

GAHC010035412023



2024:GAU-AS:11816

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

**Case No. : WP(C)/936/2023**

BORNALI SAIKIA KAKOTI @ BORNALI SAIKIA (E)  
D/O- KATIRAM SAIKIA,  
R/O- BEBEJIA GAON, BOGAR GAON, PURANA TITABOR,  
DIST- JORHAT, PIN-785632, ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS  
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM,  
EDUCATION (SECONDARY ) DEPTT, DISPUR, GHY- 06

2:THE DIRECTOR OF SECONDARY EDUCATION  
ASSAM  
KAHILIPARA  
GUWAHATI- 781019

3:THE INSPECTOR OF SCHOOLS  
JORHAT DISTRICT CIRCLE  
JORHAT  
ASSAM

**Advocate for the Petitioner** : MS D BORGOHAIN, MS M BORAH,MS. K BARUAH,MS. M SARMAH,MR. P GOHAIN

**Advocate for the Respondent** : SC, SEC. EDU.,

**BEFORE  
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR**

**ORDER**

**Date : 28.11.2024**

Heard Ms. D. Borgohain, learned counsel for the petitioner. As well as Mr. U. Sharma, learned Standing Counsel, Secondary Education Department on behalf of all the respondents.

**2.** The petitioner was initially temporarily appointed as a Subject Teacher in Economics and posted at P.R.S. Higher Secondary School for a period of 3 (three) months or till the post is filled up by the candidate selected by the State Selection Board whichever is earlier with effect from the date of joining by an Order dated 26<sup>th</sup> May, 1992, issued by the Director of Secondary Education, Assam. The petitioner, accordingly, joined to the said post on 27.05.1992. By an Order dated 16<sup>th</sup> October, 2001 issued by the Director of Secondary Education, Assam and on the basis of the screening conducted in pursuance of Government instruction dated 16.10.1993, the appointment of the petitioner was regularized.

**3.** In the meantime, the petitioner obtained her B.Ed degree from Deomornoi B.Ed. College, Deomornoi, Darrang in the year 2015.

**4.** The Principal of Padma Ram Sharma Higher Secondary School, Jorhat attended the age of superannuation on completion of 60 (sixty) years and retired from service on 28.02.2022. The petitioner having the requisite eligibility of Masters degree as well as B.Ed. degree to hold the post of the Principal and also being the senior most Subject Teacher serving in the said School approached the Inspector of Schools, JDC, Jorhat to allow her to hold the Charge of Principal of the Padma Ram Sharma Higher Secondary School.

**5.** It is the case of the petitioner that the Secondary Education Department, Government of Assam issued a Office Memorandum dated 28<sup>th</sup> July, 2014 relaxing the required educational & professional qualification of B.Ed/BT degree for the post of Teachers in Provincialised Higher Secondary Schools and High School/High Madrassa, during the period up to 01<sup>st</sup> January, 2015 enabling such Teachers serving in provincialised High School/High Madrassa to obtain their B.Ed. degree within 5 (five) years from the date of joining in their service. The said Memorandum, also provides that the Teachers of provincialised Higher Secondary School/High School/High Madrassa shall be deputed for B.Ed training course for acquiring the degree in terms of the conditions specified therein, allowing such deputed Teachers to pursue their B.Ed degrees from B.Ed College of the State which have affiliation with the Gauhati University, Dibrugarh University and Assam University in evening shift classes where normal classes of the schools are not hampered for which no prior permission shall be required.

**6.** The petitioner, accordingly, claimed to be the In-charge Principal of the said Padmaram Sharma Higher Secondary School, Jorhat along with power of DDO. Further, the outgoing Principal of the said school also handed over the Charge of Academic duties to the petitioner as per direction of the Inspector of Schools by a Communication dated 28.02.2022.

