
(2021) 08 GAU CK 0010

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 2826 Of 2021

Md. Mizanur Rahman And 9 Ors

APPELLANT

Vs

State Of Assam And 4 Ors

RESPONDENT

Date of Decision : 04-08-2021

Acts Referred:

Citation : (2021) 08 GAU CK 0010

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : R Devi

Final Decision : Allowed

Judgement

1. Heard Ms. R. Devi, learned counsel for the petitioner. Also heard Mr. K. Gogoi, learned counsel for the respondents No.1, 2 and 3 being the

authorities under the Higher Education Department of the Govt. of Assam, Mr. P. Saikia, learned counsel for the respondent No.4 being represented

by the Deputy Commissioner, Nagaon. Considering the nature of the order proposed to be passed, we do not deem that notice to be served on the

respondent No.5 being the Principal, Udali College, Bamungaon.

2. All the ten petitioners herein were appointed as Assistant Professor in Udali College, Nagaon and they are working as such continuously till date. It

is stated that Udali College was granted permission to start the TDC (Arts) 1st year class for the session 1996-97 vide resolution No.2000/20/157(17)

dated 17.11.2000 with the following subjects, but was subjected to the government concurrence:-

â??That the brief facts of the case is that the Udali College, Bamungaon, Nagaon was established in the year 1995. The College received permission

for opening from Gauhati University vide E.C. Resolution No.96/8/97(24) dated 15.06.1996 and confirmed by the Executive Council on 20.07.1996.

The College was granted permission to start TDC(Arts) 1st year class for the Sessions 1996-97 vide Resolution No.2000/20/157(17) dated 17.11.2000

with the following subjects which were subject to Govt. Concurrence:

1. English, 2. Assamese (MIL), 3. Hindi (MIL), 4. Elective Assamese, 5. Arabic and Bengali (MIL), 6. Economics, 7. Economics, 7. Education, 8.

Political Science, 9. History, 10. Philosophy, 11. Mathematics, 12. Geography.â??

3. But the Government in the Higher Education had accorded Part-I concurrence for the session 1996-97 as per the order No.AHE.13/2005/77 dated

06.04.2005 with the following subjects:-

â??That the Inspector of Colleges, Assam inspected the College for according Government Concurrence and found the College fulfilling all the

required criteria for such Concurrence. Accordingly, the Director of Higher Education, Assam submitted the proposal vide letter dated 03.01.2005

recommending Govt. Concurrence to all subjects mentioned above. However, the Govt. of Assam, Higher Education Department accorded Part-I

Concurrence for the sessions 1996-97 vide letter No.AE.13/2005/77 dated 06.04.2005 on the following subjects:

1. English, 2. MIL Assamese, 3. Elective Assamese 4. Arabic, 5. MIL Bengali, 6. Economic, 7. Education, 8. Political Sciene, 9. History.â??

4. The implication of granting concurrence to the aforesaid subjects was that the subjects Hindi, Philosophy, Mathematics and Geography were not

given concurrence. By a subsequent order No.AHE.412/2008109 dated 29.12.2008, the Govt. of Assam in the Higher Education Department had

accorded Part-II concurrence or grant of permission for affiliation up to the TDC Part-II (Arts) in all the aforesaid subjects i.e. including Hindi,

Philosophy, Mathematics and Geography. The Udali College, Nagaon continued its activities in the aforesaid manner. When the stage came for

considering provincialisation of the teaching staff of the College under the Assam Education (Provincialisation of Services of Teachers and Re-

Organization of Educational Institutions) Act, 2017 (in short Act of 2017) all the teachers including the present petitioners were subjected to

consideration. But the notification by which the grant of provincialisation was indicated did not contain the name of the present petitioners and the

reason stated in the notification is that there is no government concurrence.

5. It has been submitted before us that the remark “no government concurrence” was given inasmuch as, the Udali College did not have the

government concurrence for the aforesaid four subjects of Hindi, Philosophy, Mathematics and Geography for the 1st year TDC(Arts). But at the

same time, we have taken note of that the College continued to function along with the aforesaid four subjects till date without any complaint that

there are no students etc. and secondly, the concurrence was given to the aforesaid four subjects for Part-II TDC course. The very act of the Govt.

of Assam in the Higher Education Department not to grant concurrence to the four subjects of the College for the Part-I TDC course in spite of there

being no material being produced that the college was not eligible for concurrence for the aforesaid four subjects for the Part-I and more importantly,

due concurrence was given to the same four subjects for the Part-II TDC course in the subsequent year. The provincialisation of the present

petitioners have been rejected on the ground that the college did not have the concurrence for the aforesaid four subjects of Hindi, Philosophy,

Mathematics and Geography for the Part-I TDC course although it had the necessary concurrence for the Part-II TDC course. As already held the

same situation itself indicates an arbitrariness on the part of the Higher Education Department.

6. Such rejection of the right of the petitioners to be otherwise provincialised on the basis of such arbitrary act on the part of the department itself

would not be sustainable in law. It is not a fault of the petitioners in any manner or of the Udali College itself that the concurrence for the four subjects

was not granted by the department for Part-I TDC course, whereas, concurrence was given to Part-II TDC course. On the basis of the principle of

law that no one can be condemned for fault not of theirs whereas on the other hand, the fault lies on the part of the department itself, we interfere

with the rejection of provincialisation of the petitioners on the ground that there was no government concurrence.

7. Accordingly, we remand the matter back to the Director of Higher Education Department for doing the needful, if necessary to regularize the

earlier lapse in not granting the concurrence to the four subjects, if otherwise under the law the college is entitled for such concurrence. The Director

accordingly to pass the reasoned order on the same and thereupon if the necessary concurrence is granted, the petitioner would be subjected to a process of provincialisation de novo.

8. The requirement of passing the order be completed within a period of one month from the date of receipt of the certified copy of the order. If the order is in favour of concurrence, subsequent consequential be done within another three months.

9. Writ petition stands allowed in the above terms.