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

**Case No. : WA/402/2025**

SRI SAJAL KAMAL DAS  
SON OF LATE BHUBANESWAR DAS RESIDENT OF FAIRY LAND COMPLEX  
GALIAHATI NO 2 PO AND DISTRICT BARPETA 781301 ASSAM.

VERSUS

THE STATE OF ASSAM AND ORS  
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT  
OF ASSAM DEPARTMENT OF SCHOOL EDUCATION SECONDARY DISPUR  
GUWAHATI 6

2:THE DIRECTOR OF SECONDARY EDUCATION  
ASSAM  
KAHILIPARA, GUWAHATI 19

3:THE INSPECTOR OF SCHOOLS  
BARPETA DISTRICT CIRCLE BARPETA 781301

4:THE STATE SELECTION BOARD FOR SELECTION OF PRINCIPAL OF  
HIGHER SECONDARY SCHOOLS  
REPRESENTED BY THE CHAIRMAN CUM COMMISSIONER AND  
SECRETARY TO THE GOVT OF ASSAM SECONDARY EDUCATION  
DEPARTMENT DISPUR, PIN 781006

5:THE SCHOOL SELECTION COMMITTEE  
BAMUNDONGRA HS SCHOOL BARPETA  
REPRESENTED BY CHAIRMAN CUM PRESIDENT OF THE SCHOOL  
MANAGING COMMITTEE PO HABIDONGRA DISTRICT BARPETA  
PIN 781308

6:MD MAZID ALI  
SON OF LATE MAFIZUDDIN AHMED RESIDENT OF VILLAGE CHEUNI PO  
PUB REHABARI PS PATACHARKUCHI DISTRICT BARPETA ASSAM  
PIN 78132

For the Appellant(s) : Mr. K.N. Choudhury, Senior Advocate, assisted by Mr. T. Kashyap, Advocate.

For the Respondent(s) : Ms. R. Barua, Standing Counsel, Education (Secondary) Department for respondent Nos.1, 2, 3 & 4.  
: Mr. S.K. Das, Advocate for respondent No.5.  
: Mr. P.J. Saikia, Sr. Advocate, assisted by Ms. M. Nirola and Mr. J. Hatimuriya, Advocates for respondent No.6.

Date on which judgment is reserved : 02.04.2026.

Date of pronouncement of judgment : 06.04.2026.

Whether the pronouncement is of the operative part of the judgment? : Not Applicable.

Whether the full judgment has been pronounced? : Yes.

**JUDGMENT & ORDER**  
**(CAV)**

**(Ashutosh Kumar, CJ)**

The appellant has questioned the judgment dated 31.10.2025, passed by a learned Single Judge in WP(C) Nos. 5584 and 4843 of 2023, preferred by the respondent No. 6 herein, whereby the writ petitions referred to above were disposed off by remanding the matter to the Secretary to the Government of Assam, Department of School Education, to re-examine the marks allotted to the appellant and the respondent No. 6 and to take a decision in that regard within a period of two months from the date of receipt of the certified copy of the aforementioned judgment, with a specific direction that the Secretary shall give to the appellant and the respondent No. 6 the opportunity of personal

hearing before passing the order and, after the decision is arrived at by revisiting the marks allotted to the parties *inter se*, the consequential action should also follow.

2. We have heard Mr. K.N. Choudhury, learned Senior Advocate, assisted by Mr. T. Kashyap, learned Advocate for the appellant; Ms. R. Barua, learned Standing Counsel, Education (Secondary) Department for respondent Nos.1 to 4; Mr. S.K. Das, learned Advocate for respondent No.5 and Mr. P.J. Saikia, learned Senior Advocate assisted by Ms. M. Nirola and Mr. J. Hatimura, learned Advocates for respondent No.6.

3. Vide order dated 26.03.2026, passed in this appeal, this Court set out the sequence of events leading to the filing of the above-referred two writ petitions by the respondent No. 6 in the background of the long-running dispute between the parties for the post of Principal at Bamundongra Higher Secondary School, Barpeta, Assam.

The relevant part of our order dated 26.03.2026 is being reproduced herein-below for avoiding any prolixity as also for the sake of completeness.

