

GAHC010116972016



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

**Case No. : WP(C)/4957/2016**

HAFIZ UDDIN AHMED and 2 ORS  
S/O- ALIM UDDIN, VILL. and P.O.- GUNIALGURI, DIST.- BARPETA, ASSAM.

2: KHANDAKAR BABUL HUSSAIN  
S/O- ATOWAR RAHMAN  
VILL.- BOLAIPTHER  
P.O.- KALGACHIA  
DIST.- BARPETA  
ASSAM.

3: KHANDAKAR ASHRAFUL MAMIN  
S/O- KHANDAKAR ABDUL GAFUR  
VILL.  
P.O. and P.S.- KALGACHIA  
DIST.- BARPETA  
ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS  
TO BE REP. BY THE SECY. TO THE GOVT. OF ASSAM, EDUCATION DEPTT.,  
DISPUR, GHY- 6.

2:THE DIRECTOR OF HIGHER EDUCATION  
KAHILIPARA  
GHY- 37.

3:THE GOVERNING BODY OF NABAJYOTI COLLEGE  
TO BE REP. BY ITS PRESIDENT  
P.O.- KALGACHIA  
DIST.- BARPETA  
ASSAM.

4:THE SELECTION COMMITTEE

FOR SELECTION OF PRINCIPAL OF NABAJYOTI COLLEGE REP. BY THE  
PRESIDENT OF GOVERNING BODY  
NABAJYOTI COLLEGE  
P.O.- KALGACHIA  
DIST.- BARPETA  
ASSAM.

5:SHAHJAHAN ALI AHMED  
S/O- ALIM UDDIN AHMED  
VILL. and P.O.- BALIKURI  
DIST.- BARPETA  
ASSAM.

6:THE UNIVERSITY GRANT COMMISSION

REPRESENTED BY ITS SECRETARY  
BADARPUR  
SHAH ZAFAR MARG ITO  
NEW DELHI- 110002

**Advocate for the Petitioner** : MR. M HUSSAIN  
**Advocate for the Respondent** : SC, HIGHER EDUCATION

**BEFORE**  
**HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA**

**JUDGMENT**

**Date : 06-01-2022**

Heard Mr. M. Dutta, 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 of the Govt. of Assam and Mr. M. Hussain, learned counsel for the respondents No.3 and 4 being the Governing Body of the Nabajyoti College, Kalgachia, Mr. M.K. Choudhury, learned senior counsel assisted by Mr. M. Sarma, learned counsel for the respondent No.5 and Mr. A. Chamua, learned counsel for the respondent No.6 being the UGC.

2. The petitioner No.1 who is a social worker, the petitioner No.2 who is an elected member of Bolaipather Gaon Panchayat and the petitioner No.3 who is a businessman, institute this petition for a writ in the nature of quo-warrento assailing under what authority of law the respondent No.5 Shahjahan Ali Ahmed

is holding the post of Principal of Nabajyoti College in the district of Barpeta or to be put in a different manner alleging that the respondent No.5 had usurped the office of the Principal of Nabajyoti College.

3. It is contended that Nabajyoti College is a provincialised college under the Govt. of Assam and as such, the office of the Principal of the college would be a public office and therefore, a writ of quo-warrento would be maintainable.

4. The petitioners refer to the advertisement dated 29.11.2011 of the President Governing Body Nabajyoti College, Kalgachia pursuant to which the respondent No.5 was appointed as the Principal of the college by the order dated 06.01.2012. The advertisement provides the last date of submission of application to be 15.12.2011. The petitioners further refer to Clause-3 of the advertisement which inter alia provides that for the post of Principal of the college one of the required qualification would be that the candidate must be an Associate Professor/Professor with a total experience of 15 years of teaching/research/administration in University/Colleges and other institutes of higher education. The petitioners also refer to Clause-4 of the advertisement which provides for a minimum score as stipulated in the Academic Performance Indicator (API) based on the performance based appraisal for direct recruitment of Professors in the college.

