

GAHC010167702023



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

Case No. : WP(C)/4355/2023

BHARAT CHANDRA TALUKDAR
S/O- LATE ATUL CHANDRA TALUKDAR, R/O- VILL.- BARJAN, BARAMA,
P.O. BARAMA, P.S. AND DIST. NALBARI, ASSAM, PIN- 781346.

VERSUS

THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM AND 9
ORS.
EDUCATION SECONDARY DEPARTMENT, DISPUR, GUWAHATI-6.

2:THE SECRETARY TO THE GOVT. OF ASSAM
SCHOOL EDUCATION DEPTT.
DISPUR
GHY-6.

3:THE SECRETARY
EDUCATION DEPTT.
BODOLAND TERRITORIAL COUNCIL
KOKRAJHAR
PIN- 783370.

4:THE DIRECTOR OF EDUCATION
BODOLAND TERRITORIAL COUNCIL
KOKRAJHAR
PIN- 783370.

5:THE INSPECTOR OF SCHOOLS
BAKSA DISTRICT CIRCLE
MUSHALPUR
PIN- 781372.

6:GAUHATI UNIVERSITY
REPRESENTED BY THE VICE CHANCELLOR
GAUHATI UNIVERSITY
JALUKBARI
GUWAHATI-14
ASSAM

7:NATIONAL COUNCIL OF TEACHERS EDUCATION
REGIONAL DIRECTOR OF NCTE BHUBANESWAR
NEEL KANTH NAGAR
NAYAPALLI
ORISSA
PIN- 751012.

8:THE PRINCIPAL

SDP COLLEGE OF TEACHERS EDUCATION
TIHU
DIST. NALBARI
ASSAM
PIN- 781372.

9:THE COUNCIL LEVEL SELECTION
BOARD FOR SELECTION OF PRINCIPAL OF BARAMA H.S. SCHOOL
REPRESENTED BY ITS MEMBER-SECRETARY- CUM- THE INSPECTOR OF
SCHOOLS
BAKSA DISTRICT CIRCLE
MUSHALPUR
PIN- 781372.

10:ANUPAMA DEVI
W/O- BASANTA KUMAR SARMA
R/O- NIZ JULUKI BARAMA
MOUZA- NAMATI
DIST. BAKSA
ASSAM
PIN- 781346

Advocate for the Petitioner : MR. U K NAIR, MS. L WANGSA,MS A DAS,MR. M MAHANTA,MR. T DEURI,MR. M P SARMA,MR. S CHOWDHURY

Advocate for the Respondent : SC, EDU, SC, N C T E,MR. I ALAM,MR. N J KHATANIAR,MR H BARUAH,MR N SARMA (10),MR. B K GOSWAMI (10),MR. S K GOSWAMI (10),SC, G U,SC, BTC

Linked Case : WP(C)/639/2024

ANUPAMA DEVI
W/O SRI BASANTA KUMAR SARMA
R/O NIZ JULUKI
BARAMA
MOUZA- NAMATI

DIST. BAKSA
ASSAM

VERSUS

THE STATE OF ASSAM AND 8 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM
DEPARTMENT OF SCHOOL EDUCATION
DISPUR
GUWAHATI-781006

2:THE SECRETARY EDUCATION DEPARTMENT

BODOLAND TERRITORIAL COUNCIL
KOKRAJHAR
PIN-783370

3:THE DIRECTOR OF EDUCATION

BODOLAND TERRITORIAL COUNCIL
KOKRAJHAR
PIN-783370

4:THE INSPECTOR OF SCHOOLS

BAKSA DISTRICT CIRCLE

MUSHALPUR
PIN-781372

5:GAUHATI UNIVERSITY

REP. BY THE VICE CHANCELLOR

JALUKBARI
GUWAHATI-781014.

6:THE COMMITTEE

CONSTITUTED VIDE NOTIFICATION DATED 08-09-023 FOR PURPOSE OF
EXAMINING THE ACCEPTABILITY AND VALIDITY THE B.ED. DEGREE OF
BHARAT CHANDRA TALUKDAR
(RESPONDENT OF NO. 9)
REPRESENTED BY THE CONTROLLER OF EXAMINATION
GAUHATI UNIVERSITY AS MEMBER
JALUKBARI
GUWAHATI-781014

7:NATIONAL COUNCIL OF TEACHERS EDUCATION (NCTE)

REPRESENTED BY CHAIRPERSON
EASTERN REGIONAL COMMITTEE

DWARAKA SECTOR-II
NEW DELHI.

8:THE PRINCIPAL

S.D.P. COLLEGE OF TEACHERS EDUCATION
TIHU
DISTRICT- NALBARI
ASSAM

PIN-781372

9:SRI BHARAT CHANDRA TALUKDAR
SUBJECT TEACHER
BARAMA HIGHER SECONDARY SCHOOL

BARAMA
DIST. BAKSA
ASSAM
PIN-781346

Advocate for : MR. S K GOSWAMI
Advocate for : SC
SEC. EDU. appearing for THE STATE OF ASSAM AND 8 ORS

Linked Case : WP(C)/6381/2024

TULASHI RABHA
SON OF LATE HARO RAM RABHA

R/O- VILLAGE- ALAGJAR

P.O. AND P.S.- BARAMA

DISTRICT- BAKSA (BTR)
ASSAM.

VERSUS

THE STATE OF ASSAM AND 7 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM

SCHOOL EDUCATION DEPARTMENT

DISPUR
GUWAHATI- 781006.

2:THE SECRETARY
EDUCATION DEPARTMENT
BODOLAND TERRITORIAL COUNCIL
KOKRAJHAR
PIN-783370.

3:THE DIRECTOR OF EDUCATION
BODOLAND TERRITORIAL COUNCIL
KOKRAJHAR
PIN-783370.

