

GAHC010205702023



2026:GAU-AS:7231

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

Case No. : WP(C)/5544/2023

REZZAQUL HUSSAIN
S/O- LATE NAYAN ALI,
VILLAGE- BANJARAPARA,
P.O- GAREMARI,
DIST- BARPETA, ASSAM, PIN-781311

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, HIGHER EDUCATION DEPARTMENT, DISPUR,
GUWAHATI-06, DISTRICT- KAMRUP(M), ASSAM.

2:THE DIRECTOR OF HIGHER EDUCATION

ASSAM
KAHILIPARA
GUWAHATI-19.

3:THE DISTRICT LEVEL SCRUTINY COMMITTEE
REP. BY THE DEPUTY COMMISSIONER BARPETA

P.O AND DISTRICT- BARPETA
ASSAM
PIN-781301

4:THE DEPUTY COMMISSIONER
BARPETA

P.O AND DISTRICT- BARPETA
ASSAM
PIN-781301

5:THE PRINCIPAL
JANAPRIYA COLLEGE
BANIARAPARA
P.O- GAREMARI

DISTRICT- BARPETA
ASSAM
PIN- 781314

6:THE GOVERNING BODY
OF JANAPRIYA COLLEGE

BANIARAPARA
REP. BY ITS PRESIDENT

P.O- GAREMARI

DISTRICT- BARPETA
ASSAM
PIN- 781314

7:BABUL HOSSAIN
S/O- ASHRAF ALI

VILL- BANIARAPARA

P.O- GAREMARI

DISTRICT- BARPETA
ASSAM
PIN- 78131

Advocate for the Petitioner : MR. A R SIKDAR, J A SIKDAR,MR. S I TALUKDAR

Advocate for the Respondent : SC, HIGHER EDU, MR. MUSTAFA HUSSAIN (R-5,6),DR. R HOQUE (R-5,6),MR. R ALI (R-5,6),MR H R A CHOUDHURY (R7),P. GHOSH (R7),MR. A M AHMED (R7),MR J ABEDIN (R7),MS N AKTAR (R7),MS. M. KHATUN (R7),MR M RAHMAN (R7),MR. S AHMED (R7),GA, ASSAM

Linked Case : I.A.(Civil)/85/2024

BABUL HOSSAIN

S/O- ASHRAF ALI

VILL- BANJARAPARA

P.O- GAREMARI

DISTRICT- BARPETA

ASSAM

PIN- 781314

VERSUS

REZZAQUL HUSSAIN AND 6 ORS

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REP. BY ITS PRESIDENT

P.O- GAREMARI

DISTRICT- BARPETA
ASSAM
PIN- 781314

Advocate for : MR H R A CHOUDHURY
Advocate for : MR. A R SIKDAR appearing for REZZAQUL HUSSAIN AND 6 ORS

Date on which judgment is reserved : **10.02.2026**

Date of pronouncement of judgment : **25.05.2026**

Whether the pronouncement is of the
operative part of the judgment? : N/A

Whether the full judgment has been
pronounced? : Yes

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

JUDGMENT & ORDER (CAV)

Heard Mr. A.R. Sikdar, learned counsel for the petitioner. Also heard Mr. S. Das, learned standing counsel, Higher Education Department, for the respondent Nos. 1 and 2; Ms. D.D. Barman, learned Additional Senior Government Advocate, for the respondent Nos. 3 and 4; and Mr. J. Abedin, learned counsel for the respondent No. 7. None appears for the respondent Nos. 5 and 6.

2. Heard Mr. J. Abedin, learned counsel for the applicant in I.A. No. 85/2024; Mr. A.R. Sikdar, learned counsel for the respondent No.1. Also heard Mr. S. Das, learned standing counsel, Higher Education Department, for the respondent Nos. 2 and 3; Ms. D.D. Barman, learned Additional Senior Government Advocate, for the respondent Nos. 4 and 5.

3. As common question of law is involved in these matters and the parties involved are also the same, and as agreed upon by learned counsel for both the parties, it is proposed to dispose of both the matters by this common judgment and order.

4. In the writ petition, under Article 226 of the Constitution of India, the petitioner has challenged the speaking order, dated 28.08.2023, being Memo eCF No. 272628/64-A (Annexure-19), whereby the claim of the petitioner for provincialization of service as Library Assistant in Janapriya College was rejected; and also the petitioner has challenged the order dated 05.02.2021 (Annexure-9), by which the Director of Higher Education, Assam had

provincialized the service of the private respondent No. 7, in the post of Library Assistant of Janapriya College, Baniarapara, Garemari in the Barpeta district; and further the petitioner has prayed for declaring him that he is the senior most employee of Janapriya College in the category of Library Assistant (Grade-III) and hold him senior above the private respondent No. 7 and to provincialize his service.

5. And in the Interlocutory Application No. 85 of 2024, under Article 226 (3) of the Constitution of India the applicant, namely Babul Hossain, has prayed for vacation/modification/cancellation of the ex-parte interim order dated 11.10.2023 passed in W.P. (C) No. 5544/2023. It is to be noted here that vide interim order dated 11.10.2023, passed in W.P. (C) No. 5544/2023, this court was pleased to grant stay of provincialisation order of the applicant herein.

