

(2021) 08 GAU CK 0039

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 3558 Of 2021

Sajal Kamal Das

APPELLANT

Vs

State Of Assam And 5 Ors

RESPONDENT

Date of Decision : 11-08-2021

Acts Referred:

Assam Secondary Education (Provincialised) Service Rules, 2003 — Rule 8(4), 13(1), 13(2), 13(3), 13(4), 13(5), 16
National Council for Teacher Education Act, 1993 — Section 14

Citation : (2021) 08 GAU CK 0039

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : B D Das

Final Decision : Disposed Of

Judgement

1. Heard Mr. B.D. Das, learned senior counsel for the petitioner. Also heard Mr. R. Mazumder, learned counsel for the respondents No.1, 2, 3 and 4

being the authorities under the Secondary Education Department of the Govt. of Assam, Mr. N.H. Barbhuyan, learned counsel for the respondent

No.5 being the authorities under the NCTE and Mr. S.N. Sarma, learned senior counsel for the respondent No.6.

2. Both the petitioner and the respondent No.6 had participated in the selection process for the post of Principal of Bamundangra Higher Secondary

school in the Barpeta district pursuant to an advertisement dated 30.05.2019 issued by the then Principal of the school. Admittedly, the selection

process proceeded under the Assam Secondary Education (Provincialised) Service Rules, 2003 (in short Rule of 2003) as at that time the said Rules

were in force.

3. The procedure for selection to the post of Principal is provided under Section 13 of the Act of 2003. Section 13(1) inter alia provides that the

Member Secretary of the School Selection Committee shall invite applications from the intending eligible candidates, through an advertisement and

Rule 13(2) provides that on receipt of applications from the eligible candidates the School Selection Committee constituted under Rule 8(4), after

scrutiny of the applications, shall hold an interview and prepare a panel of names of three candidates on the basis of qualities such as leadership skill,

administrative ability, integrity and commanding personality.

4. Rule 13(3) provides that the panel of names so prepared by the School Selection Committee shall be forwarded through the concerned Inspector of

Schools to the State Selection Board constituted under Rule 16 for its approval.

5. Rule 13(4) provides that the State Selection Board after taking into consideration the qualities such as, leadership skill, administrative ability, integrity

and commanding personality shall prepare a select list in order of merit.

6. Rule 13(5) of the select list prepared by the State Selection Board shall be forwarded to the government for its approval and the approved select list

would remain in force for a period of one year from the date of the approval.

7. As required under Rules the School Selection Committee of Bamundangra Higher Secondary School prepared a panel list of the candidates

wherein, the petitioner was placed at rank 1 Sri Sajal Kamal Das and the respondent No.6 Mazid Ali was placed at rank 2.

8. The panel list prepared by the School Selection Committee was accordingly placed before the State Selection Board as required under Rule 13(3).

The State Selection Board as provided under Rule 13(4) prepared the select list, which was placed before the government for its approval as required

under Rule 13(5).

9. The Additional Secretary to the Govt. of Assam, Secondary Education Department in its communication dated 27.07.2021 addressed to the

Director of Secondary Education, Assam while conferring approval of the Government under Rule 13(5) arrived at its conclusion that the respondent

No.6 may be appointed as a regular Principal of Bamundangra Higher Secondary School. By the said communication, it was also provided that the

petitioner had obtained his B.Ed degree from Barpeta B.T College which is a

private college in the year 1997 and as the college had received NCTE recognition only on 14.09.2005, therefore, as per the provisions of the NCTE Act, 1995, the B.Ed degree obtained by the petitioner in the year 1997 would be an invalid B.Ed degree. The said decision of the Government in exercising the power under Section 13(5), that the B.Ed degree of the petitioner is invalid, is assailed in this petition.

10. Mr. R. Mazumder, learned counsel for the authorities under the Secondary Education Department seeks to justify the aforesaid decision of the Government contained in the communication dated 27.07.2021 by submitting that under Section 14 of the NCTE Act, 1995, the recognition was required to have been obtained within a period of 6 months from the date the Act coming into force i.e. on 17.08.1995.

11. Mr. S.N. Sarma, learned senior counsel for the respondent No.6 on the other hand contends that the decision of the Government while granting the approval under Section 13(5) is a right decision and the respondent No.6 upon being appointed had in the meantime assumed the charge as the Principal of Bamundangra Higher Secondary School. We take note of that in an earlier decision of this Court in WP(C) 3289/2020 (Pranita Sarma vs- The State of Assam and 7 Ors) it had been held in the judgment dated 25.02.2021 that if an institute conducted B.Ed course makes an application to the NCTE for recognition on or before 18.08.1997, the B.Ed degree obtained through such institute would have to be accepted to be a valid B.Ed degree. On the contrary, if the application seeking recognition was made at the date subsequent to 18.08.1997, the B.Ed degree obtained to such institute may not be recognized, it would be construed to be an invalid B.Ed degree.

12. From the aforesaid perspective when we look into the decision of the Government under Rule 13(5) of the Rules of 2003 that the B.Ed degree of the petitioner is invalid, apparently, the aforesaid aspect of the matter was not taken into consideration and neither the materials on record that are available do indicate that the said aspect was given a consideration by the authorities.

13. From the said point of view, we deem it appropriate to remand the matter back to the approving authority in the Government under Section 13(5) of the Act of 2003 to verify from the records as to whether the Barpeta B.T.

College had made its application for recognition to the NCTE prior to 18.08.1997 or subsequent to it as provided in the judgment of this Court in *Pranita Sarma (supra)*.

14. The appropriate authority shall specifically call for the records from the Barpeta BT College as well as from the NCTE to arrive at a factual satisfaction as to on which date the college made its application for recognition before the NCTE. Depending upon the materials that may be available, appropriate order may be passed.

15. If the order to be passed by the approving authority in the Government is in favour of the petitioner, for the purpose of other consequential actions that would be required to be taken, both the writ petitioner and the respondent No.6 would be given an opportunity of hearing to put across their respective cases. Till the approving authority takes its decision and thereafter the consequential actions are taken, the respondent No.6 the Principal of Bamundangra Higher Secondary School shall continue to remain as such. His further continuance would depend on the logical outcome of the process as indicated above. The approving authority under Rule 13(5) to take its decision within a period of three months from the date of receipt of the certified copy of the order, and thereafter the consequential action to bring the process to its logical end may follow.

16. Writ petition stands closed on the above terms.