5. By referring to the aforesaid two clauses in the advertisement, the petitioners state that the respondent No.5 was appointed as a lecturer for the subject Education in G.L. Choudhury College as per the appointment letter dated 15.09.1992 on a consolidated salary of Rs.500/- per month till such time his MA results were out. The respondent No.5 passed his MA examination in 2<sup>nd</sup> class on 25.02.1993 from the North Eastern Hill University, Shillong and

thereafter by the order dated 17.04.1993 of the Secretary of G.L. Choudhury College, he was allowed to act as a lecturer on adhoc basis for three months w.e.f. 01.04.1993 to 30.06.1993. By another order, the service of the respondent No.5 was extended from 01.07.1993 to 30.09.1993. In paragraph-5 of the writ petition, it is stated that the respondent No.5 thereafter joined Kamargaon College as a lecturer in Education and he has been rendering his service in such manner from 01.12.1993 and to that effect there is a certificate issued by the Principal of Kamargaon College, which was issued on 01.12.2011.

6. From the aforesaid conspectus of facts narrated by the petitioners, we have to understand that from 01.12.1993 the respondent No.5 is on regular service as a lecturer in the Kamargaon college upto the time he had submitted his application pursuant to the aforesaid advertisement dated 29.11.2011.

7. By referring to the aforesaid service condition of the respondent No.5, the petitioners raise a contention that the adhoc period of service from 01.04.1993 up to 30.06.1993 in G.L. Choudhury College cannot be counted towards his experience inasmuch as, as per the appropriate regulation of the UGC, the adhoc period of service cannot be taken into account towards counting the teaching experience.

8. We are not expressing any view on the said contention of the petitioners. But however for the purpose of this petition, we are not taking the said period of adhoc service for the purpose of arriving at a teaching experience of the respondent No.5. Mr. M. Dutta, learned counsel for the petitioners thereafter refers to the service book of the respondent No.5 which is annexed as Annexure-7 to the writ petition to show that from 01.10.2004 up to 31.03.2007, the respondent No.5 was on a study leave granted under FIP of UGC for doing Ph.D. and that subsequent thereof there was another extension of six months of

the study leave as per the resolution of the Governing Body of the college concerned. By referring to the study leave it is the contention of the petitioners that the said period would have to be excluded from the teaching experience of the respondent No.5 and if it is done so, the respondent No.5 would have a teaching experience of less than 15 years. A further submission of Mr. M. Dutta, learned counsel for the petitioners is that the API evaluation of the petitioner was incorrectly made by the authority who had made the selection for the post of Principal by giving higher marks to the respondent No.5 although in the factual circumstance, he may not be entitled to such marks.

9. Mr. M.K. Choudhury, learned senior counsel for the respondent No.5 has raised a question on the maintainability of the petition for a writ of quo-warranto by the present three writ petitioners.

10. In paragraph-5 of the affidavit-in-opposition assertions are made that the petitioner No.1 namely Hafiz Uddin Ahmed is an accused in Kalgachia P.S. Case No.372/2013 under Sections 143/341/427/506/307 of the IPC against which the corresponding G.R. Case No.3128/2013 has been registered in the Court of learned Chief Judicial Magistrate, Barpeta. It is noticed that the respondent No.5 is the informant in the said ejahar leading to the Kalgachia P.S. Case No. 372/2013 and in the relevant charge-sheet that was submitted the informant being the present respondent No.5 is also described as the Principal of Nabajyoti college. In the circumstance, a contention is raised on behalf of the respondent No.5 that this petition for a writ in the nature of quo-warranto had been instituted by the petitioner No.1 in furtherance of his enmity with the respondent No.5 inasmuch as, he was the informant in the ejahar that was earlier lodged by him.

11. With respect to the writ petitioner No.2 Khandakar Babul Hussain, a

statement is made that he is a cousin of the General Secretary of the Students' Union of the college and under the circumstances, the petitioner No.2 sought to derive certain undue gain in respect of the college, but as because such attempt to have undue gain was prevented by the respondent No.5 Principal, therefore, the petitioner No.2 is aggrieved by the further continuation of the respondent No.5 as the Principal of the college. In respect of the petitioner No.3 Khandakar Ashraful Mamin, it is stated that he is the son of Khandakar Abdul Gafur, who is an ex-Lecturer in the Department of Political Science in the college and that the petitioner No.3 is an active member of a political party, namely, the All India United Democratic Front (AIUDF).