**7.** As no steps were taken by the respondents allowing the petitioner to act as In-charge Principal of the said School, the petitioner preferred WP(C) No. 5258/2022, which was disposed of by an Order dated 16.02.2023, with the following directions:-

*“26. After hearing the learned counsels for the parties and on perusal of the records, it is directed that the Director of Secondary*

*Education, Assam and/ or not below the rank of Deputy Director of Secondary Education, Assam, after giving an opportunity of hearing to the petitioner as well as said Mitali Sonowal, Science Teacher of said HS school and other eligible teachers of the said P. R. S. H. S. School, Titabor to hold the post of Principal in a provincialised Higher Secondary School of the State, shall pass a reasoned order regarding holding of charge of Principal of said Padma Ram Sarmah Higher Secondary School, Titabor, Jorhat as well as entitlement of increment of B.Ed. degree obtained by the petitioner in the year 2015 from Deomornoi B.Ed. College, Darrang under the Gauhati University.*

*27. While considering such matters of the petitioner, said Mitali Sonowal, who also submitted her claim before the DSE, Assam for the post of In-charge Principal of said H. S. School and other eligible teachers of the said school the authorities concerned i.e., the DSE, Assam shall consider all the relevant documents, records and the relevant Rules, as applicable.*

*28. The petitioner shall file an application along with the certified copy of this order before the Director of Secondary Education, Assam forthwith, along with a copy of this writ petition including the Annexures appended thereto, obtaining necessary acknowledgment from the said authority in that regard.*

*29. In the event of filing such application as directed above, the Director of Secondary Education, Assam within a period of 90 (Ninety) days shall dispose of the same, intimating the petitioner and others concerned about the outcome of the same.*

*30. Till such decision is taken by the Director of Secondary Education, Assam, the Inspector of Schools, Jorhat shall continue to hold the post of Principal In-charge of said Padma Ram Sarmah Higher Secondary School, Titabor, Jorhat along with the power of DDO.*

*31. With the above observation and direction, this writ petition stands disposed of."*

**8.** Consequent to the Order dated 16.02.2023 passed by this Court in WP(C) No. 5258/2022, the Director of Secondary Education, Assam passed an Order dated 04.10.2023, and the relevant portion reads as under:-

*"Smti Barnali Saikia Kakoti acquired B.Ed. degree from Demornoi B.Ed. College, Deomornoi, under Darrang District in the year 2015. At the same time, she was also attending normal classes in Padma Ram Sarmah Higher Secondary School under Jorhat District. Smti Barnali Saikia Kakoti could not produce "No Objection Certificate" issued by the competent authority for acquiring B.Ed. degree. Her claim that no prior permission is necessary to study B.Ed. in evening shift classes where normal classes of the School is not hampered as per Govt. O.M. No.ASE.383/2011/Pt/71, dtd.- 28-07-2014 is not tenable, as the Govt. O.M. is applicable only to those Teachers appointed as per Govt. Notification No.ASE.324/2009/138, dtd:- 13-09-2012. On the other hand, Rule 13 of "the Assam Civil Services (Conduct) Rules, 1965 prescribes that "No Government Servant while in Government service shall join or attend any educational institution for the purpose of preparing himself for or shall appear at an examination of a recognized-Board or University without obtaining previous permission*

*from appointing authority". Smti Barnali Saikia Kakati, PGT of Padmaram Sarmah Higher Secondary School, District - Jorhat could not explain how she attended regular classes at Deomornoi B.Ed. College, Deomornoi under Darrang District from Jorhat which is stunted at a distance of about 350 KM. No leave was taken by her for acquiring B.Ed. degree. 80% attendance in B.Ed. classes is mandatory in regular B.Ed. course. Accordingly, the way of obtaining B.Ed. degree by Smti. Barnali Saikia Kakati, Subject Teacher of Padma Ram Sarmah Higher Secondary School under Jorhat District from Deomornoi B.Ed. College, Deomornoi, District - Darrang is found irregular. Moreover, Smti. Mitali Sonowal, Assistant Teacher acquired her Master Degree from Dibrugarh University under Distance Learning mode during her service period without prior / previous permission from the appointing authority. As such, her MA degree is also not found as per rule.*

*It appears that both Smti. Barnali Saikia Kakati, PGT and Smti. Mitali Sonowal, Assistant Teacher of Padma Ram Sarmah Higher Secondary School are not eligible for holding the charge of Principal of the School. Moreover, no other senior teachers in the School possess the B.Ed. degree.*

*Hence, the Inspector of Schools, J.D.C. Jorhat is hereby allowed to continue to hold the charge of Principal of the school, till regular Principal is appointed in the School.*