*“We have heard Mr. K.N. Choudhury, learned Senior Advocate assisted by Mr. T. Kashyap, learned Advocate for the appellant; Ms. R. Barua, learned Standing Counsel, Secondary Education Department for respondent Nos.1 to 4; Mr. S.K. Das, learned Advocate for respondent No.5 and Mr. P.J. Saikia, learned Senior Advocate assisted by Mr. J. Hatimura, learned Advocate for respondent No.6.*

*This is a long-running battle between the appellant and the respondent No.6 for the post of Principal at Bamundongra Higher Secondary School, Barpeta, Assam.*

*The sequence of events are as hereunder:*

*On 30.05.2019, an advertisement was issued by the competent authority for section for the post of Principal of Bamundongra Higher Secondary School in the district of Barpeta.*

*The School Selection Committee had prepared a panel of candidates*

*wherein the appellant was placed at Serial No.1 whereas respondent No.6 was placed at Serial No.2 in the merit list. The list of persons to be considered was then placed before the State Selection Board, which, in turn, referred the list to the Government for its approval.*

*It may be noted herein that no selection had been made till that time. However, respondent No.6, on being placed second in the merit list, filed a representation before the Director of Secondary Education, Assam, making a request to re-examine the select list before the list was acted upon by the authorities.*

*The re-examination of the list was done by Member Secretary, State Selection Board.*

*The State Selection Board, after critically examining the list, approved of it, which paved the way for the appellant to be appointed ultimately.*

*The respondent No.6, thereafter, but before any final selection was made, preferred a writ petition [WP(C) No.7980/2019] mounting the challenge that the re-examination as directed was never carried out and the list which was already prepared, was forwarded for selection.*

*At that stage, a Bench of this Court, disposed off that writ petition with a direction to the authorities to complete the process of selection, initiated pursuant to the advertisement.*

*Whatever may have been understood by the authorities regarding the directions referred to above the prospect of the appellant being appointed even though marked first in the merit list was marred because of cloud over his B.Ed. degree, which, at that time, was found to be invalid. As such, a decision was taken to appoint respondent No.6 on the post of Principal of Bamundongra Higher Secondary School.*

*On 29.07.2021, the respondent No.6 was actually appointed as the regular Principal of the said School.*

*The charge against the appellant of his having applied on an invalid B.Ed. degree, was questioned by him vide WP(C) No.3558/2021.*

*A Bench of this Court in the afore-noted writ petition directed the Government to verify whether Barpeta B.T. College from where the B.Ed. degree was obtained by the appellant was actually recognized by the NCTE prior to 18.08.1997 and then to take a decision whether the B.Ed. degree of the appellant was valid or invalid.*

*Once it was found that the B.Ed. degree of the appellant was valid, on 09.03.2023, the Government in the Department of School Education, decided to appoint him as the Principal of Bamundongra Higher Secondary School in place of respondent No.6.*

*The appellant was appointed as the regular Principal of the said school on 29.04.2023 and respondent No.6 was reverted to his original post of Post-Graduate Teacher of Rehabari High School, Barpeta.*

*This again was challenged by respondent No.6 vide WP(C) No.2442/2023 on various grounds, one amongst them inter alia was the faulty marking pattern adopted by the authorities.*

*This time, the High Court, setting aside the appointment of the appellant as Principal of Bamundongra Higher Secondary School, remanded the matter to the Secretary, School Education Department to re-hear both the appellant and respondent No.6 on the issue of validity of the B.Ed. degree of the appellant.*

*The contention of the appellant is that the order of remand on a particular aspect was accepted without demur by respondent No.6. Thus, he would be presumed to have given up his challenge to the statement of marks where, initially the appellant was given 20 marks and the respondent No.6 was given 18 marks and later, both were awarded 17 marks.*

*Some time elapsed and it was found, on a fresh verification of all related records that the B.Ed. degree of the appellant was valid, he again stood appointed as Principal of the School on 18.08.2023.*

*Respondent No.6 thereafter again challenged the appointment of the appellant vide WP(C) No.4843/2023, questioning the correctness of the marking pattern and grant of marks to him and the appellant both, even when that issue after being addressed to, was not the plank on which the remand order was made for verification of the validity of the B.Ed. degree of the appellant.*

*During the pendency of the afore-noted writ petition, respondent No.6 filed WP(C) No.5584/2023 assailing the B.Ed. degree of the appellant as well as the statement of marks.*

*Both the afore-noted writ petitions, preferred by respondent No.6, were taken up together and were disposed off by impugned judgment dated 31.10.2025.*

*The impugned judgment dated 31.10.2025 contains the direction to the Secretary to the Government of Assam, Department of School Education, now to again re-examine the marks given to both the contenders in terms of the Office Memorandum dated 26.12.2018 and come to a definite conclusion within a period of 2(two) months.*

*In the meantime, according to the averments, the respondent No.6 continued to officiate as Principal of the Bamundongra Higher Secondary School.*

*The contention of the appellant, however, is that over a period of time, respondent No.6 was suspended and there is an In-Charge Principal governing the said School for all this while.*