12. By referring to the said averments in the affidavit-in-opposition, it is the contention of the respondent No.5 that all the three writ petitioners have special interest in the respondent No.5 continuing as the Principal of the college and as such a writ petition for a writ of *quo warranto* would not be maintainable. It is the further contention of Mr. MK Choudhury, learned senior counsel for the petitioner that even the assertion of the petitioners that the respondent No.5 did not have a teaching experience of 15 years would be unsustainable, *inasmuch as*, admittedly the respondent No.5 was appointed as a regular Lecturer in the Kamargaon college on and from 01.12.1993 and the last date of submission of the application as per the advertisement dated 29.11.2011 was 15.12.2011 and, therefore, the respondent No.5 has the requisite teaching experience of 15 years. It is the further contention that for the period 01.10.2004 to 30.09.2007, with the further extension of six months, cannot be taken away from the total teaching Experience of the petitioner in view of the provisions of the explanation to clause 8.2 of *UGC Regulations on Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities and Colleges and Measures*

*for the Maintenance of Standards in Higher Education, 2010* (for short, the UGC Regulations of 2010).

13. As regards the assertion of the writ petitioners that the selection committee had given more marks to the respondent No.5 on the component API, it is the contention of Mr. MK Choudhury, learned senior counsel that the same cannot be an issue to be raised in a proceeding for a writ of quo warranto inasmuch as, the selection authority had given such marks as per their discretion, which is, not under challenge in any other proceeding.

14. Mr. M Dutta, learned counsel for the petitioners on the other hand refers to the provisions of Clause 3.9.0 of the UGC Regulations of 2010 to raise the counter contention that the period spent by a candidate for the purpose of his M.Phil or Ph.D degree cannot be counted towards the total period of experience of such candidate. On the question of maintainability of the writ petition for a writ in the nature of quo warranto, Mr. M Dutta, learned counsel for the petitioners refers to the proposition laid down by the Supreme Court in paragraph 28 of its judgment in *Rajesh Awasthi vs Nand Lal Jaiswal & Ors* reported in *2013 (1) SCC 501* the nature of quo warranto and he stands in the position of a relater and that the real test is to see whether the person holding the office is authorised to hold the same as per law and even delay and laches do not constitute any impediment to deal with the lis on merits.

15. Mr. A Chamuah, learned counsel for the UGC submits that it is the view of the UGC that the wisdom of the selection committee as regards the question of awarding marks in the selection should not be questioned. But again, the selection committee would not have the liberty to make a selection contrary to the Regulations of the UGC.

16. Mr. K Gogoi, learned counsel for the Higher Education Department also raises a question on the maintainability of the present writ petition for a writ of quo warranto, more particularly, considering the background of the three writ petitioners.

17. Mr. M Hussain, learned counsel for the Governing Body of the college also reiterates the contention raised by Mr. K Gogoi, learned counsel for the Higher Education Department. A further issue is raised by Mr. M Hussian that this writ petition is also to be rejected on the ground of delay and laches inasmuch as, the appointment given to the respondent No.5 in the year 2012 is assailed in a writ petition of the year 2016.

On the question of maintainability of the writ petition:

18. As regards the question raised on the maintainability of the writ petition we take note of the assertions made by the respondent No.5 in paragraph 5 of their affidavit-in-opposition wherein a stand has been taken that the petitioner No.1 Hafiz Uddin Ahmed is an accused in Kalgachia Police Station Case No.372/2013 under Section 143/341/427/506/307 IPC corresponding to GR Case No.3128/2013 in the Court of the learned Chief Judicial Magistrate Barpeta and that it was the respondent No.5 Shahjahan Ali Ahmed who was the informant in the said Police Station Case by virtue of being the Principal of the Nabajyoti College.

19. In other words, it is the stand of the respondent No.5 that the petitioner No.1 had instituted this writ petition in furtherance of the enmity between him and the respondent No.5 arising out of the earlier ejahar lodged by the respondent No.5 against the petitioner No.1.

