
(2023) 08 GAU CK 0013

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 6427 Of 2021, 353, 3723 Of 2022

Abul Kalam Azad

APPELLANT

Vs

Govt Of Assam And 2 Ors

RESPONDENT

Date of Decision : 14-08-2023

Acts Referred:

Assam Education (Provincialisation of Services of Teachers and Re-Organization of Educational Institutions) Act, 2017 — Section 2(u)

Citation : (2023) 08 GAU CK 0013

Hon'ble Judges : Sanjay Kumar Medhi, J

Bench : Single Bench

Advocate : U K Nair, A R Bhuyan

Final Decision : Disposed Of

Judgement

1. All these writ petitions being connected have been analogously heard and are being disposed of by this common judgment and order.

2. While WP(C)/3723/2022 has been instituted by one Abul Kalam Azad, the rest of the cases, namely, WP(C)/6427/2021, Cont. Cas(C)/230/2022 and WP(C)/353/2022 have been instituted by one Nawshad Ali Ahmed. The dispute is with regard to the post of Principal of Sontali Anchalik College, Boko in the district of Kamrup.

4. I have heard Shri KN Choudhury, learned Senior Counsel assisted by Shri A Ali, learned counsel for the petitioner in WP(C)/3723/2022 whereas, the petitioner in rest of the cases is represented by Shri A Chakraborty, learned counsel. Also heard Shri S Das, learned Standing Counsel, Higher Education Department, Assam as well as Ms. S Parikh, learned counsel appearing on instructions of Shri SK Medhi, learned Standing Counsel, Accountant General, Assam. The State of Assam is represented by Shri TR Gogoi, learned State Counsel. Shri S Biswakarma, learned counsel is present for the respondent no. 3 in WP(C)/3723/2022.

5. The Sontali Anchalik College, Boko (hereinafter referred to as the College) was a venture one in which Shri Abul Kalam Azad was the Principal. On 20.01.2014, an order was passed for provincialisation of the services of venture colleges. However, the name of Shri Abul Kalam Azad was left out as he did not have the Ph.D.

6. It is the case of the petitioner, Shri Abul Kalam Azad that subsequently, on 13.03.2015, he had obtained the Ph.D whereafter on 05.11.2015, the Director of Higher Education had issued a list of candidates who were left out and that list included his name. Pursuant to the said process, it is claimed that on 11.06.2018, the hard copies of the degree was called for. The petitioner was allowed to hold the post of In-Charge Tutor Principal. The aforesaid arrangement was, however, the subject matter of challenge by the petitioner in the other cases. Shri Nawshad Ali Ahmed had filed WP(C)/5258/2021 praying to allow him to discharge the function of In-Charge Principal of the College wherein, this Court vide order dated 06.10.2021 had directed for consideration of the case whereafter, the charge of Drawl and Disbursing Officer (DDO) was given to the Inspector of Schools, KDC. However, Shri Abul Kalak Azad was allowed to retain the other functions. In the meantime, an order was passed on 25.10.2021 whereby the Tutor Principal was allowed to hold the post of In-charge Principal and the said order was said to be passed pursuant to an Office Memorandum dated 23.05.2017. Prior to that vide an order dated 18.08.2020, the Department has granted sanction for Tutor Principal and in the list appended thereto, the name of Shri Abul Kalam Azad found place against Sl. No. 418.

7. At this stage, Shri Nawshad Ali Ahmed instituted WP(C)/353/2022 and this Court vide order dated 24.01.2022 had stayed the impugned order dated 25.10.2021. Pursuant to the said direction passed in WP(C)/353/2022, an order has been passed by the Department on 24.05.2022 whereby the in-charge arrangement has been entrusted to the Principal of another College, namely, JN College, Boko.

8. Shri Choudhury, learned Senior Counsel appearing for the petitioner in WP(C)/3723/2022 has submitted that since May 2022, his client is not even being paid his salary even in the substantial capacity as a Tutor and therefore, he is facing immense hardship and inconvenience. The learned Senior Counsel further submits that the present arrangement by which the Principal of another college has been given the charge of the College in question was not the purport and objective of the orders passed by this Court and is also otherwise, against the interest of public service. Shri Choudhury, accordingly submits that appropriate directions are required to be passed for resolution of the dispute by the Department.

9. Since an issue regarding the genuineness of the Ph.D of the petitioner was also raised, the learned Senior Counsel submits that till date no decision has been rendered and therefore, merely by raising a doubt, his client cannot be deprived of due consideration and he should be allowed to hold the post of

Principal of the College in question as there is no dispute that his client is the senior most in the College and was also discharging the services as Principal during the venture stage.