4:INSPECTOR OF SCHOOL
MUSHALPUR
DISTRICT- BAKSA
ASSAM.

5:THE PRINCIPAL
S.D.P. COLLEGE OF TEACHERS EDUCATION
TIHU
DISTRICT- NALBARI
ASSAM.

6:GAUHATI UNIVERSITY
REPRESENTED BY VICE CHANCELLOR

GAUHATI UNIVERSITY

JALUKBARI
GUWAHATI-14

ASSAM.

7:THE COMMITTEE
CONSTITUTED VIDE NOTIFICATION DATED 08.09.2023 FOR THE PURPOSE
OF EXAMINING THE ACCEPTABILITY AND VALIDITY OF B.ED. DEGREE OF
SRI. BHARAT CHANDRA TALUKDAR (RESPONDENT NO. 8)

REPRESENTED BY THE CONTROLLER OF EXAMINATION

GAUHATI UNIVERSITY AS MEMBER
JALUKBARI
GUWAHATI- 781014.

8:BHARAT CHANDRA TALUKDAR
SUBJECT TEACHER
BARAMA HIGHER SECONDARY SCHOOL

BARAMA
DISTRICT-BAKSA

ASSAM
PIN- 781346.

Advocate for : MR. S K GOSWAMI
Advocate for : SC
SEC. EDU. appearing for THE STATE OF ASSAM AND 7 ORS

**BEFORE
HONOURABLE MR. JUSTICE KARDAK ETE**

JUDGMENT

Date : 22-07-2025

Heard Ms. B. Bhuyan, learned senior counsel assisted by Mr. T. Deuri, learned counsel for the petitioner in WP(C) No. 4355/2023 and for the respondent Nos. 8 & 9 in WP(C)No.639/2024 and WP(C) No.6381/2024. And also heard Mr. S. K. Goswami, learned counsel for the petitioners in WP(C)No.639/2024 and WP(C)No.6381/2024 and respondent No. 10 in WP(C)No. 4355/2023; Mr. P. J. Phukan, learned Standing Counsel, Gauhati University and Mr. I. Alam, learned Standing Counsel, NCTE.

2. Since these writ petitions are inter-connected and the issues involved are similar on facts and law, same were heard analogously and disposed of by this

common judgment and order.

3. In WP(C)No. 4355/2023, the petitioner, namely, Shri Bharat Chandra Talukdar, has assailed the order dated 27.07.2023, passed by the Director of Education, Bodoland Territorial Council, Kokrajhar, whereby, the appointment of the petitioner as Principal of Barama Higher Secondary School and the validity of B.Ed. Degree obtained by the petitioner from the SDP College of Teachers Education, Tihu, has been treated to be cancelled in pursuant to the order dated 26.06.2023 passed in WP(C) 1026/2023 and the petitioner in the said writ petition, namely, Smti Anupama Devi has been allowed to hold the In-Charge Principal of Barama Higher Secondary School, in place of the petitioner, till regular Principal is appointed, thereby, reverting the petitioner back to his original post.

4. It is the contention of the petitioner that he was initially appointed as subject teacher of Barama Higher Secondary School on 15.09.1998. While serving as subject teacher, the petitioner applied to the Inspector of Schools, B.D.C. Mushalpur, through the Principal of Barama Higher Secondary School for permission to pursue B.Ed. Course without hampering the regular classes of the Barama Higher Secondary School. Accordingly, the petitioner was allowed and the petitioner, thereafter, obtained the B.Ed. Degree from SDP College of Teachers Education, Tihu, under Gauhati University in the year 2014-2015.

5. It is contended that the petitioner has obtained all the required permissions for the course of B.Ed., including attending and appearing in the final examination of B.Ed.course, from the Principal of Barama Higher Secondary School. The Principal, SDP College of Teachers Education, Tihu, issued the B.Ed. certificate in the year 2015. After due selection process pursuant to the advertisement dated 11.11.2021, vide order dated 03.09.2022, the petitioner

was appointed as Principal of Barama Higher Secondary School in the District of Baksa on regular basis.

6. The private respondent No. 10, namely, Smti Anupama Devi, had filed a writ petition being WP(C)No. 337 of 2021, challenging the validity of the B.Ed. Degree of the petitioner. Accordingly, this Court had directed the Director of Education, BTC, Kokrajhar to verify the B.Ed. Degree of the petitioner. Pursuant thereto, the Director of Education, BTC, Kokrajhar, after verifying all the documents of the petitioner, has declared the B.Ed. Degree of the petitioner to be valid, vide speaking order dated 18.09.2021. The private respondent No. 10, assailing the speaking order dated 18.09.2021, and the appointment of the petitioner as Principal dated 03.09.2022, had again approached this Court being WP(C) No. 8277/2022 and WP(C) No. 1026/2023.

7. This Court, vide common order dated 26.06.2023, has set aside and quashed the speaking order, dated 18.09.2021, passed by the Director of Education, BTC, thereby, directed the Director of Education, BTC, to reconsider the matter afresh as to whether the petitioner had legitimately obtained his B.Ed. Degree from the SDP College of Teachers Education, Tihu after taking into consideration of the report of the Inspector of School, BDC, Mushalpur, dated 23.07.2021 as well as the fact that the SDP College of Teachers Education, Tihu, does not have evening shift to impart B.Ed. Degree and also the Office Memorandum, dated 28.07.2014 and to pass a reasoned order in accordance with law.

8. Pursuant thereto, the Director of Education, BTC, vide order dated 27.07.2023, treated the B.Ed Degree of the petitioner obtained from the SDP College Teachers Education, Tihu and the appointment order of the petitioner as Principal of Barama Higher Secondary School, dated 03.09.2022 to be cancelled

and the respondent No. 10 has been temporarily allowed to hold the In-Charge Principal of Barama Higher Secondary School. Being aggrieved, present writ petition being WP(C)No. 4355/2023 is filed.