Background Facts:-

6. The background facts, leading to filing of the present petition, are briefly stated as under:

“The petitioner was appointed as Library Assistant, vide appointment letter, dated 15.03.2006, by the Secretary, Janapriya College, Baniarapara, as per Resolution of the Governing Body No. 2(a), dated 11.03.2006, and since then he has been rendering his duties as Library Assistant in the college, continuously, without any break. In addition to his duty as a Library Assistant, the college had entrusted him additional duty, sometimes as Tutor in Philosophy and sometimes as Librarian, but he never resigned from the post of Library Assistant. He also received financial assistance for the session 2008-09 up to 2011, in the same capacity. Thereafter, the Principal of the college had issued a certificate to

him on 16.05.2011, certifying that he had been working as a Library Assistant of Janapriya College since 16.03.2006, till the date of issuing of the certificate. Thereafter, the Government had sanctioned the posts for regularization of the services of teaching and non-teaching staffs of Janapriya College, Baniarapara, under Assam Education (Provincialisation of Services of Non-Teaching Staff of Venture Educational Institutions) Act, 2018 ('Act of 2018', for short), vide sanction order No. AHE.416/2020/73, dated 01.02.2021 and provincialized the services of 11 (eleven) non-teaching staffs and treated them as employees of the Government w.e.f. 01.01.2021.

The grievance of the petitioner is that the private respondent No. 7, namely, Babul Hossain, has been provincialized against the post of Library Assistant at serial No. 5, but the staff pattern prepared by the Principal, dated 31.12.2010, indicates that he was appointed on 09.12.2006, as Junior Assistant, not as Library Assistant and thereby violated the right of the petitioner guaranteed under Article 14, 15, 16 and 21 of the Constitution of India. The further contention of the petitioner is that he was appointed as Library Assistant w.e.f. 16.03.2006, and since then he has been serving in the same capacity and the college authority has persuaded him to discharge the duty of Librarian of the college. And in the year 2011, the college authority had attempted to fill up the post by way of an advertisement, but no applicant was found. Thereafter, the Principal of the college had asked him to function as Librarian as an additional duty, and accordingly, he performed the duties of Librarian as additional work. Then, he also discharged the duty of Teacher as he passed MA in Philosophy, and as the college was not having adequate teaching staff in

Philosophy, and he had done the same in addition to his duties as Library Assistant and he never resigned from the said post. His further contention is that the then Principal had illegally manipulated the records of the college, regarding appointment of the petitioner, and those of respondent No. 7 and one Abul Kalam Azad, and had prepared the particulars of the staff pattern, and the petitioner was shown as Assistant Librarian. But, Abul Kalam Azad was shown as Library Assistant and private respondent No. 7 was shown as Junior Assistant, and the same was forwarded to the authority for provincialization. And that the petitioner had filed one writ petition, being WP(C) No. 5307/2021, challenging the order dated 05.02.2021, provincializing the service of the private respondent No. 7, and this Court, vide order dated 03.01.2023, had disposed of the said writ petition with a direction that the petitioner has to file an appeal narrating his grievances and to place the same before the Commissioner and Secretary to the Government of Assam for consideration, and accordingly, vide the impugned speaking order dated 28.08.2023, the claim of the petitioner was rejected. Being aggrieved, the petitioner has approached this Court by filing the present petition seeking the relief(s) as aforesaid."

7. The respondent No. 1/Secretary to the Government of Assam, Higher Education Department has filed affidavit-in- opposition, wherein a stand has been taken that the petitioner was originally appointed as Library Assistant on 16.03.2006, at Janapriya College, Baniarapa, Barpeta, and later on, he was appointed as Assistant Librarian on 29.03.2010. But, his service was not provincialized as he obtained BLISC degree from Vinayaka Missions University, Tamil Nadu, in off-campus mode, through distance education.

8. The respondent No. 5/In-charge Principal of Janapriya College has also filed

affidavit-in-opposition, wherein a stand has been taken that the petitioner was appointed as Library Assistant on 16.03.2006, but subsequently, he was appointed as Assistant Librarian on 29.03.2010, and the college authority had forwarded his particulars as an Assistant Librarian for provincialization. It is also stated that the respondent No. 7 was appointed as Junior Assistant on 09.12.2006, and the college authority had forwarded his particulars as Junior Assistant for provincialization. But, his post has been provincialized as Library Assistant, as both the posts are of same category, and that the allegation of manipulation of document is incorrect.

9. The petitioner has filed a reply to the affidavit-in-opposition filed by the respondent No. 1, denying the statements and averments made thereon.

Submission of learned counsel for the petitioner:-

10. Mr. Sikdar, learned counsel for the petitioner submits that there is manipulation of record in the resolution dated 28.03.2010, of the Managing Committee, so far it relates to the up-gradation of the petitioner and the respondent authorities have not answered the same in their affidavit-in-opposition, and the said documents are enclosed with the petition Annexure-20. Mr. Sikdar also submits that the petitioner has collected information under the RTI Act and despite absence of minimum enrolment of students in the Department of History, the post was provincialized, and there is gross violation of the provision under Section 3(i)(vii) of the Assam Education (Provincialisation of Services of Teachers and Re-Organisation of Educational Institutions) Act, 2017.

