



GAHC010137632024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3506/2024

DR. HEMANTA KUMAR BARUAH AND 5 ORS
THE I/C PRINCIPAL OF SAPEKHATI COLLEGE, P.O.-SAPEKHATI, DIST-
CHARAIDEO, ASSAM

2: DEBOJIT BORAH
THE I/C PRINCIPAL OF GHANA KANTA BORAH (G.K.B.) COLLEGE
TAMULICHIGA
P.O.-TAMULICHIGA
DIST- JORHAT
ASSAM

3: MALAMONI GOSWAMI
THE I/C PRINCIPAL OF GOLAGHAT PURBANCHALIK COLLEGE
P.O.-HATIEKHOWA
DIST- GOLAGHAT
ASSAM

4: MARTUZ ALI AHMED
THE I/C PRINCIPAL OF MANIKPUR ANCHALIK COLLEGE
P.O.-MANIKPUR
DIST- BONGAIGAON
ASSAM

5: IVEELATA CHUTIA
THE I/C PRINCIPAL OF MORAN COMMERCE COLLEGE
P.O.-DIKHARI MORAN
DIST- DIBRUGARH
ASSAM

6: JOYSHREE PHUKON
THE I/C PRINCIPAL OF MORAN MAHILA MAHAVIDYALAYA
P.O.-MORANHAT
DIST-CHARAIDEO
ASSA



VERSUS

THE STATE OF ASSAM AND 7 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM,
DEPARTMENT OF HIGHER EDUCATION, DISPUR, GUWAHATI-06

2:THE DIRECTOR OF HIGHER EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19

3:THE GOVERNING BODY OF SAPEKHATI COLLEGE
REPRESENTED BY ITS PRESIDENT
P.O.-SAPEKHATI
DIST- CHARAIDEO
ASSAM

4:THE GOVERNING BODY OF GHANA KANTA BORAH (G.K.B.) COLLEGE
TAMULICHIGA
REPRESENTED BY ITS PRESIDENT
P.O.-TAMULICHIGA
DIST- JORHAT
ASSAM

5:THE GOVERNING BODY OF GOLAGHAT PURBANCHALIK COLLEGE
REPRESENTED BY ITS PRESIDENT
P.O.-HATIEKHOWA
DIST- GOLAGHAT
ASSAM

6:THE GOVERNING BODY OF MANIKPUR ANCHALIK COLLEGE
REPRESENTED BY ITS PRESIDENT
P.O.-MANIKPUR
DIST- BONGAIGAON
ASSAM

7:THE GOVERNING BODY OF MORAN COMMERCE COLLEGE
REPRESENTED BY ITS PRESIDENT
P.O.-DIKHARI MORAN
DIST- DIBRUGARH
ASSAM

8:THE GOVERNING BODY OF MORAN MAHILA MAHAVIDYALAYA
REPRESENTED BY ITS PRESIDENT
P.O.-MORANHAT
DIST- CHARAIDEO
ASSA



Advocate for the Petitioner : MR K K MAHANTA (Sr. Advocate)

Advocate for the Respondent : SC, HIGHER EDU

BEFORE

HON'BLE MR. JUSTICE KALYAN RAI SURANA

For the petitioners	: Mr. K.K. Mahanta, Senior Advocate.
	: Mr. S. Haque, Advocate.
For respondent Nos.1 and 2	: Mr. S. Das, standing counsel.
Date of hearing	: 11.07.2024.
Date of judgment	: 11.07.2024.

JUDGMENT AND ORDER

Heard Mr. K.K. Mahanta, learned senior counsel, assisted by Mr. S. Haque, learned counsel for the petitioners. Also heard Mr. S. Das, learned standing counsel for the Higher Education Department, representing respondent nos.1 and 2.

2. The case of the petitioners is that they are presently working as Principal In-Charge of their respective colleges. It is projected that the services of the petitioners were provincialised as Assistant Professor in their respective departments of their respective colleges under the provisions of the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 as well as under the Assam Education (Provincialisation of Services of Teacher and Re-Organisation of Educational Institutions) Act, 2017, as applicable. By virtue of holding the post of In-Charge Principal, the petitioners are also vested with the power of Drawing and Disbursing Officer of their respective colleges. The learned senior counsel for the petitioners has submitted that while the petitioner no.1 holds a Ph.D. Degree, the petitioner nos.2, 3, 5 and 6 are pursuing their Ph.D. Course, which is likely to be completed in a short span of time.



3. The learned senior counsel for the petitioners has submitted that the grievance of the petitioners is that the concerned authorities in the Higher Education Department of the Govt. of Assam have not taken any steps of provincialisation of service of the petitioners as regular Principals of their respective colleges. Moreover, it was submitted that at the outset, as the post of Principal has not yet been provincialised in their respective colleges, at first, the Govt. would have to issue notification of provincialisation of the post of Principal in their respective colleges and thereafter, the services of the petitioners has to be regularized/absorbed and/or provincialised.