9. This Court, vide order dated 31.08.2023, on consideration that the B.Ed Degree had been obtained from Gauhati University and the NCTE is the appropriate regulatory authority under the law as regards acceptability and validity of any B.Ed. Degree, has observed and directed that there is requirement of Gauhati University to take a final decision on the acceptability and validity of the B.Ed. Degree of the writ petitioner, Shri Bharat Chandra Talukdar as to whether the manner and circumstances in which the degree was obtained would be acceptable in law to be declared to be a valid degree. In doing so, as the NCTE is an appropriate regulatory authority, regarding the procedure and requirement of obtaining a B.Ed. Degree, the Gauhati University while taking final decision, shall do it in consultation with the appropriate authority in the NCTE. This Court has directed the authorities in the NCTE to cooperate completely with the Gauhati University, in arriving at a decision. It has further observed that as certain contradictory factual situations also sought to be relied upon by writ petitioner, the Gauhati University while taking the final decision shall give an opportunity of hearing to the writ petitioner to explain his case. The Gauhati University shall also call for the complete records of the SDP College of Teachers Education, Tihu, from where the petitioner had undertaken the B.Ed. course, which shall also be taken note of by the authorities in the NCTE and their views be also formally informed to the Gauhati University as to in manner in which the B.Ed. course was undertaken by the petitioner, whether it can lead to a valid B.Ed. Degree.

10. Pursuant to the above order, the Gauhati University, the respondent No. 6,

has taken up the proceedings, starting from 12.09.2023. All the stakeholders including the petitioner, the Principal of SDP College of Teachers Education, Tihu, and Smti Anupama Devi, the respondent No. 10, appeared and submitted their respective statements. The NCTE was also represented through online mode and the opinion expressed by the NCTE was also sent in writing on the same day to Gauhati University and after consideration, held the B.Ed. Degree in question, as awarded to Bharat Chandra Talukdar valid. In view of the above findings of the Gauhati University, pursuant to the order of this Court, the writ petition appears to be virtually infructuous as the B.Ed.Degree awarded to the writ petitioner, namely, Bharat Chandra Talukdar, is held to be valid.

11. The respondent No. 10, Smt. Anupama Devi, petitioner in WP (C) No.639/2024, has challenged the decision of the Gauhati University, dated 29.09.2023, by which the B.Ed. Degree of the writ petitioner is declared as valid Degree on the ground that Gauhati University has failed to consider the NCTE regulation and other relevant aspects of the matter, wherein, Bharat Chandra Talukdar is arrayed as respondent No. 9.

12. In WP(C) No. 6381/2024, the writ petitioner, namely, ShriTulashiRabha, has also challenged the legality and validity of the proceeding of hearing of Gauhati University, dated 29.09.2023, whereby, B.Ed. Degree of Bharat Chandra Talukdar, respondent No. 8 in this writ petition, has been held to be valid degree contrary to the NCTE regulation, as it affects the right of the petitioner to be promoted to the post of regular Principal, while the Vice Principal, Smti Anupama Devi is allowed to hold the charge of Principal.

13. Mr. S. K. Goswami, learned counsel for the petitioners in WP(C)No.639/2024 and WP(C) No. 6381/2024, submits that the B.Ed. Degree of the respondent No. 9, was under challenge in W.P.(C) No. 337/2021 as well as

W.P.(C) No. 1026/2023 and this Court, vide judgment, dated 26.06.2023 directed the Director of Education, BTC, to pass a reasoned order, whether B.Ed. Degree obtained by Bharat Chandra Talukdar is in accordance with NCTE Act and Regulation framed thereunder or not, considering the report submitted by Inspector of Schools, BDC, Mushalpur, dated 23.07.2021. Thereafter, the appellant authority, i.e. the Director of Education, BTC, Kokrajhar, after going through the report of the Inspector of Schools, dated 23.07.2021, passed a reasoned order vide order, dated 27.07.2023 and gave clear finding that B.Ed. Degree of Bharat Chandra Talukdar is not in accordance with law and cancelled the appointment of Bharat Chandra Talukdar as Principal.

14. Mr. S. K. Goswami, learned counsel, submits that Bharat Chandra Talukdar obtained B.Ed. Degree from the SDP College of Teachers Education, Tihu for the academic year 2014-2015 and was student of day shift while he was working as regular teacher in Barama Higher Secondary School, Barama, which is almost 15 Km away from the said college. As per RTI report, dated 31.07.2019, no attendance records are found in the said institution during his study period. The Inspector of Schools, BDC, Mushalpur, vide communication dated 23.07.2021, also informed the Director of Education, BTC, Kokrajhar that no record is available in the Office, whereby, it can be shown that Bharat Chandra Talukdar obtained permission from the appointing authority to obtain B.Ed. Degree. Mr. Goswami, learned counsel submits that Bharat Chandra Talukdar was not deputed to study B.Ed. through proper channel and he was absent on two days as per attendance register i.e, on 29.08.2015 and 14.09.2015. He had no casual leave, no attendance on 31.08.2015, 03.09.2015, 18.09.2015 and had the casual leave days only on 07.09.2015, 09.09.2015, 11.09.2015, 16.09.2015 and 21.09.2015. There cannot be statutory presumption that a regular teacher of a

school simultaneously attends the class of B.Ed. Course, which is at distance of 15 Km from the school in which he is working.

15. Mr. Goswami, learned counsel, while referring to Rule 13 of the Assam Civil Service (Conduct) Rules, 1965, which provides that no Government Servant while in Government Service shall join or attend any educational institution for the purpose of preparing himself for or shall appear at an examination of a recognised Board or University without obtaining previous permission from the appointing authority, submits that the document enclosed by Bharat Chandra Talukdar regarding taking permission from the Principal of Barama Higher Secondary School, Barama, has no leg to stand as it was not the proper authority to give permission for the study of B.Ed. Although the said permission is shown to be obtained from the Principal of Barama Higher Secondary School but it did not disclose any date and memo number and said document is prepared back dated to substantiate his claim that he was given permission to attend B.Ed. course.

