

GAHC010015212024



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

**Case No. : WP(C)/426/2024**

RUHIT CHABUKDHARA AND ANR  
S/O LT. BHOLANATH CHABUKDHARA, R/O WARD NO. 2, NAZIRA TOWN,  
P.O. AND P.S.-NAZIRA, DIST- SIVASAGAR, ASSAM

2: MRS. MANJU GHARPHALIA W/O BHABANANDA BORA  
R/O WARD NO. 10 LAKHIMIALI SUKAFANAGAR P.O. AND P.S.-NAZIRA  
DIST-SIVASAGA

VERSUS

THE STATE OF ASSAM AND 3 ORS  
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE  
GOVERNMENT OF ASSAM, EDUCATION (SECONDARY) DEPARTMENT,  
SACHIVALAYA, DISPUR, GUWAHATI-6

2:THE DIRECTOR OF SECONDARY EDUCATION  
ASSAM KAHILIPARA GUWAHATI-19

3:THE INSPECTOR OF SCHOOL SIVASAGAR DISTRICT CIRCLE  
SIVASAGAR DISTRICT SIVASAGAR ASSAM

4:TULSHI KONWAR PRINCIPAL IN CHARGE  
NAZIRA GIRLS HIGHER SECONDARY SCHOOL  
SIVASAGAR ASSAM P.O. AND P.S.-NAZIRA  
DIST- SIVASAGAR ASSAM PIN-78568

**Advocate for the Petitioner : MR S BORTHAKUR**

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

**BEFORE  
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

**Date of hearing : 13.06.2024**

**Date of Judgment : 13.06.2024**

**Judgment & order(Oral)**

Heard Mr. S. Borthakur, learned counsel, appearing on behalf of the petitioners. Also heard Mr. U. Sarma, learned standing counsel, Secondary Education Department, appearing on behalf of respondents No. 1 to 3.

2. It is to be noted that inspite of service of notice upon the respondent No. 4, herein, none has entered appearance on behalf of the said respondent.
3. The petitioners, in the present proceeding, have presented a challenge to an order, dated 06.01.2024, by which the Director, Secondary Education Department, Assam, allowing the respondent No. 4, herein, to hold the charge of the post of in-charge, Principal, Nazira Girls' Higher Secondary School, Nazira.
4. The petitioner No. 1, in the writ petition, has contended that he was initially appointed as a Science Graduate Teacher in Geleky High School vide order, dated 16.03.1992, and thereafter, in the year 1993, he was transferred in the same capacity to Nazira Girls' Higher Secondary School, Nazira, wherein, he is stated to be continuing in his service in the said school as on date.
5. The petitioner No. 2 has contended that she was initially appointed as a Hindi Teacher in Hologuri Tribal High School vide order, dated 12.02.1994, and thereafter, had received her graduate scale of pay w.e.f. 01.03.1994. The petitioner No. 2 was thereafter transferred to Nazira Girls' Higher Secondary School, Nazira, in the same capacity in the year 2004, wherein, she is stated to

be continuing in her service in the said school till date.

**6.** The private respondent No. 4, herein, was appointed as an Assistant Teacher in Nazira Girls' Higher Secondary School, Nazira, vide order, dated 17.08.2005, in the graduate scale of pay.

**7.** The incumbent in the post of Principal of Nazira Girls' Higher Secondary School, Nazira, having retired from his service on attaining the age of superannuation w.e.f. 31.12.2023; a list of teachers in order of seniority working in the said school, was forwarded to the respondent authorities for the purpose of holding the charge of the post of Principal of Nazira Girls' Higher Secondary School, Nazira. In the said list, the names of petitioner No. 1, petitioner No. 2 and respondent No. 4, were shown at Serial No. 1, Serial No. 7 and Serial No. 9, respectively.

**8.** It is further contended that the School Management and Development Committee(SMDC) had also adopted a resolution in its meeting held on 12.12.2023, requesting the departmental authorities to allow the petitioner, herein, being the senior-most teacher to hold the charge of the post of Principal, Nazira Girls' Higher Secondary School, Nazira. However, the Director, Secondary Education Department, Assam, vide order, dated 06.01.2024, proceeded to allow the respondent No. 4, herein, to function as the in-charge Principal of Nazira Girls' Higher Secondary School, Nazira, along with the financial power against the vacancy so occasioning on retirement of the incumbent, therein. The arrangement as made vide order, dated 06.01.2024, was stated to have come

into force w.e.f. 01.01.2024. Being aggrieved, the petitioners have instituted the present proceeding.