*Several arguments were initially advanced by the learned counsel for the parties, justifying their respective appointments to the post of Principal of the Bamundongra Higher Secondary School. However, after going through the present sequence of events demonstrating seesawing so far as the appointment of the Principal of Bamundongra Higher Secondary School is concerned for 7 (seven) years, we tentatively arrived at the view that the entire process has*

*become a source of unnecessary litigation and it would only be appropriate if the entire process of appointment of the regular Principal of the Bamundongra Higher Secondary School is initiated afresh, giving both the appellant and the respondent No.6 and may be others a clear field to stake their claims and compete with each other.*

*In that case, a fresh advertisement will have to be issued with specific directions for the pattern of marking so that the entire process is completed.*

*It is really unfortunate that because of the disputes inter se two claimants, the school does not have a regular Principal for approximately 7(seven) years.*

*This is not a comfortable situation to be in.*

*On hearing the views of the Court, the learned counsel for the parties, namely, Mr. K.N. Choudhury and Mr. P.J. Saikia, learned Advocates for the appellant and respondent No.6, respectively, seek some time to take instructions in the matter and get back to this Court.”*

4. Mr. Choudhury, learned senior Advocate for the appellant has submitted that it would be apparent from the records of this case that the respondent No. 6 has approbated and reprobated at the same time, which may not be permissible. The respondent No. 6 had defended the selection on the basis of the same set of marks as the correct decision. However, when the appellant was appointed as the Principal on 29.07.2021, the respondent No. 6 questioned the award of marks and claimed that he should have been awarded more marks than the appellant.

5. Referring to the judgment of the Supreme Court in **New Bihar Biri Leaves Co. & Ors. Vs. The State of Bihar : (1981) 1 SCC 537**, he submitted that it is one of the fundamental principles of general application that if a person of his own accord, accepts the marking pattern and the marks obtained by him, he cannot be allowed to dispute the same later. This principle is based on the concept of “*qui approbat non reprobat*” (“one who approbates cannot reprobate”). On this inhibitory principle, Mr.

Choudhury contends, the learned Single Judge ought not to have remanded the matter again to the Secretary, Department of Education, to revisit the marks allotted to the parties; rather, the Court should have taken a decision whether the appointment of the appellant as Principal of the school in question as well as the reversion of the respondent No. 6 to his original post was justified.

6. The impugned judgment was further assailed on the ground of *constructive res judicata*, which, according to the appellant, was not appreciated by the learned Single Judge in its contextual perspective. The respondent No. 6 had challenged the statement of marks dated 15.06.2019 in WP(C) 2442/2023, but such challenge was given up, which would be evident from the judgment and order dated 19.06.2023 passed in the afore-noted writ petition whereby the matter was remanded to the Secretary, Education Department to re-hear the parties on the issue of validity of the B.Ed. Degree of the appellant, notwithstanding the fact that in the afore-noted writ petition, the respondent No. 6 had also challenged and assailed the statement of marks dated 15.06.2019. Therefore, the respondent No. 6, it is argued, was disentitled to raise the afore-noted challenge again in the subsequent writ proceedings, namely, WP(C) No. 4843/2023 and WP(C) No. 5584/2023. This only reflects that either the respondent No. 6 did not press the challenge qua the statement of marks in WP(C) No. 2442/2023, or that it was pressed but the challenge was not sustained. Thus, the impugned judgment remanding the matter again on the issue of award of marks to the parties, is hit by the principle of *constructive res judicata*. The remand vide the impugned judgment amounts to vexation of the appellant for the third time.

In order to buttress his arguments, Mr. Choudhury has relied on the judgments of the Hon'ble Supreme Court in ***Daryao & Ors. Vs. State of U.P. and Ors.: AIR 1961 SC 1457; Devilal Modi vs. Sales Tax Officer, Ratlam & Ors.: AIR 1965 SC 1150; Mr. Kesho Ram and Co. & Ors. Vs. Union of India: (2024) 16 SCC 738.***

7. Mr. P. J. Saikia, learned senior Advocate for the respondent No. 6, however, expostulated that the issue of fair award of marks, according to the rules, was never decided in any one of the writ proceedings referred to by the appellant; rather, in WP(C) No. 7980/2019, vide the judgment and order dated 06.12.2019, a Bench of this Court had directed the authorities to complete the process of selection as per the rules and also taking into consideration the letter dated 22.08.2019, whereby the Joint Director of the Secondary Education had issued instructions to the Inspector of Schools, annexing the Government letter dated 31.07.2019, to examine the allegations made by the respondent No. 6 against the marking pattern.