16. Mr. Goswami, learned counsel, submits that as per RTI from the S.D.P. College of Teachers Education, there was no attendance of Bharat Chandra Talukdar in the said school at the relevant time and B.Ed. course was day shift course. So, it is practically impossible for a teacher to attend classes in the B.Ed. College in a day shift while he was working as regular teacher in a school simultaneously in day time at distance of 15 Km. He submits that Bharat Chandra Talukdar obtained B.Ed. Degree, violating the NCTE Regulations, 2014, though from a recognised institution from Gauhati University. He submits that as per Section 2(m) of the NCTE Act, 1993, B.Ed. Degree obtained by Bharat Chandra Talukdar is not a valid degree to be qualified as Teacher/Principal as per NCTE Act, 1993.

17. Mr. Goswami, learned counsel, while referring to the order dated 31.08.2023 in W.P.(C) No. 4355/2023, submits that in compliance of the order of this Court, Gauhati University conducted an inquiry, however, it has held that the degree awarded to Bharat Chandra Talukdar is valid, without passing any reasoned order particularly as to the manner and procedure as required as per NCTE Regulations, 2014, which was specifically directed by this Court to examine by the said University. So, the report of Gauhati University did not qualify the direction passed by this Court and same is not legally sustainable in law.

18. Mr. Goswami, learned counsel submits that in the proceeding before Gauhati University, S.D.P. College of Teachers Education deliberately submitted that college could not supply the concerning register as to the attendance of Bharat Chandra Talukdar on the plea that old records had been destroyed which cast a serious doubt on the veracity of his attendance in the said course. Interestingly, the said particular was already provided in a reply to the RTI and the record cannot be destroyed without permission from higher authority.

19. Mr. Goswami, learned counsel submits that the B.Ed. Degree of Bharat Chandra Talukdar is decided to be a valid degree by the Gauhati University but same is not a qualification to be appointed as teacher as per Section 2(m) of the NCTE Act, 1993, as same has been obtained by violating the norms and procedure of NCTE Regulations, 2014. Therefore, degree obtained by Bharat Chandra Talukdar violating statutory norms cannot be considered as valid degree for appointment to the post of the Principal of any Government Provincialized School.

20. In support of his submissions, Mr. S. K. Goswami, learned counsel has placed reliance on the following judgments:

(i). WP(C)No. 1565/2019, Dalimi Das vs. the State of Assam.

(ii). 1994 (2) SCC 102, Bar Council of India vs. Aparna Basu Mallick.

(iii). 1989 Supp2 SCC 91, Baldev Raj Sharma vs. Bar Council of India.

21. On the other hand, Ms. B. Bhuyan, learned senior counsel appearing for Bharat Chandra Talukdar, petitioner in WP(C) No. 4355/2023 and respondent No. 9 in WP(C)No.639/2024 & respondent No. 8 in WP(C)No.6381/2024, submits that pursuant to the order dated 31.08.2023, passed by this Court in W.P(C) No. 4355/2023, a Committee was constituted by the Gauhati University and after hearing all the stakeholders and consideration of the materials, has held the B. Ed. Degree of Bharat Chandra Talukdar, valid. The petitioners having failed to get selected in the selection process, initiated pursuant to the advertisement dated 11.11.2021 issued by the Director of Education, BTC, Kokrajhar for filling up vacant posts of Principal of Provincialized Senior Secondary Schools, under BTC area have challenged the said selection. The petitioners having been participated in the process of selection without any demur, the petitioners, on being unsuccessful, are estopped from challenging the selection criterion. The petitioner in WP(C)No.639/2024 had retired from service on 31.08.2024 on attaining the age of superannuation and, as such, the cause of action does not survive in respect of the petitioner. Moreover, the petitioner does not have the legal right to challenge the B. Ed degree of Bharat Chandra Talukdar.

22. Ms. B. Bhuyan, learned senior counsel submits that Bharat Chandra Talukdar, vide application dated 15.07.2014 had applied to the Inspector of Schools, B.D.C., Mushalpur, through the Principal, Barama H.S. School for granting permission to pursue the B.Ed. Course without hampering the regular

classes of the Barama Higher Secondary School. The Inspector of Schools, B.D.C., Mushalpur had allowed the prayer of Bharat Chandra Talukdar by putting his signature on it and also by inscribing his seal over the aforesaid application, dated 15.07.2014.

23. Ms. B. Bhuyan, learned senior counsel submits that a University offers a degree in exercise of the powers under Section 22 of the University Grants Commission Act, 1956 and taking note of Section 21 of the General Clauses Act, it is only the university who can declare the degree obtained to be untenable in law or may withdraw it. No other third party can be understood to have any jurisdiction or authority to not accept a degree issued by a University in exercise of the powers under Section 22 of the UGC Act, 1956.

24. Ms. B. Bhuyan, learned senior counsel submits that the Gauhati University, in pursuance of order dated 31.08.2023 passed by this Hon'ble Court had constituted a committee to decide the validity of the same. The committee after considering all the relevant aspect of the matter and after taking the views of the NCTE came to a finding that the B.Ed. degree awarded to Bharat Chandra Talukdar is a valid B.Ed. degree, as such, the said finding/decision is final and binding on all and there is no scope for interference in the said finding/ decision.