*Further, Smti. Barnali Saikia Kakati, PGT of Padmaram Sarmah Higher Secondary School, District - Jorhat obtained her B.Ed. degree after 10-07-2012 and as per the view of the Ld. Advocate General, Assam dtd. 02.11.2022 those candidates; who obtained B.Ed. degree prior to 10-07-2012, would be entitled to 1 (one) Advance increment, while those who obtained it after 10-07-2012 may not be so entitled in terms of order dated 14-12-2015 in WP© 3733/2015 Kamlesh Kumar Hajong-Vs-State of Assam & others. As such, the Inspector of Schools, Jorhat is hereby directed to withdraw the order of allowing 1 (one) Advance increment for acquiring B.Ed. degree in respect of Smti. Barnali Saikia Kakati, PGT of Padmaram Sarmah Higher Secondary School and to initiate necessary steps for recovery of excess drawal amount accordingly."*

**9.** Being aggrieved with the Order dated 04.10.2023, the petitioner is before this Court by way of the present writ petition.

**10.** Learned counsel for the petitioner submits that the petitioner is eligible to be considered for the post of In-charge Principal of Padma Ram Sharma Higher Secondary School, Jorhat. It is also submitted that the petitioner received the Post Graduate Scale of pay w.e.f., 27.05.1992 and as the petitioner has obtained her M.A. degree as well as B.Ed. Degree, she is entitled to be considered for holding the post of In-charge Principal of the said school in terms of Rule 12 of the Assam Secondary Education (Provincialised Schools) Service Rules, 2018 (Rules of 2018 in short), inasmuch as the petitioner has the required qualification and has also rendered more than 30 (thirty) years of service as a Graduate Teacher. However, the Director of Secondary Education by the impugned Order dated 04.10.2023, came to a wrong finding that the B.Ed.

degree obtained by the petitioner is irregular and accordingly, she is not entitled to hold the post of In-charge Principal of the Padma Ram Sharma Higher Secondary School.

**11.** Mr. U. Sharma, learned Standing Counsel, Secondary Education Department submits that as the petitioner did not obtain No Objection Certificate (NOC in short) from the Competent Authority prior to acquiring her B.Ed. degree, the said degree could not be recognized by the Government and accordingly, the Director of Secondary Education has rightly passed the Order dated 04.10.2023. He further submits that for obtaining a B.Ed. degree a candidate has to have at least 80% (eighty percent) attendance, however, the college from which the petitioner obtained her degree is more than 360km away from her school and therefore, the petitioner could not have obtained the B.Ed. degree without hampering her normal school duties.

**12.** Insofar as the B.Ed. degree obtained by the petitioner from the Deomorno B.Ed. College, District Darrang under the Gauhati University is concerned, there is no doubt that the said degree was obtained without getting prior approval from the Competent Authority. A Co-ordinate bench of this Court by Judgment and Order dated 28.09.2023 passed an I.A.(C)/2615/2013 has held as under:-

*“5. A university offers a degree in exercise of the powers under section 22 of the University Grants Commission Act, 1956 and taking note of Rule 21 of the General Clauses Act, it is only the university who can declare the degree obtained to be untenable in law or may withdraw it. No other third party can be understood to have any jurisdiction or authority not to accept a degree offered by a university in exercise of the powers under section 22 of the UGC Act, 1956.*



*We are unable to accept the view formed by the Director of Secondary Education, Assam in the order dated 27.07.2023 that as because the writ petitioner Smti Smriti Rekha Kalita had obtained the M.A Degree without obtaining NOC or previous permission from the authority, therefore, the M.A Degree of the writ petitioner would be unacceptable as per Rule. From such point of view, the writ petitioner can be said to have made out a strong prima facie case against the order dated 27.07.2023. If the M.A Degree of the writ petitioner is otherwise valid and acceptable in law, the writ petitioner may have a legal right to be the in-charge Principal and accordingly also has the benefit of the balance of convenience as well as will suffer irreparable loss if the interim order dated 09.08.2023 is vacated.”*

**13.** The Judgment & Order dated 28.09.2023 was also followed by this Court in the case of Tankeswar Nath Vs. State of Assam & Others [WP(C) No. 5419/2023, dated 18.12.2023], wherein, after examining the provisions of Rule 13 of the Assam Civil Services (Conduct) Rules, 1965 and agreeing with the decision of this Court in the case of Mouchumi Saharia (supra) concluded as under:-

