

(2022) 05 GAU CK 0031

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 3001 Of 2022

Tulumoni Devi

APPELLANT

Vs

State Of Assam And 5 Ors.

RESPONDENT

Date of Decision : 19-05-2022

Acts Referred:

Assam Land and Revenue Regulations, 1886 — Section 3

Citation : (2022) 05 GAU CK 0031

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : A C Borbora

Final Decision : Allowed

Judgement

1. Heard Mr. AC Borbora, learned senior counsel for the petitioner, Mr.B Kaushik, learned counsel for the respondents No. 1, 2 and 4 being the authorities in the Elementary Education Department of the Government of Assam, Mr. B Gogoi, learned counsel for the respondent No. 3 being the Director, SCERT and Ms. DD Barman, learned Additional Senior Government Advocate for the respondents No. 5 and 6 respectively being the Deputy Commissioner, Nagaon and Additional Deputy Commissioner (Education), Nagaon.

2. The petitioner Dr. Tulumoni Devi is involved in a dispute as regards as to who should be the in-charge Principal of Government Sikshan Mahavidlaya, Nagaon and in this respect has instituted WP(C) No. 1509/2022 being aggrieved by an order dated 15.02.2022 of the Special Commissioner, Elementary Education Department, by which the respondent No. 6 therein namely Smti Binita Pathak was allowed to be the in-charge Principal. In the said writ petition, an order dated 02.03.2022 had been passed, whereby an interim order dated 21.02.2022 in WP(C) No. 1173/2022 was clarified to the extent that when an order of promotion dated 28.12.2021 was stayed, the consequence thereof would be that any further orders that may be passed on the order that was stayed, would be deemed to have been stayed. The petitioner had instituted another writ petition

being WP(C) No. 1173/2022 wherein a notification dated 28.12.2021 by which the respondent No. 8 namely Smti Binita Pathak was promoted is assailed. In the aforesaid factual background of the interim orders passed by the Court, the communication dated 04.04.2022 of the Additional Secretary to the Government of Assam in the Elementary Education Department was issued, which was addressed to the Deputy Commissioner, Nagaon. The relevant provision of the communication dated 04.04.2022 is extracted below:-

"In inviting a reference to the letter on the subject cited above and due to the series of events leading to an untoward situation in Government Shikshan Mahavidyalaya, Nagaon recently, I am directed to say that Government is of the opinion that the District Administration needs to intervene in the matter and charge of the Principal of the above institution should be entrusted to Additional Deputy Commissioner (Education), Nagaon immediately with all financial power until appointment of a permanent Principal there. This is to maintain the academic atmosphere in the institution and smooth running of the teaching & learning.

This is for urgent action on your part."

3. A reading of the extracted portion of the communication dated 04.04.2022 makes it discernible that in view of the interim orders of the Court as regards who should be the in-charge Principal of Government Sikshan Mahavidlaya, Nagaon, the Additional Deputy Commissioner (Education), Nagaon was allowed to be the in-charge Principal of the said institution till the appointment of a permanent Principal. The communication dated 04.04.2022 of the Additional Secretary to the Government of Assam in the Elementary Education Department is assailed in this writ petition.

4. Mr. AC Borbora, learned senior counsel for the petitioner has raised a contention that the Additional Deputy Commissioner (Education), Nagaon is essentially an authority under the district administration and he is substantially an Additional Deputy Commissioner. The concept of Additional Deputy Commissioner is available under the provisions of the Assam Land and Revenue Regulation 1886 (in short Regulations of 1886), wherein the Deputy Commissioner is defined and it is also provided that the Deputy Commissioner shall also include an Additional Deputy Commissioner. It is the further contention of Mr.AC Borbora, learned senior counsel for the petitioner that the Principal or an in-charge Principal of an educational institute is a specialized post, for which under the prevailing Rules, specific educational qualifications as well as eligibility are prescribed.

5. As per law, an incumbent who is duly qualified and eligible alone can be allowed to be the Principal of an educational institution. Further, as laid down by this Court in Jagannath Pegu -vs- State of Assam and others, reported in 2007 (3) GLT 389, it had been held that even in order to be an in-charge Principal of an educational institution, the incumbent concerned must satisfy the educational

qualification and other eligibility as may be prescribed for the post of Principal. Accordingly, it is the contention that even in order to be the in-charge Principal of the Government Sikshan Mahavidlaya, Nagaon, the person concerned who is made the in-charge Principal would have to satisfy the required educational qualifications that are prescribed for the post of Principal of the said institute.

6. Mr. B Kaushik, learned counsel for the Elementary Education Department takes a stand that allowing the Additional Deputy Commissioner (Education), Nagaon to be the in-charge Principal of the Government Sikshan Mahavidlaya, Nagaon is a temporary measure, which will remain effective till a permanent Principal is appointed and therefore, the respondents were within their competence to allow the Additional Deputy Commissioner (Education), Nagaon to be the In-charge Principal of Government Sikshan Mahavidlaya, Nagaon.

7. As submitted by Mr. AC Borbora, learned senior counsel for the petitioner, the concept of Deputy Commissioner is provided under section 3 of the Regulation of 1886, wherein Deputy Commissioner is provided to include and deemed always to include the Additional Deputy Commissioner.

