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**(2021) 08 GAU CK 0016**

**In the Gauhati High Court**

**Case No : Writ Petition (Civil) No. 5323 Of 2014**

Dr. Nipun Baruwati

APPELLANT

Vs

State Of Assam And 7 Ors

RESPONDENT

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**Date of Decision : 05-08-2021**

**Acts Referred:**

**Citation : (2021) 08 GAU CK 0016**

**Hon'ble Judges : Achintya Malla Bujor Barua, J**

**Bench : Single Bench**

**Advocate : G Alam, K Boruah**

**Final Decision : Disposed Of**

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## **Judgement**

1. Heard Mr. PD Nair, learned counsel for the petitioner, Mr. K Gogoi, learned counsel for the respondent Nos. 1 and 2 being the authorities in the

Higher Education Department of the Government of Assam and Mr. K Barua, learned counsel for the respondents No. 3, 4, 5 and 6 being the

authorities under the Gargaon College, Simaluguri in the Sivasagar district. The order dated 30.04.2015 provides that the service on the respondents

No. 7 and 8 are deemed to be completed. In spite of such order, none appears for the respondents No. 7 and 8.

2. We cannot be oblivious to the aspect that this is a writ petition of the year 2014, where there is a dispute as regards the appointment of Assistant

Professor of Botany in the Gargaon College and there is an interim order dated 22.10.2014, by which it was provided that till the next returnable date,

no appointment be given to the respondents No. 7 and 8 to the post of Assistant Professor in Botany of Gargaon College. Mr. K Gogoi, learned

counsel for the Higher Education Department as well as Mr. K Barua, learned

counsel for the respondents in the Gargaon College authorities have stated that because of such interim order, no appointment has been made and the post concerned is still vacant.

3. We cannot but to take note of that because of the dispute being raised by certain intending candidates for the post of Assistant Professor in Botany, resulting in the interim order, the post still remains vacant, meaning thereby that the students of the College are the ones who are the actual sufferer.

The order dated 30.04.2015, merely accepted the deemed service of the notice on the respondents No. 7 and 8, but there is no conclusive material to

indicate whether the notices were actually served or not. Balancing the equities that on one hand, there is an interim order prevailing since the year

2014 resulting in the Assistant Professor of Botany of being not appointed in the Gargaon college and on the other hand, giving an effective hearing to

the respondents No. 7 and 8 in respect of the resolution dated 02.08.2014 of the College authorities, of which the respondent No.7 is a beneficiary, we

cannot keep the matter pending any further. It would be more so, considering that the result thereof would be that it is the students of the College who are actually the sufferer.

4. In the resultant circumstance, there is an agreement between Mr. PD Nair, learned counsel for the petitioner, Mr. K Gogoi, learned counsel for the

Higher Education Department and Mr. K Barua, learned counsel for the authorities in the Gargaon College that it would be more appropriate to

require the Director of Higher Education, Assam to go into the allegations raised by the writ petitioner against the aforesaid resolution dated

02.08.2014 of the authorities of the Gargaon College of which the respondent No.7 is a beneficiary. In doing so, the petitioner shall file a

representation before the Director along with a copy of the writ petition, affidavits and any other materials that the petitioner may desire to file as well

as a copy of the order passed today. The Director shall cause an enquiry on the authenticity and acceptability of the resolution dated 02.08.2014 of the

authorities of the Gargaon College and in doing so, the Director shall give a hearing to the petitioner, to the authorities of the Gargaon College as well

as to the respondents No. 7 and 8 by duly informing them about the date, time and place of the hearing. After conducting the hearing, an appropriate

order be passed as regards the acceptability and legality of the resolution dated

02.08.2014, which is impugned in this writ petition and the order to be passed be communicated to all the parties.

5. We have also taken note of the statement made by Mr. PD Nair, learned counsel for the petitioner that the respondent No.7 Ms. Dharitri

Borgohain, who is the beneficiary of the resolution dated 02.08.2014 had in the meantime been appointed as an Assistant Professor in the North

Lakhimpur College and therefore, she may not be any further interested in the issue. Even if it is so, the notice be issued to the respondent No.7 by the

Director before any decision is taken.

6. We also make it clear that although we require the Director to take a decision on the matter, we have not expressed any view on the merit of the

claim of the writ petitioner and the Director shall take an independent decision of its own depending on the materials that may be placed before him as

well as by taking into consideration the relevant law in the subject.

7. The requirement of passing the necessary order by the Director be done within a period of six weeks from the date of receipt of the representation

from the writ petitioner along with a copy of this writ petition, affidavit and any other documents that the petitioner desire to submit as well as the

order passed today. Any order that the Director may pass, would prevail over the earlier resolution dated 02.08.2014 and the interim order dated

22.10.2014 in WP(C) No.5323/2014 shall no longer hold good after the order of the Director.

8. Mr. PD Nair, learned counsel for the petitioner also states that by an order dated 26.03.2018, the earlier interim order stood vacated. If it is so, the

Director to proceed as if there is no interim order in force at present.

The writ petition is closed in the above terms.