20. We also take note of the assertions made against the petitioner No.2

Khandakar Babul Hussain that although he wanted to interfere with the affairs of the college through his cousin, who is the General Secretary of the Students' Union, it is because of the respondent No.5 who is the Principal of the college, he was unable to do so. We also take note that the assertions made by the respondent No.5 against the petitioner No.3, Khandakar Ashraful Mamin that he is an active member of a political party namely AIUDF.

21. To understand the assertions made by the respondent No.5 on the conduct and special interest of the three writ petitioners, we refer to the affidavit-in-reply filed by the petitioners on 14.07.2017. In paragraph 5 of the said affidavit-in-reply, against the assertions made by the respondent No.5 against the petitioner No.1, it is replied that the petitioner No.1 is the Secretary of the Kalgachia Civil Sub-Division Cultural Organisation and he is also the Secretary of an NGO named SEEPA and, therefore, he is a social worker and under the criminal law jurisprudence no person can be said to be a criminal unless he is convicted by a competent court of law. Further being a social worker the petitioner No.1 also raises his voice against any illegality or illegal action against any person of the locality. In respect of the assertions made against the petitioner No.2, it is stated that he is an elected member of No.62 Bolaipather Gaon Panchayat and being an elected member, he has no relation to the business of the Students' Union of the college nor he expects any fund from the Principal of the college.

22. With regard to the assertions made against the petitioner No.3, it is stated that he is an activist of the political party AIUDF and is also a businessman by occupation holding the post of President of Kalgachia Sub-Divisional Cultural Development Committee and Secretary of Kalgachia Town Club and, therefore, he was within the competence to institute a petition for a writ of quo warranto

against the alleged usurpation of office by the respondent No.5.

23. We have given a consideration of the assertions made by the respondent No.5 as regards the conduct, antecedent and special interest of the petitioners over the present litigation as well as the counter denials made by the writ petitioners. A reading of the stand taken by the writ petitioners in their affidavit-in-opposition shows that the assertion of the respondent No.5 that the petitioner No.1 has a special interest in removal of the respondent No.5 as the Principal of the college *inasmuch as*, he was the informant in the ejarah leading to the Kalgachia Police Station Case No.372/2013 has neither been denied nor been countered and, therefore, the assertions of there being a special interest of the petitioner No.1 cannot be said to be wholly unacceptable.

24. As regards the petitioner No.2 it is a mere general denial that he being an elected member of a Gaon Panchayat has no relation with any business of the Students' Union of the college. The assertion that taking advantage of his cousin being the General Secretary of the Students' Union the petitioner No.2 seeks to gain certain undue advantage in the affairs of the college, but could not achieve the same as because the respondent No.5 is the Principal of the college, has neither been denied nor been countered.

25. As regards the petitioner No.3, we have taken note that the said writ petitioner is a political personality being a member of the political party AIUDF and is also the President of Kalgachia Sub-Divisional Cultural Development Committee and Secretary of Kalgachia Town Club, whereas the petitioner No.1 is the Secretary of Kalgachia Civil Sub-Division Cultural Organisation. Such inter-relation does not inspire confidence to arrive at any conclusion that the purport and intent of the writ petitioners are not related to each other.

26. In this respect, we take note of the propositions laid down by the Supreme Court in paragraph 28 in Rajesh Awasthi (supra) which is extracted as follows:

*“28. From the aforesaid pronouncements it is graphically clear that a citizen can claim a writ of quo warranto and he stands in the position of a relater. He need not have any special interest or personal interest. The real test is to see whether the person holding the office is authorized to hold the same as per law. Delay and laches do not constitute any impediment to deal with the lis on merits....”*

27. A reading of the propositions laid down by the Supreme Court in Rajesh Awasthi (supra) shows a clear proposition that a petitioner in a petition for a writ of quo warranto should not have any special interest or personal interest on the dispute that has been raised. In the instant case, in view of the conclusions arrived hereinabove, more particularly, the aspect that the respondent No.5 was the informant in the ejarah against the petitioner No.1 which in fact was made by the respondent No.5 as the Principal of the college, it cannot be wholly accepted that the petitioners have no special interest in the dispute raised in this writ petition for a writ of quo warranto.