25. Ms. B. Bhuyan, learned senior counsel submits the Rule 12 of the Assam Secondary Education (Provincialized Schools) Service Rules, 2018, prescribes the mode of recruitment to the post of Principal in Provincialised Higher Secondary Schools by direct recruitment. Rule 12(2) of the said Rule prescribes that the post of Principal in Provincialised Senior Secondary Schools shall be filled up by direct recruitment from the candidates amongst the cadre of Post Graduate Teachers of Senior Secondary and Higher Secondary School as per procedure under sub-rule 5, thus, it becomes evidently clear that no candidate

i.e. Post Graduate Teacher of a Senior Secondary or a Higher Secondary School shall be promoted to the post of Principal of Provincialised Senior Secondary Schools, hence, the writ petition filed by Mr. Tulashi Rabha, by which he had prayed that the respondent authorities may be directed to promote the petitioner to the post of regular Principal of Barama Higher Secondary School, Barama may be dismissed in limine.

26. Ms. B. Bhuyan, learned senior counsel submits the petitioner, Tulashi Rabha is presently serving as the In-Charge Principal of Barama Higher Secondary School, Barama. The Rule 12(3)(v) of the Assam Secondary Education (Provincialised Schools) Service Rules, 2018, provides that the age of the candidates must not be more than 57 years as on 1st January of the year of recruitment. The petitioner is presently 58 years old, as such, there is an embargo in the appointment of the petitioner due to the age bar as provided under Rule 12(3)(v) of the Assam Secondary Education (Provincialised Schools) Service Rules, 2018.

27. Ms. B. Bhuyan, learned senior counsel submits that the petitioners having failed to get selected in the selection process initiated pursuant to advertisement, dated 11.11.2021 issued by the Director of Education, BTC, Kokrajhar, for filling up vacant posts of Principal of Provincialised Senior Secondary Schools under BTC area is making false and baseless allegations against the said selection. She further submits that if the petitioners are aggrieved by the aforesaid selection process or the appointment of Bharat Chandra Talukdar, the petitioners ought to have challenged the same, however, the petitioners had neither challenged the select list, dated 06.04.2022 nor the Minutes of the Meeting, dated 06.04.2022 of the Council Level Selection Board by which Bharat Chandra Talukdar was selected for the post of Principal of

Barama Higher Secondary School, Barama.

28. Ms. B. Bhuyan, learned senior counsel in support of her submissions, has placed reliance on the following judgments:

(i). WP(C)No. 416/2025, Dayananda Bhuyan vs. State of Assam and Ors.

(ii). WP(C)No. 2146/2024, Mitali Sonowal vs. State of Assam and Ors.

(iii). WP(C)No. 29571 (W) of 2013, Md. Sherful Alam vs. State of West Bengal and Ors.

29. Due consideration has been extended to the submissions of learned counsel for the parties and also perused the materials placed on record.

30. As noted herein above, Shri Bharat Chandra Talukdar, in WP(C)No. 4355/2023, has assailed the order, dated 27.07.2023, passed by the Director of Education, Bodoland Territorial Council, pursuant to the order of this Court dated 26.06.2021, passed in WP(C) No. 1026 of 2023, whereby, the appointment of the petitioner as Principal of Barama Higher Secondary School and the validity of B.Ed. Degree obtained by the petitioner from the SDP College of Teachers Education, Tihu, have been treated to be cancelled and the petitioner in the that writ petition, namely, Smti Anupama Devi has been allowed to hold the In-Charge Principal of Barama Higher Secondary School, in place of the petitioner, till regular Principal is appointed, thereby, reverting the petitioner back to his original post.

31. This Court, vide order dated 31.08.2023, on consideration that the B.Ed Degree had been obtained from Gauhati University and the NCTE is the appropriate regulatory authority under the law as regards acceptability and

validity of any B.Ed. Degree, has observed and directed that there is a requirement of Gauhati University to take a final decision on the acceptability and validity of the B.Ed. Degree of the writ petitioner, Bharat Chandra Talukdar as to whether the manner and circumstances in which the degree was obtained would be acceptable in law to be declared to be a valid degree. In doing so, as the NCTE is an appropriate regulatory authority, regarding the procedure and requirement of obtaining a B.Ed. Degree, the Gauhati University while taking final decision, shall do it in consultation with the appropriate authority in the NCTE. This Court has further directed the authorities in the NCTE to cooperate completely with the Gauhati University, in arriving at a decision. It has further observed that as certain contradictory factual situations also sought to be relied upon by writ petitioner, the Gauhati University while taking the final decision shall give an opportunity of hearing to the writ petitioner to explain his case. The Gauhati University shall also call for the complete records of the SDP College of Teachers Education, Tihu, from where the petitioner had undertaken the B.Ed. course, which shall also be taken note of by the authorities in the NCTE and their views be also formally informed to the Gauhati University as to in manner in which the B.Ed. course was undertaken by the petitioner, whether it can lead to a valid B.Ed. Degree.

32. Pursuant to the above order, the Gauhati University, the respondent No. 6, has taken up the proceedings, starting from 12.09.2023. All the stakeholders including the petitioner, the Principal of SDP College of Teachers Education, Tihu, and Smti Anupama Devi, the respondent No. 10, appeared in person and submitted their respective statements. The NCTE was also represented through online mode and the opinion expressed by the NCTE was also sent in writing on the same day to Gauhati University and finally, held which is extracted as under:

“3. After perusal of all the statements and records as well as documents and at the conclusion of the hearing the committee observed that –

i) As per the NCTE, the SDP College of Teacher Education was granted recognition for B.Ed. Course from academic Session 2014-2015 vide file No. FERC/NCTE/AS-S/E-23/96 & ERCAPP1097/B.Ed. (Revised Order) 2015/31756 dated 20.5.2015.

ii) Bharat Chandra Talukdar was duly admitted in the college.

iii) Bharat Chandra Talukdar has produced NOC allowed by the Inspector of Schools of Baksa District Circle, Mushalpur, which was in consonance with the Govt. Office Memorandum dated 28th July, 2014 (The N.O.C and OM jointly enclosed as Annexure - E).