8. According to the respondent No. 6, WP(C) No. 2442/2023 was filed against the order dated 29.04.2023 appointing the appellant as the Principal of the school on the basis of the decision dated 19.03.2023, whereby no opportunity of hearing, as contemplated by the judgment dated 11.08.2021 passed in WP(C) No. 3558/2021, was granted, nor the directions contained in the order dated 06.12.2019, passed in WP(C) No. 7980/2019 was complied with. It was in such circumstances the matter was remanded to be heard before passing any appropriate order, but unfortunately no opportunity was given to the respondent No. 6 to put up his case. Under such circumstances, it cannot be said that the judgment

impugned is hit by the principle of *constructive res judicata*.

9. The rules of procedure, Mr. Saikia contends, are hand-maids of justice. The processual law must aim towards advancing the cause of justice and not obstructing it. The issue in question for which remand has been made by the impugned judgment, was never directly or substantially in issue in the earlier writ petitions and, therefore, the argument of the appellant of *constructive res judicata* is not well founded.

He has referred to the judgments of the Hon'ble Supreme Court in ***Sheodan Singh vs. Daryao Kunwar: AIR 1966 SC 1332; State of U.P. vs. Nawab Hussain: AIR 1977 SC 1680; Smt. Rani Kusum vs. Smt. Kanchan Devi and Ors.: AIR 2005 SC 3304; Asgar and Ors. Vs. Mohan Verma and Ors.: AIR Online 2019 SC 581; Prem Kishore and Ors. Vs. Brahm Prakash and Ors.: AIR Online 2023 SC 237.***

10. After having heard the learned counsel for the parties, we still are of the view that the matter should have been finally decided by the learned Single Judge, when the dispute regarding the candidature of the appellant and the respondent No. 6 had continued for so long and the school did not have any regular Principal for all this while.

11. So far as the concept of *constructive res judicata* is concerned, it is a legal fiction embodied in Explanation 4 to Section 11 of the Code of Civil Procedure, which expands the traditional doctrine of *res judicata*. Ordinarily, *res judicata* bars the issues that were actually raised and decided in an earlier proceeding. *Constructive res judicata* goes further and it bars the issues that ought to have been raised, but were not. The underlying principle is that if a party had an opportunity to raise a ground or claim in an earlier litigation but failed to do so, law ought to treat it as if

it has been raised and decided against that party. The rationale, it has now been decided in a catena of decisions of the Supreme Court, is (i) finality in litigation; (ii) prevention of multiplicity of proceedings and (iii) avoidance of abuse of the process and unnecessary vexation of either of the parties.

12. In other words, *constructive res judicata* is essentially a rule of compulsory joinder of grounds; meaning thereby that all the grounds, which ought to have been taken, or which is taken, must be pressed; and the party not doing so would be disentitled to question it again in a subsequent proceeding. The only limitation to this conceptual construct could be in situations when the issue was not within the knowledge of the party despite due diligence, or that the earlier forum lacked jurisdiction, or there is a fraud or collusion amongst the parties, or if there is a subsequent change in law or material facts.

13. In the present case, the question of award of marks was specifically raised by the respondent No. 6 in WP(C) No. 2442/2013, but while the Bench hearing the matter remanded the case to the Secretary to the Government of Assam in the Education Department, it was on one limited point with regard to the validity of the B. Ed. Degree of the appellant and not on the award of marks. The respondent No. 6, while pursuing the afore-noted writ petition [WP(C) 2442/2023], was dissatisfied with the award of marks, which aspect he had raised also, but settled for the remand on one issue, namely, validity of the B. Ed. Degree of the appellant. This would clearly fall in the category of *res judicata* with the challenge to the award of marks. The Bench deciding WP(C) 2442/2023

had the jurisdiction to take cognizance of the challenge to the award of marks. However, as it was noted earlier in our order dated 26.03.2026, we are of the conclusive view that it would be more in the interest of the parties, as also for concluding/settling the litigation that instead of setting aside the impugned judgment, we modify the same by issuing a specific direction to the Secretary to the Government of Assam, Department of School Education, to finally examine the marks allotted to the appellant and the respondent No. 6 and pass necessary order and also take a consequential decision with respect to appointment of Principal of the school in question, within a period of fifteen days of the production/receipt of a certified copy of this judgment, which, we are sanguine, would end the litigation.

14. We have set a strict timeline, keeping in mind the submission advanced on behalf of the appellant that he is to retire from service shortly and the issue regarding appointment of the Principal has been hanging fire since the last seven years and the school is being run by an in-charge Principal.

15. We order accordingly.

16. The appeal stands disposed off with the modification in the impugned judgment to the extent indicated above.

**JUDGE**

**CHIEF JUSTICE**

**Comparing Assistant**