28. We further look into the averments made by the petitioners to substantiate their locus standi to institute the writ petition and from such averments what is discernible is that it is the stand of the petitioners, more particularly the petitioner No.1, that he always raises his voice against any illegality or any illegal action against any person in the locality. Apart from a bland statement no material is made available before the Court to arrive at any conclusion that the petitioner No.1, persistently raises his voice against any illegality in the locality in furtherance of his status as a social worker. In the absence of any such material being produced we are unable to arrive at any adjudication in favour of the writ petitioners that they have no special interest in the subject matter of the dispute that has been raised.

29. Mr. M Hussain, learned counsel for the respondents in the Governing Body of the college has also raised the contention that this writ petition would also be not maintainable on the ground of delay and laches inasmuch as the appointment of the respondent No.5 is of the year 2012, whereas, his appointment assailed in a writ petition of the year 2016. But, however, we are conscious of the aspect that this is a proceeding for a writ of quo warranto, where the concept of delay and laches as applicable to a proceeding for a writ of certiorari or mandamus would not be applicable as such. Even in paragraph 28 of its pronouncement in Rajesh Awasthi (supra) the Supreme Court has provided that delay and laches do not constitute any impediment to deal with the lis on merits raised in a proceeding for a writ of quo warranto. Even otherwise we are unable to accept the contention of the learned counsel for the Governing Body of the college on the question of the writ petition being hit by the principles of delay and laches inasmuch as, a writ in the nature of quo warranto questions the usurption of a public office by an incumbent without authority of law. A person holding an office to which he is not qualified, is a continuous wrong and gives rise to a continuous cause of action and any rejection of such claim on the ground of being hit by delay and laches would enable the person to wrongfully continue in a public office to which he otherwise would not be entitled to hold.

On the question of the respondent No.5 being not qualified to hold the office.

30. Mr. M Dutta, learned counsel for the petitioner heavily relies upon the study leave obtained by the respondent No.5 for the period 01.10.2004 to 30.09.2007, which was further extended for a period of six months, to urge upon that the said period would have to be excluded from the total experience

of the respondent No.5 and if the said period is excluded the respondent No.5 would be short of 15 years of the required teaching experience as per the advertisement. To sustain the aforesaid contention, Mr. M Dutta, learned counsel relies upon the provisions of Clause 3.9.0 of the UGC Regulation 2010 which is extracted as below:

*“3.9.0. The period of time taken by candidates to acquire M.Phil. and/or Ph.D. Degree shall not be considered as teaching/ research experience to be claimed for appointment to the teaching positions.”*

31. By relying on the said proposition, it is contended that the time taken by the respondent No.5 to acquire his Ph.D degree cannot be considered towards his teaching experience for appointment to a teaching position.

32. Mr. MK Choudhury, learned senior counsel for the respondent No.5 counters the above contention by firstly contending that in the instant case the dispute is with regard to the appointment of the respondent No.5 as the Principal of the Navodaya College and it is not related to a teaching position. Secondly, Mr. Choudhury, learned senior counsel refers to the provisions of the Explanation to Clause 8.2. of the UGC Regulations of 2010 which *inter alia* provides as under:

“Study leave

I) *Study leave may be granted for the entry level appointees as Assistant Professor/ Assistant Librarian/ Assistant Director of Physical Education and Sports/ College DPES after a minimum of three years of continuous service to pursue a special line of study of research directly related to his/her work in the University or to make a special study of the various aspects of University organization and methods of education.*

II) *Subject to the terms contained in this Clause 8.2, in respect of granting study leave with pay for acquiring Ph.D. in a relevant discipline while in service, the number of years to be put in after entry would be a minimum of two or the years of probation specified in the University statutes concerned, keeping in mind the availability of vacant positions for teachers and other cadres entering service in Colleges and Universities, so*

*that a teacher and other cadres entering service without Ph.D. or higher education could be encouraged to acquire these qualifications in the relevant disciplines at the earliest rather at a later stage of career.*

*III) The paid period of study leave should be for three years, but two years may be given in the first instance, extendable by one more year, if there is adequate progress as reported by the Research Guide. Care should be taken that the number of teachers given study leave, does not exceed the stipulated percentage of teachers in any department. Provided that the Executive Council/ Syndicate may, in the special circumstances of a case, waive the condition of two years service being continuous.*