8. Essentially, a Deputy Commissioner is a concept which flows from the Assam Land and Revenue Regulation, 1886 and further is also entrusted with certain other duties and responsibilities pertaining to the district administration. The Deputy Commissioner under certain statutory provisions also discharges the duties of a Deputy Collector and under the Code of Criminal Procedure, discharges the duties of a District Magistrate. In any view of the matter, the duties and responsibilities of a Deputy Commissioner is circumscribed by the aforesaid provisions of law as well as, as per the other duties and responsibilities entrusted upon the Deputy Commissioner by the Government of Assam as may be required through various other provisions.

9. The service conditions of the faculty members of Government Sikshan Mahavidlaya, Nagaon is governed by the National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2014 (in short Regulations of 2014) and Rule 5.2 (A) thereof provides for the qualification for the post of a Principal of an institution governed by the said Regulation. Rule 5.2 (A) is extracted as below:-

"5.2 Qualification

The faculty shall possess the following qualifications:

Principal/HoD

(A)(I) Post graduate degree in Arts/Science/ Commerce with minimum 55% marks and

(II) M.Ed with minimum 55% marks and

(iii) Ph.D in education or in any Padagogi subject offered in the institution, and

(IV) Eight years of Training Experience in a Secondary Teachers Education Institution Desirable Diploma Degree in Educational Administration or Educational leadership.”

10. Further, as per the notification dated 24.06.2019, the Gauhati University authorities had also provided that the NCTE guidelines be strictly followed by the Principal/Director of B.Ed,B.T teacher training colleges affiliated to the Gauhati University, wherein also clause 5.2 of the Regulations of 2014 was incorporated. In other words, we have to understand that the prescribed qualifications for the post of Principal of the Government Sikshan Mahavidlaya, Nagaon would be as provided in clause 5.2(A) of the Regulations of 2014. While providing for the eligibility educational qualifications, it is stated that the NCTE Regulation also provides that any deviation thereof may lead to a withdrawal of the recognition of the institute.

11. We further take note of that this Court in Jagannath Pegu (supra), in paragraph 10 thereof, had held that ‘it is too fundamental to state that a candidate eligible in terms of the relevant Rules for promotion to a post on a regular basis cannot be over looked for the purpose of any temporary arrangement concerning the post.’ Further, in Julhash Ali -vs- State of Assam reported in 2010 SCC OnLine Gau-131 it had been specifically held that even to be the in-charge to a given post, the incumbent concerned must have the required educational qualifications and other eligibility for being regularly inducted to such post.

12. In view of the aforesaid propositions of law, in the instant case, we have to arrive at a conclusion that even for the purpose of being the in-charge Principal of Government Sikshan Mahavidlaya, Nagaon, the incumbent who is allowed to be the in-charge Principal must necessarily have the required educational qualifications and eligibility as is prescribed under the Regulations of 2014 for being the Principal of the institute concerned.

13. By the communication dated 04.04.2022, the Additional Deputy Commissioner (Education), Nagaon had been allowed to be the in-charge Principal of Government Sikshan Mahavidlaya, Nagaon. In other words, the Additional Deputy Commissioner (Education), Nagaon is made the in-charge Principal and therefore by following the above provisions of law, the Additional Deputy Commissioner (Education), Nagaon would necessarily to also have the educational qualifications that are prescribed under Rule 5.2(A) of the Regulations of 2014.

14. In the circumstances, we put a query to the learned counsel for the Education Department as to whether the Additional Deputy Commissioner (Education), Nagaon who is allowed to be the in-charge Principal of the Government Sikshan Mahavidlaya, Nagaon as per the impugned communication dated 04.04.2022 does have the necessary educational qualifications prescribed under Rule 5.2(A) of the Regulations of 2014. The forthright answer that is given

is that the concerned person does not have the said requisite qualification.

15. We have taken note of that one of the required qualifications is to have a qualification of M.Ed with minimum 55% marks, which in fact the Additional Deputy Commissioner (Education), Nagaon does not have.

16. From such point of view, the conclusions that can be arrived at is that the Additional Deputy Commissioner (Education), Nagaon, who is made the in-charge Principal of Government Sikshan Mahavidlaya, Nagaon as per the communication impugned dated 04.04.2022 does not have the necessary qualifications and eligibility to be the Principal of Government Sikshan Mahavidlaya, Nagaon and consequent thereof he also does not have the eligibility to be the in-charge Principal.

17. Accordingly, the provisions in the communication dated 04.04.2022 allowing the Additional Deputy Commissioner (Education), Nagaon to be the in-charge Principal of Government Sikshan Mahavidlaya, Nagaon is set aside.

18. Having set aside the appointment of the Additional Deputy Commissioner (Education), Nagaon, we now require the competent authority to appoint any other suitable person, who has the necessary qualification for the purpose to be the in-charge Principal. In doing so, the order of this Court dated 28.11.2019 in I.A(Civil) No. 3703/2019 may also be taken note of.

19. As it is a question of an educational institute to function without a Principal or an in-charge Principal, it is requested that the authorities may do the needful at the earliest.

The writ petition is allowed to the extent indicated above.