iv) As per record, Bharat Chandra Talukdar was allowed by the SDP College of Teacher Education, Tihu to appear in the examination after submission of the examination form.

v) When a college allows a student to appear in the examination after following all the requirements including the attendance aspect, the authenticity and impeccability of the decision is accepted and maintained all along in normal circumstances. However, in this matter the present Principal of the College could not supply the Attendance Register for that particular academic session, stating that the old records were destroyed as per the decision of the Governing Body of the college (Annexure-F)

vi) Bharat Chandra Talukdar appeared in the examination in the particular session and he passed in the said examination for which the said B.Ed degree was awarded by Gauhati University.

vii) The NCTE stated in its statement that "The validity of the degree of the petitioner comes under the purview of the affiliating body of the institution i.e. Gauhati University. The same may be ascertained from University's end only".

viii) As such, from what has been observed above, it is found that Bharat Chandra Talukdar is a bonafide candidate for awarding the B.ED degree (Session 2014-2015) by the Gauhati University.

ix) As such, the committee is of the humble opinion that the B.Ed. degree in question, as awarded to Bharat Chandra Talukdar is valid.”

33. Perusal of the above findings clearly shows that the B.Ed. degree of Shri Bharat Chandra Talukdar, is valid. As noted above, in pursuant to the order of this court, the Gauhati University, has taken up the proceedings, starting from

12.09.2023. All the stakeholders including the petitioner, the Principal of SDP College of Teachers Education, Tihu, and Smti Anupama Devi, appeared in person and submitted their respective statements. The NCTE was also represented through online mode and the opinion expressed by the NCTE was also sent in writing to Gauhati University.

34. The challenge to the findings of the Gauhati University with regard to B.Ed. degree of Shri Bharat Talukdar to be valid, is essentially, to the effect that same is without any reasons and have ignored the provisions of the Assam Civil Service (Conduct) Rules, 1965 and the National Council for Teachers Education (Recognition Norms and Procedure) Regulation, 2014 and as Shri Bharat Chandra Talukdar has not taken proper permission for B. Ed. Course and being the regular teacher he could not have obtained the same.

35. In order to appreciate, I deem apposite to refer the relevant provisions of the Assam Civil Service (Conduct) Rules, 1965 and the National Council for Teachers Education (Recognition Norms and Procedure) Regulation, 2014.

36. Rule 13 of the Assam Civil Service (Conduct) Rules, 1965 provides which is reproduced herein under:

“13. Prosecution of studies by Government Servants in Educational institution: No Government Servant while in Government Service shall join or attend any educational institution for the purpose of preparing himself for or shall appear at an examination of a recognised-Board or University without obtaining previous permission from the appointing authority.

Who is Appointing Authority

As per Section 2(a)(i) of the Assam Secondary Education (Provincialised Schools) Service Rules, 2018, appointing authority means the Director of Secondary Education, Assam in respect of the cadres of Principal, Headmaster/ Superintendent.”

37. Bare reading of the above provisions show that no Government Servant

while in Government Service shall join or attend any educational institution for the purpose of preparing himself for or shall appear at an examination of a recognised University without obtaining previous permission from the appointing authority. Record placed reveals that permission has been obtained from the authorities including the Principal of Barama Higher Secondary School, although it has to be obtained from the Director of Secondary Education. Be that as it may, this court is of the view that even if there is a violation of above rule, same may, at best, warrants disciplinary action and would not be a ground for declaration of the degree invalid. More so, when the competent authorities has clearly held that the degree issued is a valid one that too after examination and consideration of materials in pursuant to the order of this court.

38. In this context, reference may be made to the case of **Mitali Sonowal (supra)**, wherein this Court has held which is reproduced herein under:

“17. The provisions of Rule 13 of the Assam Civil Service (Conduct) Rules, 1965, being of relevance, is extracted herein below:

“13. Prosecution of studies by Government servants in educational institutions. - No Government servant while in Government service shall join or attend any educational institution for the purpose of preparing himself for or shall appear at any examination of a recognized-Board or University without obtaining previous permission from the appointing authority:

Provided that the appointing authority may refuse such permission in the interest of the public service on consideration that such joining or attending any educational institution or appearing at any examination may create dislocation of work or stand in the way of the efficient discharge of his duties by the Government servant concerned. Permission of study leave or any other kind of leave granted for the purpose of joining or attending any educational institution shall be subject to the condition that the Government servant shall not seek election to or hold any electist office in Students' Union or other Association of Student's except Association formed for purely literary, academic or athletic pursuits.”

18. *The provisions of Rule 13 of the Rules of 1965 mandates that no government employee while in service, shall join or shall attend any educational institution for preparing himself or shall appear at an examination of a recognized Board or University without obtaining previous permission from the appointing authority.*

The provisions of Rule 13 only mandates that prior permission shall be obtained by a government employee for prosecuting any course of study. The violation of Section 13 would amount to a misconduct for which the employer may draw a disciplinary proceeding against the government employee. The provisions of Rule 13 of the Rules of 1965 cannot, however, be invoked to invalidate any degree acquired by a government employee, the course of study for which the government employee had prosecuted without previous permission from the authorities.

19. *This Court in the case of Tankeswar Nath(supra), on considering the issue similar to the one arising to the present proceeding, has drawn the following conclusions:*

“6. The said issue is no longer res-integra and this Court, vide order, dated 28.09.2023, passed in IA(c)2615/2023 [Smt. Mouchumi Saharia v. Smriti Rekha Kalita & 3 ors.] had held that if a Degree had been obtained without prior permission of the appointing authority, the same would be a misconduct under Rule 13 of the Rules of 1965 and it being a misconduct, the relevant proceedings of law applicable against the candidate, would be a proceeding against such candidate under the Assam Services(Discipline and Appeal) Rules, 1964, but the same by itself cannot invalidate the otherwise valid degree obtained from the respective Universities and further, that the Degree obtained from a University is governed by Section 22 of the University Grants Commission Act, 1956.