4. It is submitted that under Sub-Section (6) of Section 8 of the Assam Education (Provincialisation of Services of Teacher and Re-Organisation of Educational Institutions) Act, 2017, it is envisaged that the initial appointees, who do not acquire the requisite qualification, would hold personal post to be created for provincialisation of their services, which is envisaged as outside the cadre and those posts would stand abolished on cessation of services by the concerned Principal, as the case may be, due to retirement, death, resignation or any other reason whatsoever. Accordingly, it is submitted that the State respondents must take a call as to whether the services of the petitioners should be regularized/absorbed/ provincialised as Principals of their respective colleges, and then to take a decision thereon.

5. The learned standing counsel for the State respondent nos.1 and 2 has submitted that once the service of the petitioners as Tutors/Teachers and/or Assistant Professors of their respective colleges was provincialised, the petitioners would not be covered by the Provincialisation Act of 2011 and 2017. Rather, the post of Principal of colleges in Assam is covered by the Assam College Employees (Provincialisation) Act, 2005 and Assam College Employees



(Provincialisation) Rules, 2010, is required to be filled up by direct recruitment only. It is also submitted that the post of Principal is required to be filled up by way of direct recruitment as per Clause 4.2.0 of the UGC Regulation, 2010, which is a mandatory requirement of law.

6. Considered the submissions made at the bar on behalf of the petitioners as well as respondent nos.1 and 2.

7. From the contents of Annexure-4 series of this writ petition, it appears that on and from the various dates mentioned therein, the petitioners were appointed as Principal In-Charge of their respective colleges and that the Director of Higher Education, Assam, by orders passed on various dates, had allowed the petitioners to act as the Principal-In-Charge of their respective colleges in addition to their own duties, without any financial benefit till a regular Principal is appointed. It appears that such orders of *ad-hoc* appointments were extended from time to time. Moreover, it appears that the petitioners, who were senior most Assistant Professors of their respective provincialised degree colleges, were entrusted with the drawing and disbursing power for drawal of only pay and allowances of their respective colleges as per FR-49(C) subject to other required formalities. Thus, it appears that the petitioners were all put to notice that their appointment as In-Charge Principal was only a temporary and/or *ad-hoc* arrangement till a regular Principal is appointed. Therefore, the Court does not find that any indefeasible right has accrued in favour of the petitioners for being appointed as regular Principal, merely because they have been working as Principal-In-Charge since long.

8. The learned standing counsel for respondent nos.1 and 2 has been able to successfully demonstrate before this Court from the contents of Order No. Ecf No.405651/ 2024/1 dated 09.02.2024 (Annexure-8) that the Govt. vide



letter eCF No.259349/30 dated 18.12.2023 had created 41 (forty one) numbers of posts of Principal in respect of newly provincialised colleges of Assam and accordingly, direction was issued to the President/Governing Body/ Principal-In-Charge of the respective colleges to take necessary steps for selection and appointment of regular Principal.

9. The petitioners have not been able to demonstrate from any material on record that the post of Principal of a provincialised college is a promotional post. Rather, the learned standing counsel for the respondent nos.1 and 2 has been able to show from the provision of Sub-Rule (1) of Rule 5 of the Assam College Employees (Provincialisation) Rules, 2010 that the prescribed method of recruitment of a Principal is by way of direct selection. The said 2010 Rules are framed under the Assam College Employees (Provincialisation) Act, 2005. The petitioners have not been able to show that the said 2005 Act and the said 2010 Rules have been repealed. Hence, the Court is of the considered opinion that as the method of recruitment by direct selection/appointment is prescribed for the post of Principal of a provincialised college under the Assam College Employees (Provincialisation) Rules, 2010, the petitioners have not been able to establish that they have any right to be considered for regularisation/absorption/provincialisation to the post of Principal merely because they have held the post of Principal-In-Charge of their respective colleges for some length of time.

10. In view of the prescription of Rule 5(1) of the aforesaid 2010 Rules, the Court is inclined to hold that no question of regularisation/absorption/provincialisation of service of the petitioners would arise in this case because the petitioners are holding the substantive post of Assistant Professor in their respective departments in their respective colleges. Accordingly, the Court is inclined to hold that the provision of Sub-Section (6) of



Section 8 of the Assam Education (Provincialisation of Services of Teacher and Re-Organisation of Educational Institutions) Act, 2017 has not application for the petitioners in this case.

11. It may be mentioned that as it is not in dispute that the petitioners were appointed in their respective colleges as Assistant Professor where they were allowed to hold the charge of post of Principal, the various dates of appointments and name of the colleges have not been reproduced in this order.

12. The Court is further inclined to hold that in the event the petitioners have acquired the prescribed qualification for being considered for selection and appointment as Principal of 41 newly provincialised colleges in the State of Assam, the petitioners would have a right to apply for such posts, as and when so advertised. It may be stated that the petitioners have not disclosed in this writ petition that any advertisement has been issued for filling up the post of regular Principal in the said 41 newly provincialised degree colleges.

13. Accordingly, this writ petition fails and the same is dismissed at the motion stage without issuance of notice on the respondents.

JUDGE

Comparing Assistant