*Explanation: in computing the length of service, the time during which a person was on probation or engaged as a research assistant may be reckoned provided.*

- a) The person is a teacher on the date of application.*
- b) There is no break in service and*
- c) The leave is requested for undertaking the Ph.D. work...."*

33. With regard to the first counter contention of Mr. MK Choudhury, learned senior counsel that Clause 3.9.0 of the UGC Regulations of 2010 is applicable only in respect of the teaching position, we are not expressing any view on the same as it would be an intricate question as to whether the Principal of an institute would be in a teaching position or otherwise. But however, we do take note of both the provisions of Clause 3.9.0 and the Explanation to Clause 8.2 of the UGC Regulations of 2010.

34. On a conjoint reading of the aforesaid two clauses, we understand that Clause 3.9.0 is a general provision which provides that the time taken by the candidates to acquire, amongst others, the Ph.D degree shall not be considered as a teaching/ research experience for the purpose of appointment to a teaching position. But the Explanation to Clause 8.2 is a specific provision for a situation where a member of a teaching faculty of an educational institute avails the study leave for the purpose of Ph.D and the said provision would have to be understood to be a special provision related to a study leave being obtained for

the purpose of Ph.D by a teaching faculty. The law of interpretation provides that whenever there is a general provision of law and also a special provision, if the special provision is applicable to a particular facts and circumstances of a case, the special provision would prevail over the general provision of law.

35. From such point of view, we have to accept that the provisions of Clause 3.9.0 simpliciter would be inapplicable to the present case, *inasmuch as*, it is an admitted position of fact that the petitioner was granted permission to avail study leave for the period from 01.10.2004 to 30.09.2007, which was extended by another six months. The Explanation to Clause 8.2 specifically provides that the said period which was utilized as a research assistant be reckoned towards computing the length of service provided the person concerned was a teacher on the date of the application; there was no break in service; and the leave was requested for undertaking the Ph.D research. In the instant case, no material is produced before the Court that the aforesaid three conditions precedent were not satisfied by the respondent No.5.

36. The respondent No.5 admittedly was a teacher when he had sought for the study leave; once the study leave was duly granted under the service law jurisprudence it has been understood that there is no break in service; and the leave was requested by the respondent No.5 for undertaking the Ph.D research work.

37. As the three conditions precedent to Explanation 8.2 of the UGC Regulations of 2010 have been satisfied by the respondent No.5, it has to be accepted that the period spent by the respondent No.5 on study leave for his Ph.D work would have to be included in his total length of service. If it is so, the total length of service of the respondent No.5 from his initial date of appointment on 01.12.1993 upto the date of his application pursuant to the

advertisement dated 29.11.2011 would be more than 15 years of teaching experience.

38. From such point of view, the contentions raised by the writ petitioners that the respondent No.5 did not have the requisite 15 years of total experience as required under the advertisement would have to be rejected.

39. As regards the other contention that more than appropriate marks were awarded by the selection authority to the respondent No.5 towards the component API, we have to rely upon the submission made by Mr. A Chamuah, the learned counsel for the UGC that the evaluation made by the Selection Committee would have to be left to its own wisdom and discretion. We also take note of that this is not a proceeding for a writ of certiorari or mandamus where one of the contesting candidate is questioning the awarding of marks to the respondent No.5 which may give a locus standi to such candidate to assail the same. The evaluation made by the Selection Committee of a particular candidate in a selection process cannot be accepted to be a question to be determined in a proceeding for a writ of quo warranto. We are of the said view, inasmuch as, in a proceeding for a writ of quo warranto, the *locus standi* to assail the same remains with any member of the public whose individual legal right may not have been effected, but the proceedings are initiated in the public interest to ensure that a person who is not duly qualified or not authorized under the law do not hold a public office. Further, no materials have also been produced before the Court to arrive at any such conclusion that the evaluation by the Selecting Authority in respect of the petitioner towards the component API was either inflated or was unduly given.

40. Considering the matter in its entirety, we are unable to accept the writ petition for a writ of quo warranto declaring the respondent No.5 to be holding

the post of Principal of Nabajyoti College without any authority of law.

41. Writ petition, is, accordingly, dismissed.

**JUDGE**

**Comparing Assistant**