**9.** Mr. Borthakur, learned counsel for the petitioners, has submitted that given the date of entry into the service of the petitioners No. 1 & 2, and respondent No. 4, respectively; it is seen that the petitioner No. 1 is the senior-most teacher amongst them in the said school while the respondent No. 4 is much junior to the petitioners No. 1 & 2 in Nazira Girls' Higher Secondary School, Nazira.

**10.** Mr. Borthakur, learned counsel, has contended that on issuance of the order, dated 06.01.2024, inquiries were made by the petitioners, herein, to understand the reason behind allowing the respondent No. 4 to hold the charge of the post of Principal of Nazira Girls' Higher Secondary School, Nazira. During such inquiry, it was revealed that the case of the petitioners were not so considered in-as-much as it was held that they had proceeded to pursue their Masters Degree from Dibrugarh University in the Distance Education Mode without taking prior permission for pursuing such course from the departmental authorities. It is to be noted that both the petitioners No. 1 & 2 had completed their respective B.Ed. Degree from recognized Universities after being deputed to undergo such course by the departmental authorities. However, on the ground that the petitioners had acquired their respective Masters Degree through Distance Education Mode without taking prior permission from the concerned authority, it was contended by the respondent authorities that their cases for being allowed to hold the charge of Principal of the said school, was not considered.

**11.** It is contention of Mr. Borthakur, learned counsel for the petitioners that the petitioners had pursued their Masters Degree courses in Distance Education Mode and such pursual of their Masters Degree course by them, has not hampered their duties as assigned to them in the said school and accordingly, the respondent authorities could not have arrived at a conclusion that the Masters Degree course having been pursued by them without obtaining prior permission from the competent authority, the Masters Degree so obtained by them, stood invalidated and accordingly, they were not eligible to hold even the charge of the post of Principal of Nazira Girls' Higher Secondary School, Nazira, inspite of their service seniority in the said school.

**12.** In this connection, Mr. Borthakur, learned counsel, has relied upon a decision of this Court rendered in the case of ***Smriti Rekha Kalita v. State of Assam & ors.*** [WP(c)4526/2023, disposed of on 19.01.2024].

**13.** Per contra, Mr. Sarma, learned standing counsel, Secondary Education Department, by referring to the affidavit-in-opposition filed by the Director, Secondary Education Department, Assam, in the matter; has contended that in the said school, there were 4(four) teachers having MA/M.Sc. with B.Ed. Degrees and the petitioners were also amongst those 4(four) teachers. However, the petitioners, herein, having not obtained their respective Masters Degree after obtaining prior permission from the departmental authorities for pursuing their Masters Degree, course, in view of the provisions of Rule 13 of the Assam Services (Conduct) Rules, 1965; their such Degrees cannot be reckoned for the purpose of grant to them of service benefits. It was further contended that although the petitioner No. 1, herein, was the senior-most

teacher presently serving in Nazira Girls' Higher Secondary School, Nazira, but, for having obtained his Masters Degree without taking prior permission from the departmental authorities; he was not considered eligible for holding the charge of the post of Principal of the said school and the respondent No. 4, herein, having so obtained the eligibility criterias requisite for the purpose of holding the charge of Principal of the said school in the manner required; he was allowed vide order, dated 06.01.2024, to hold the post of in-charge Principal of Nazira Girls' Higher Secondary School, Nazira. Accordingly, it was contended that the action on the part of the respondent authorities in issuing the order, dated 06.01.2024, being based on considerations germane to the issue; does not call for any interference from this Court.

**14.** I have heard the learned counsels appearing for the parties and also perused the materials available on record.

**15.** At the outset, it is to be noted that the manner and mode for recruitment against the post of Principal of Nazira Girls' Higher Secondary School, Nazira, is provided under the provisions of Rule 12 of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, which mandates amongst others that the candidates for being considered for appointment against the post of Principal of a Higher Secondary School, must have a Masters Degree along with B.Ed./B.T. Degree from a recognized University.

**16.** It is not disputed that the petitioners, herein, have the requisite eligibility criterias for being considered for appointment to the post of Principal of Nazira

Girls' Higher Secondary School, Nazira.

