2018, no consideration or procedure has been undertaken to consider the senior

candidates and other eligible candidates. Even for temporary arrangement, all the eligible candidates are required to be considered for appointment of In-charge Principal following the provisions of Service Rules of 2018.

28. In view of the discussion made here-in-above, I am of the considered view that the impugned order dated 30.03.2023, issued by the Director of School Education, Assam, whereby the respondent No.3 has been allowed to hold the charge of In-charge Principal of the P. B. Dhirdutta Higher Secondary School, cannot be sustained as the same has been issued without following the due procedure prescribed under the Service Rules of 2018 and without considering other eligible and senior candidates including the petitioner.

29. Consequently, the impugned order dated 30.03.2023, issued by the Director of School Education, Assam is hereby set aside and quashed.

30. It is provided that if the post of Principal of P. B. Dhirdutta Higher Secondary School is required to be filled up, the respondent authorities may filled up the same, in terms of Rule 12 of the Service Rules of 2018, by considering all the eligible candidate including the petitioner and the respondent No.5. It is further provided that even for a temporary arrangement, the authorities are directed to consider all the eligible candidates including the petitioner and respondent No.5 by following the procedure prescribed under the Service Rules, 2018.

31. The Writ Petition stands allowed and disposed of accordingly. No order as to costs.

JUDGE

Comparing Assistant