*“7. On application of the decision of this Court in the case of Mouchumi Saharia(supra); to the issues arising in the present case, it is clear that the petitioner having been validly granted a Masters Degree in Assamese and the said Degree having been obtained from an institution recognized by the University Grants Commission, the respondent authorities do not*

*have the jurisdiction and authority to invalidate the said Degree obtained by the petitioner and such invalidation cannot be done even impliedly. The effect of the denial of the benefits of holding the charge of in-charge Principal of the said school to the petitioner in spite of being the senior most Teacher of the school, amounts to an invalidation of the Degree obtained by the petitioner in Krishna Kanta Handique State Open University, which is impermissible.*

*Accordingly, the order, dated 30.03.2023, having been issued only on the ground that the petitioner was not eligible to hold the charge of the post of Principal, Sarthebari Higher Secondary School, Sarthebari, on account of he having obtained his M.A. Degree without prior permission from the competent authorities for undergoing such a course; stands interfered with.*

*9. The M.A. Degree acquired by the petitioner having been so acquired from a recognized University; the said Degree is otherwise valid and acceptable in law and accordingly, the petitioner having fulfilled the eligibility criteria as mandated for recruitment to the post of principal of the school in question, under the provisions of Rule 12(3) of the said Rules of 2018; a legal right has accrued to the petitioner to hold the charge of the post of Principal, Sarthebari Higher Secondary School, Sarthebari.”*

**14.** Applying the ratio of the decision of this Court in Tankeswar Nath (supra),

it is held that the B.Ed. degree acquired by the petitioner having been so acquired from a recognized University, the said degree is otherwise valid and acceptable in law and accordingly, the petitioner is held to have the fulfilled eligibility criteria for consideration for the post of In-charge Principal of the said Padma Ram Sharma Higher Secondary School. Accordingly, this writ petition is disposed of Directing the Director of Secondary Education Assam to consider the claim of the petitioner for consideration for the post of In-charge Principal of Padma Ram Sharma Higher Secondary School and to take necessary steps for filling up the said post in accordance with law and in terms of the observations made by this Court hereinabove within a period of 1 (one) month from the date of receipt of a certified copy of the Order of this Court.

**15.** Insofar, as the entitlement of the petitioner to receive 1 (one) advance increment by virtue of obtaining the B.Ed. degree is concerned, this Court has noticed that the Director of Secondary Education, Assam in the Order dated 04.10.2023 has held that as the petitioner had obtained her B.Ed. degree after 10.07.2012 and as per the view of the learned Advocate General, Assam, those candidates who obtained B.Ed. degree prior to 10.07.2012 would be entitled to 1 (one) advance increment while those who obtained after 10.07.2012 may not be entitled in terms of the Order dated 14.12.2015 in WP(C) No. 3733/2015 (*Kamlesh Kumar Hajong Vs. State of Assam & Others*), accordingly, Inspector of Schools, Jorhat was directed to withdraw the order of allowing 1 (one) advance increment for acquiring B.Ed. degree by the petitioner and initiate necessary steps for recovery of excess drawal amount.

**16.** This Court in another writ petition namely, WP(C) No. 6241/2015 by an Order dated 16.02.2016 had quashed the Government notification No. ASE.229/2013/153 dated 22.10.2024. Consequent thereto, the Joint Director of

Secondary Education, Assam by a Communication dated 27<sup>th</sup> July, 2016 and addressed to the Inspector of Schools, JDC, Jorhat stated that the Assistant Teachers are eligible to get 1 (one) advance increment for qualifying B.Ed. degree provided, (1) he/she has joined service before 03.07.2012 and (2) Obtained B.Ed. from UGC recognized University and B.Ed. College approved by NCTE. However, as the present writ petition is confined only with regard to the eligibility of the petitioner to hold the post of In-charge Principal by virtue of her obtaining the B.Ed. degree, this Court is leaving the issue open to the wisdom of the Director of Secondary Education Department, Assam to take steps as regards the entitlement of the petitioner for receiving 1 (one) advance increment in terms of the settled law that is in operation as on today.

**17.** Accordingly, the impugned Order dated 04.10.2023, passed by the Director of Secondary Education, Assam is interfered with and the same is accordingly set aside and quashed, insofar as it pertains to the observation and finding of the Director of Secondary Education Department, Assam with regard to the B.Ed. degree obtained by the petitioner.

With the above observations and directions this writ petition is disposed of.

**JUDGE**

**Comparing Assistant**