**17.** It is seen from the materials as brought on record that both the petitioners No. 1 & 2, herein, and the respondent No. 4, herein, have the mandated educational qualifications for recruitment to the post of Principal of a Higher Secondary School. However, what is to be noted is that the petitioners, herein, were held to be not entitled for appointment to the post of Principal of Nazira Girls' Higher Secondary School, Nazira, on the ground that they had pursued their respective Masters Degree course while in service without obtaining prior permission and/or No Objection Certificates from the departmental authorities.

**18.** Countering the above argument; Mr. Borthakur, learned counsel for the petitioners, has submitted that the petitioners, herein, had pursued their respective Masters Degree not in the regular mode of education but had availed the said course through Distance Education Mode from Dibrugarh University which is a recognized University of the State.

**19.** It was further contended by Mr. Borthakur, learned counsel, that on account of pursuing their respective Masters Degree course by the petitioners through the Distance Education Mode; the services rendered by them in the said school was not hampered in any manner and accordingly, the respondent authorities ought not to have ignored the Masters Degree as possessed by them while considering the case of the eligible serving teachers in the school, in question, for appointment to the post of Principal, in-charge, of Nazira Girls' Higher Secondary School, Nazira, on a vacancy having arisen in the said post.

**20.** The respondent authorities by referring to the provisions of Rule 13 of the Assam Civil Services(Conduct) Rules, 1965, have contended that the petitioners having so pursued their Masters Degree without obtaining prior permission and/or NOCs from the departmental authorities; the Masters Degree as acquired by them is invalid and the petitioners not having possessed the requisite eligibility criterias as mandated under the provisions of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, for appointment to the post of Principal of the school, in question; they also would not be entitled to hold the said post of Principal of the school, in question, on in-charge basis.

**21.** The issue that arises in the present proceeding, is as to whether on a mere violation of Rule 13 of the Assam Civil Services(Conduct) Rules, 1965; the Masters Degree so obtained by the petitioners, herein, would be rendered invalid and would not be reckonable for consideration of further service benefits including appointments/promotions to them in their service careers.

**22.** The above issue is no longer *res integra* in-as-much as this Court in the case of **Tankeswar Nath v. State of Assam & ors.**[WP(c)5419/2023, judgment & order, dated 18.12.2023], after examining the provisions of Rule 13 of the Assam Civil Services (Conduct) Rules, 1965, and agreeing with the earlier decision available in the matter of a coordinate Bench of this Court in the case of **Smti. Mouchumi Saharia v. Smriti Rekha Kalita**[IA(c)2615/2023, judgment & order, dated 28.09.2023]; had proceed to conclude as follows:

**“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 inspite 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.*

8. *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.”*

23. Applying the ratio of the decision of this Court in the case of **Tankeswar Nath**(supra), it is held that the MA Degree acquired by the petitioners having been so acquired from a recognized University, the said Degree is otherwise valid and acceptable in law and accordingly, the petitioners are held to have fulfilled the eligibility criterias as mandated for recruitment to the post of Principal of Nazira Girls' Higher Secondary School, Nazira, under the provisions of Rule 12(3) of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018.

24. The petitioner No. 1, herein, admittedly, being the senior-most serving teacher in the said school and admittedly also being senior to the respondent No. 4, herein, a legal right has accrued to the petitioner No. 1 to hold the charge of the post of Principal of Nazira Girls' Higher Secondary School, Nazira and accordingly, it is held that the petitioner No. 1 could not have been deprived

of his such right and the petitioner No. 1 having been already held by this Court hereinabove, to possess the requisite mandated eligibility criterias under the provisions of the Rules holding the field; it is the petitioner No. 1, herein, who is now required to be allowed to function as the in-charge, Principal of the said school in place of respondent No. 4, herein.

**25.** In view of the conclusions reached by this Court hereinabove; the order, dated 06.01.2024, issued by the Director, Secondary Education Department, Assam, allowing the respondent No. 4, herein, to hold the charge of the post of in-charge, Principal, Nazira Girls' Higher Secondary School, Nazira, is set aside.

**26.** In that view of the matter; the Director, Secondary Education Department, Assam, is hereby directed to issue a formal order allowing the petitioner No. 1 to hold the charge of the post of in-charge, Principal, Nazira Girls' Higher Secondary School, Nazira.

**27.** The Director, Secondary Education Department, Assam, in terms of the observations and directions passed hereinabove; shall now be required to pass the consequential orders within a period of 1(one) month from the date of receipt of a certified copy of this order.

**28.** With the above directions, the writ petition stands disposed of.

**JUDGE**

**Comparing Assistant**