

(2021) 08 GAU CK 0012

Gauhati High Court

Case No: Writ Petition (Civil) No. 3042 Of 2021

Gouri Sankar Biswas

APPELLANT

Vs

State Of Assam And 3
Ors.

RESPONDENT

Date of Decision: Aug. 4, 2021

Acts Referred:

- Constitution Of India, 1950 - Article 226
- Assam Services (Discipline And Appeal) Rules, 1964 - Rule 9

Hon'ble Judges: Achintya Malla Bujor Barua, J

Bench: Single Bench

Advocate: N Baruah

Final Decision: Disposed Of

Judgement

1. Heard Mr. N Baruah, learned counsel for the petitioner. Also heard Mr. K Gogoi, learned counsel for the respondents no. 1 and 2 being the

authorities under the Higher Education Department, Government of Assam and Mr. G Pegu, learned counsel for the respondent no. 3 being the

Deputy Commissioner, Karimganj, Assam.

2. Considering the nature of the order proposed to be passed, we deem it appropriate not to wait for the notice to be served on the respondent no. 4.

3. The petitioner is an Upper Division Assistant in the R K Nagar College in the Karimganj district. Sri Mohitosh Chakraborty was the In-Charge

Principal of the School. Another teacher of the school Dr. Mala Sharma had instituted WP(C) 458/2017 praying for a direction that the selection

process for appointment of the regular Principal of the school which was initiated by the advertisement of 2016 be brought to its logical end and

further continuation of the In-Charge Principal be brought to its end. Another writ petition was instituted by the same teacher Dr. Mala Sharma being

WP(C) 4112/2017 for interfering with some departmental proceeding that was initiated against the said teacher. Both the writ petitions came out for

its consideration on 05.04.2021. On 05.04.2021, the following order was passed which is extracted as below:

“We have taken note of a communication by the President of Governing Body of Ramkrishna Nagar College dated 20.11.2016, which is annexed

as annexure-22, page-79 of the writ petition being WP(C) No.4122/2017. This is a report by the President of the Governing Body to the Deputy

Commissioner, Karimganj as regards the happening that took place in the meeting of the Governing Body for appointment of a regular Principal of the

College. Clause-9 of the report shows that the Principal In-charge of the College/ Governing Body with his coterie started to disrupt the meeting,

inasmuch as the proceedings that were going on as regards the constitution of the committee was not favourable to them.

The report further states that the Principal In-charge was unwilling to record the minutes of the meeting regarding the constitution of the Selection

Committee for appointment of a regular Principal and the Principal In-charge was instigating his coterie to stand against the opinion of the house.

Further, some important minutes of the meeting were not recorded by the Principal In-charge at that stage. The respondent No.6, Shri Gouri Shankar

Biswas, (UDA), who is a non-teaching staff member of the College created a chaotic situation and threatened to physically assault the President of

the Governing Body.

The Director of Higher Education on the next date shall inform the Court as to what action have been taken pursuant to the said report of the

President of the Governing Body.

We have taken note of that because of the disruptive activities on the part of the Incharge Principal and the respondent No.6, Shri Gouri Shankar

Biswas, (UDA), the process for selection of the regular Principal is yet to be proceeded and taking advantage of such situation, the In-charge

Principal is still continuing in his post. The Director shall inform the Court as indicated above on the next date fixed.

List on 20.04.2021.

The personal appearance of Shri Gouri Shankar Biswas, (UDA) is dispensed with for the present.â€

4. A reading of the order dated 05.04.2021 goes to show that this Court had taken note of the report of the President of the Governing Body submitted

to the Deputy Commissioner, Karimganj as regards certain events that took place in the meeting of the Governing Body of the college for appointment

of a regular Principal. Clause 9 of the report provides that the Principal In-Charge of the college/Governing Body with some coterie had started to

disrupt the meeting by raising an issue that the constitution of the committee for the purpose of selection of regular Principal was not favourable to

them.

5. In the said report, it was also stated that the Gouri Sankar Biswas UDA who is the writ petitioner in this present writ petition had created a chaotic

situation and threatened to physically assault the President of the Governing Body. By the said order of 05.04.2021 in WP(C) 458/2017 and WP(C)

4112/2017, this Court had taken notice of the disruptive activities on the part of the In-Charge Principal of the college as well as the present writ

petitioner Gouri Sankar Biswas UDA in the meeting for selection of a regular Principal and that taking advantage of the situation the In-Charge

Principal is still continuing in his post. Accordingly, the Director of Higher Education was required to inform the Court as regards the happenings that

had taken place. The aforesaid incident was also taken note of on an earlier date and the writ petitioner Gouri Sankar Biswas was required to make

personal presence before the Court which he accordingly did on 05.04.2021 and after hearing him, his personal appearance was dispensed with.

6. In the aforesaid circumstance by the order dated 19.04.2021 the petitioner was placed under suspension. The said order of suspension dated

19.04.2021 is assailed in this writ petition on the ground that there was no direction from this Court to suspend the petitioner.

7. We agree with the learned counsel for the petitioner on the said submission that there was no direction from this Court but at the same time by the

order dated 05.04.2021 in WP(C) 458/2017 and WP(C) 4112/2017 certain events that took place in the meeting of the Governing Body was taken

note by this Court and the Court wanted to have a detailed information from the Director of Higher Education.

8. When the Court wanted to have a detailed information from the Director of Higher Education, it cannot be construed that other than informing the

Court the Director had no further administrative jurisdiction to act over the matter as per law. If the Director after looking into the matter was of the

view that certain events had taken place which justifies the suspension of the writ petitioner or it also justifies the initiation of the departmental

proceeding, we cannot hold such suspension or initiation of the proceeding would be without any authority of law merely because there is no mention

of suspension in the earlier order dated 05.04.2021 that the writ petitioner Gouri Sankar Biswas should be suspended or that there should be a

proceeding drawn up against him. No other ground is raised in this writ petition on the non-maintainability of the order of suspension or to that effect

against the order of initiating a departmental proceeding.

9. Mr. K Gogoi, learned counsel for the Higher Education Department has made a statement that in the meantime by the show-cause notice dated

02.07.2021 a proceeding had been drawn up against the writ petitioner under Rule 9 of the Assam Services (Discipline and Appeal) Rules, 1964.

10. Mr. N Baruah, learned counsel for the petitioner vehemently argues that all the allegations against the writ petitioner are untrue and therefore, the

order of suspension requires an interference. The said submission of the learned counsel is a submission on facts which requires a determination and

this Court under Article 226 would not be the appropriate forum at this stage to arrive at factual determination as to whether the allegation against the

writ petitioner are true or false. As the proceeding had already been initiated under Rule 9 of the Assam Services (Discipline and Appeal) Rules, 1964,

the correctness of the allegation against the writ petitioner is expected to be determined in the proceeding initiated.

10. From such point of view, we do not want to interfere at this stage either with the order of suspension or with the departmental proceeding that had

been initiated but at the same time as it is the specific stand of the petitioner that the allegations are untrue, we require disciplinary authority being the

Director of Higher Education to carry forward the proceeding and bring the proceeding initiated by the show-cause notice dated 02.07.2021 to its

logical end within a period of three months from the date of receipt of certified copy of the order.

11. As regards the order of suspension if the petitioner has any further grounds by way of any other law, it would be open for the petitioner to take recourse of such.

12. Writ petition stands disposed of in the above terms.