7. On application of the decision of this Court in the case of Mouchumi Saharia(supra); to the issues arising in the present case, it is clear that the petitioner having been validly granted a Masters Degree in Assamese and the said Degree having been obtained from an institution recognized by the University Grants Commission, the respondent authorities do not have the jurisdiction and authority to invalidate the said Degree obtained by the petitioner and such invalidation cannot be done even impliedly.

The effect of the denial of the benefits of holding the charge of in-charge Principal of the said school to the petitioner inspite of being the senior-most Teacher of the school, amounts to an invalidation of the Degree obtained by the petitioner in Krishna Kanta Handique State Open University, which is impermissible.

8. *Accordingly, the order, dated 30.03.2023, having been issued only on*

the ground that the petitioner was not eligible to hold the charge of the post of Principal, Sarthebari Higher Secondary School, Sarthebari, on account of he having obtained his M.A. Degree without prior permission from the competent authorities for undergoing such a course; stands interfered with."

39. Clause 2 of Appendix-4 of the National Council for Teachers Education (Recognition Norms and Procedure) Regulation, 2014 provides the requisite working days and duration which are reproduced herein under:

"Clause-2

Duration and Working Days

2.2. Working Days

a) There shall be at least 200 working days each year exclusive of the period of examination and admission.

b) The institution shall work for a minimum of 36 hours in week (five or six days), during which physical presence in the institution of all the teachers and student teachers is necessary to ensure their availability for advice, guidelines, dialogue and consultation as and when needed.

c) The minimum attendance of student-teacher shall have to be 80% for all course work and practicum, and 90% for school internship."

40. Perusal of the above provision evidently reflects the duration and working days which shall be at least 200 working days each year, the institution shall work for a minimum of 36 hours in week during which physical presence in the institution of all the teachers is necessary and minimum attendance of student-teacher shall have to be 80% for all course work and practicum. Therefore, there would not be any dispute to the duration and working days for teacher as per the National Council for Teachers Education (Recognition Norms and Procedure) Regulation, 2014. However, in the present case, it is not discernable as to whether Shri Bharat Chandra Talukdar had not have any required workings days and percentage of attendance except the bald averment and submission of Mr. Goswami, learned counsel for the petitioners, that there was no attendance of Shri Bharat Chandra Talukdar in the said school at the relevant time and B.Ed. course was day shift

course at a distance of 15 Km. Thus, it is difficult to conclude that it was not possible for a teacher to attend classes in the B.Ed. College in a day shift while he was working as regular teacher in a school simultaneously in day time.

41. Having considered that the B. Ed degree had been obtained from the Gauhati University and the NCTE is the appropriate regulatory authority under the law as regards acceptability and validity of any B. Ed degree, this court has directed the Gauhati University to take a final decision on the acceptability and validity of the B. Ed degree of Shri Bharat Chandra Talukdar, vide order dated 31.08.2023 in WP(C) 4355/2023, pursuant to which Gauhati University has taken up the proceedings, and all the stakeholders including the petitioner, the Principal of SDP College of Teachers Education, Tihu, and Smti Anupama Devi, appeared in person and submitted their respective statements as well the NCTE having been represented through online mode and the opinion expressed by the NCTE was also sent in writing to Gauhati University, has held that the B.Ed degree of Shri Bharat Chandra Talukdar valid, in my considered view, it would not be appropriate to have a different view other than the view taken by the Gauhati University unless flagrant violation of law is clearly established. Thus, this court finds no infirmity in the decision of the Gauhati University.

42. I have perused the case laws relied on by the learned counsel for the parties. On perusal of the above case laws, this court finds not relevant and applicable but one as the same have been rendered on a different contextual facts. However, some of the observations are referred and reproduced. In the case of **Dalimi Das (supra)**, this Court has held, which is reproduced hereunder:

“17. The learned counsel for the petitioner had submitted that a lot of people in Assam who have obtained B.Ed. Degree from CMJ University have been appointed in various teaching posts. In this regard, the Court is of the considered opinion that in this writ

petition, the validity of B.Ed. Degrees of any third party has not been questioned and therefore, no comment is warranted as to the validity of B.Ed. degree of any person other than the petitioner herein. Nonetheless, if any B.Ed. Degree is not in accordance with law and yet anyone has been appointed on the strength of such a degree, it would amount to committing a wrong. However, a 3 Judge Bench of the Supreme Court of India in the case of R. Muthukumar & Ors. v. The Chairman and Managing Director Tangedco & Ors., reported in (2022) 0 Supreme(SC) 135, has put its seal of approval on the well settled legal proposition that one wrong committed in one case cannot be allowed to repeated in another case as there is no concept of negative equality. Therefore, the appointment made to any other person on the basis of B.Ed. Degree of CMJ University for Examination held in the year 2012 would be of no help to the case of the petitioner.”

43. In the case of **Aparna Basu Mallick (supra)**, the Hon’ble Supreme Court has held, which is reproduced as hereunder:

“16. It was lastly submitted that so far as the Calcutta student was concerned, her case was governed by Regulation 35 which specifically permitted a woman candidate to appear as non-collegiate student. This Regulation underwent a change on the addition of the proviso by the Resolution of December 7, 1979 which required the University to inform the woman candidate in advance that she will not be eligible for enrolment as an advocate and the degree to be awarded shall bear an inscription to the effect that it was obtained as a non-collegiate student. Regulation 35 could not hold the field unless it was consistent with the provisions of the Act and the Rules. That is why the proviso was required to be added to the Regulation. But if the University had omitted to insert the proviso that would not have entitled a woman candidate for enrolment as an advocate on securing a degree as a non-collegiate. Unless the degree of law was secured consistently with the requirements of the provisions of the Act and the Rules, it would not serve as a qualification for enrolment. The proviso was added to Regulation 35 by way of extra caution. After the incorporation of Rule 1(1)(c) in its present form, Regulation 35 could not entitle a woman candidate to be enrolled as an advocate if she secured the degree as a non-collegiate.”