10. On the other hand, Shri Chakraborty, learned counsel appearing for the petitioner, Shri Nawshad Ali Ahmed in the other cases has submitted that in WP(C)/6427/2021, the subject matter of challenge is the order dated 26.10.2021. He submits that vide the impugned order dated 26.10.2021, the claim of the petitioner for In-charge Principal was rejected and the arrangement was continued with Shri Abul Kalam Azad and only the financial powers of DDO was given to the IAS. He further submits that under the Assam Education (Provincialisation of Services of Teachers and Re-Organization of Educational Institutions) Act, 2017 (hereinafter referred to as the Act of 2017), there is a bar for allowing Tutors to hold the post of Principal and in this connection, he has referred to the proviso of Section 2 (u). He submits that the order dated 25.10.2021 was in violation of the aforesaid provision of law and therefore, the second writ petition, namely, WP(C)/353/2022 was filed. Shri Chakraborty, learned counsel, however, fairly submits that Shri Abul Kalam Azad is senior to his client, Shri Nawshad Ali Ahmed, however, since the Ph.D of Abul Kalam Azad is under cloud, his client should be allowed to hold the post of In-charge Principal till a regular process is conducted to fill up the said post.

11. Shri Das, learned Standing Counsel of the Department has submitted that the petitioner, Abul Kalam Azad in WP(C)/3723/2022 was the Principal of the College at the venture stage and therefore, at the time of provincialisation, he was made the Tutor Principal. With regard to the justification for issuing the notification dated 25.10.2021 which apparently is in violation of the proviso to Section 2 (u) of the Act of 2017, the learned Standing Counsel submits that the said arrangement was a temporary measure for smooth functioning and in any case, the arrangement was only on in-charge basis. Shri Das, learned Standing Counsel, however, reiterates that the Ph.D of Shri Abul Kalam Azad is doubtful.

12. Shri Biswakarma, learned counsel for the respondent no. 3 in WP(C)/3723/2022, who is the Principal of the nearby JN College, Boko and has been given the additional charge and therefore, he does not have much to submit in this controversy. Ms. Parikh, learned counsel representing the Accountant General also does not have much role to play.

13. The controversy is with regard to the post of the Principal of the College in question wherein, initially Shri Abul Kalam Azad was made the In-charge Tutor Principal which after the orders of this Court has been modified by allowing the Principal of JN College, Boko to hold the additional charge of the College in question. Vide the earlier order dated 18.05.2020, the financial powers of the DDO of the College in question was given to the Inspector Schools, KDC.

14. This Court finds force in the contention of Shri Choudhury, learned Senior Counsel which is also not disputed by the learned counsel for the other parties

that the present arrangement is benefiting none and cannot be a final solution to the dispute which has arisen.

15. This Court after consideration of the matter in its entirety is of the opinion that the dispute is required to be resolved by the Department itself. The contention raised by Shri Chakraborty, learned counsel by taking recourse to the proviso of Section 2 (u) of the Act of 2017 is also a relevant factor which has to be taken into consideration. However, this Court is also of the opinion that unless the Department or the appropriate authority takes a final call on the Ph.D of the petitioner, Shri Abul Kalam Azad, mere suspicion would not be enough to disentitle him for consideration for appointment as Principal of the College in question. This Court is also of the opinion that in-charge arrangement cannot continue indefinitely as all such in-charge arrangements are to be discontinued and a regular appointment be made.

16. In view of the above, this Court remands the entire dispute to the Director of Higher Education, Assam for consideration of the same. The parties to the dispute, who are petitioners in the respective cases, are directed to appear before the Director, Higher Education, Assam on 25.08.2023 with all documents whereafter, the Director may either consider their cases on that date or any other date as per his convenience. The dispute is, however, directed to be resolved within an outer limit of 45 days from the date of first appearance of the parties i.e., 25.08.2023.

17. The issue with regard to the payment of salary to the petitioner, Shri Abul Kalam Azad is also to be decided as it is claimed that he is not getting his salaries since May, 2022.

18. It is further made clear that on resolution of the dispute by a Speaking Order, the present arrangement by which the Principal of JN College was given the additional charge of the College would be discontinued and the Principal to be appointed on regular basis would also be given the full financial powers, including that of DDO.

19. The writ petition is accordingly disposed of.