44. In the case of **Baldev Raj Sharma (supra)**, the Hon’ble Supreme Court has held, which is reproduced hereunder:

“3. On 26 April 1983 the Bar Council of Punjab and Haryana denied enrolment to the petitioner as an advocate on the ground that the petitioner has not fulfilled the conditions laid down in Rule 1(1)(c) of the Rules of the Bar Council of India framed under S. 7(h) and (i) S. 24(1)(c)(iii) and (iia) and S. 49(1)(d). The detailed grounds of refusal supplied to the petitioner by the Bar Council of Punjab and Haryana State that the petitioner had obtained his Bachelor of Laws degree from the Kurukshetra University as a result of the examination held in April, 1980 as a private candidate. It was an LL B. (Academic) degree obtained in two years study as a private candidate. The third year of law was pursued by him as a regular student from V.S.S.D. College, Kanpur of the Kanpur University from which institution he obtained the professional degree. It was further stated that the petitioner had not fulfilled the conditions laid down in the provisions detailed earlier as he had passed his two years law course as a private candidate from Kurukshetra University and the third year law only by regular attendance at the V.S.S.D. College, Kanpur. It appears that the State Bar Council, upon receiving the application of the petitioner for enrolment as an advocate, obtained the opinion of the Bar Council of India and in conformity with that opinion the State Bar Council has refused enrolment. Section 24(1)(c) provides as follows:

"24. Persons who may be admitted as advocates on a State roll - (1) Subject to the provisions of this Act, and the rules made thereunder, a person shall be qualified to be admitted as an advocate on a State roll, if he fulfils the following conditions, namely:-

(c) he has obtained a degree in law

(i) & (ii)

(iii) after the 12th day of March, 1967, save as provided in sub-clause (iii-a), after undergoing a three-year course of study in law from any University in India which is recognised for the purposes of this Act by the Bar Council of India; or

(iii-a) after undergoing a course of study in law, the duration of which is not less than two academic years commencing from the academic year 1967-68, or any earlier academic year from any University in India which is recognised for the purposes of this Act by the Bar Council of India."

Sub-clause (iii) of Cl. (c) of S. 24(1) entitles a person to be admitted as an advocate on a State roll if he has obtained a degree in

law after 12th March 1967 after undergoing three years of study in law in any University in India recognised for the purposes of the Advocates Act by the Bar Council of India. An exception to this is provided by subcl. (iii-a) of Cl. (c), under which a person is qualified for admission as an advocate if he has obtained a degree in law after undergoing a course of study in law, the duration of which is not less than two academic years commencing from the academic year 1967-68. or any earlier academic year from any University in India recognised for the purposes of the Act by the Bar Council of India. The petitioner obtained a degree of Bachelor of Laws (Professional) from the Kanpur University in the examination of 1981. He had pursued the third year course only of study pertaining to that degree as a regular student of the V.S.S.D. College, Kanpur in Kanpur University. The Bar Council of India has framed Rules under the Advocates Act, 1961. Rule 1(1)(c) of Part IV of the Bar Council of India Rules, 1975 provides that except as provided in S. 24(1)(c)(iii-a) of the Advocates Act a degree in law obtained from any University in the territory of India after 12th March, 1967 shall not be recognised for the purposes of S. 24(1)(c)(iii) of the Act unless the conditions specified there are fulfilled, including the condition "that the course of study in law has been by regular attendance at the requisite number of lectures, tutorials and moot courts in a college recognised by a University". These rules were replaced by a fresh set of rules in 1984 and the new Rule 1(1)(c) is almost identical. The Rule clearly requires that the course of study in law should have been by regular attendance for the requisite number of lectures, tutorials and moot courts and practical training. The rule envisages that for the entire period of the law course there must be a regular attendance of the student before he can satisfy the conditions necessary for enrolment as an advocate under the Advocates Act, 1961 The Rules amplify what is intended in S. 24(1)(c)(iii) of the Act. The three years course of study envisaged by that sub-clause in the Act intends that the three years course of study in law must be pursued by maintaining regular attendance. We are unable to say that there is any inconsistency between the Act and the Rule. So also in a case falling under Cl. (iii-a) of S. 24(1)(c) of the Act, a course of study in law must be pursued for not less than two academic years in terms of that sub-clause and Rule 1(1)(c) will apply to such a case also. There is a substantial difference between a course of study pursued as a regular student and a course of study pursued as a private candidate. The policy underlying the relevant provisions of the Bar Council Rules indicates the great emphasis laid on regular attendance at the law classes. The conditions are specifically spelt out when the Act is read

along with the Rules. When so read, it is plain that a candidate desiring enrolment as an advocate under the Advocates Act must fulfil the conditions mentioned in S. 24(1)(c)(iii) or S. 24(1)(c)(iii-a) read with Rule 1(1)(c) of the Bar Council of India Rules, 1975. In the present case the petitioner failed to do so. His application for enrolment was rightly rejected.”

45. In view of what has been discussed herein above, there is no infirmity in the findings of Gauhati University dated 29.09.2023 whereby the B.Ed degree of Shri Bharat Chandra Talukdar is held to be valid. Consequently, the impugned order dated 27.07.2023 passed by the Director of Education, BTC, Kokrajhar and the cancellation of appointment order of Shri Bharat Chandra Talukdar as Principal are set aside and quashed.

46. In the result, WP(C) 4355/2023 is allowed and WP(C) 639/2024 & WP(C) 6381/2024 are dismissed. Cost(s) made easy.

JUDGE

Comparing Assistant