10.1. Mr. Sikdar has also pointed out that in a writ petition, being W.P.(C) No. 5307/2021, filed by the petitioner, this Court, vide order dated 11.10.2023, had

stayed the operation of the provincialization of private respondent No. 7, and thereafter, vide order, dated 15.02.2024, had directed the respondents in Higher Education Department to show the justification of the impugned order, dated 28.08.2023, more particularly the basis for arriving at the conclusion therein under paragraph Nos. 3 and 4, however, the respondent Higher Education Department has filed affidavit-in-opposition without any justification of the said paragraphs, and that before passing the impugned order dated 28.08.2023, the Director of Higher Education, Assam, had conducted a hearing and prepared a report (Annexure-18), and in the last paragraph of the said report, it has been recorded as to how the petitioner's service was taken as Tutor in Philosophy, sometimes as a Librarian and sometimes as Assistant Librarian, but he never resigned from his original post as Library Assistant. However, this aspect has eschewed consideration of the Director Higher Education, Assam, at the time of passing of the order.

10.2. Mr. Sikdar further submits that the private respondent No. 7 was appointed as Junior Assistant on 06.12.2006, as per resolution of the Governing Body dated 03.12.2006, and he never served in the post of Library Assistant, despite, his service was provincialized as Library Assistant, which violates the mandatory precondition to serve at least six years continuous period as on 01.01.2017, from the date of joining in the concerned venture educational institution, which is 31.12.2010, or prior to the date as prescribed under Section 4(2)(iii) of the Act of 2018, which is highly illegal and liable to be interfered with. Under the abovementioned facts and circumstances, Mr. Sikdar has contended to allow this petition by interfering with the provincialization of service of the private respondent No. 7 as Library Assistant, and further to interfere with the impugned speaking order, dated 28.08.2023, and to issue

direction to the respondent authorities to appoint the petitioner to the said post.

10.3. In support of his submission, Mr. Sikdar, learned counsel for the petitioner has referred to a decision of a Co-ordinate Bench of this Court in the case of **Manashi Goswami vs. State of Assam and Ors.**, reported in **2009 (1) GLT 729**.

10.4. Mr. Sikdar also submits that there is no merit in the I.A.(Civil) No. 85/2024, and therefore, it is contended to dismiss the same.

Submission of learned counsel for the respondents No.1 & 2:-

11. Per contra, Mr. Das, learned standing counsel, Higher Education Department, for the respondent Nos. 1 and 2, submits that the impugned order, dated 28.08.2023, suffers from no infirmity or illegality requiring any interference of this Court. He also submits that after considering all aspects and after affording opportunity of being heard to the parties, the said order was passed. He further submits that though the petitioner was initially appointed as Library Assistant, yet subsequently, he was appointed as Assistant Librarian, but to provincialize his post as Assistant Librarian, he did not possess the requisite qualification as he obtained the BLISC degree from Vinayaka Mission University, Tamil Nadu in off-campus mode, through distance education, which is not permissible and that the private respondent No. 7 was working as Junior Assistant and his service was provincialized as Library Assistant and that there is no merit in this petition and therefore, it is contended to dismiss the same.

Submission of learned counsel for the respondent No. 7:-

12. Per contra, Mr. Abedin, learned counsel for the respondent No. 7 submits that the service of the private respondent No. 7 has rightly been provincialized as Library Assistant, and that the petitioner's name was forwarded for

provincialization as Assistant Librarian, but due to lack of qualification, his service could not be regularized by the State respondents, as he obtained the BLISC degree from Vinayaka Mission University, Tamil Nadu in off-campus and through distance education mode.

12.1. In support of his submission, Mr. Abedin referred to a decision of a Co-ordinate Bench of this Court in **WP(C) No. 2983/2017 and another connected petition (Purnendu Sekhar Debnath vs. the State of Assam and Ors.)**, wherein a Co-ordinate Bench of this Court has held that the degree which is an essential requirement under the rule for provincialization is not a valid degree. Under such circumstances, he has contended to dismiss the petition.

12.2. Mr. Abedin also submits that the interim order dated 11.10.2023 is required to be vacated as the applicant, who is the respondent No.7 in the writ petition, has been deprived of the benefit of provincialisation of his service.

Discussion and Analysis:-

13. Having heard the submissions of learned counsel for both the parties, this Court has carefully gone through the petition and the documents placed on record, and also perused the impugned speaking order dated 28.08.2023 (Annexure-19) and the report (Annexure-18), prepared by the Director of Higher Education, Assam, before passing the impugned speaking order. Also gone through the relevant provisions of law. Also gone through the Department's file produced before the Court by the learned standing counsel for the Higher Education Department.

The Issues before the Court:-

14. From the pleadings of the parties and from the contentions made by the

learned counsel for both the parties, the issues to be addressed by this court are formulated as under:-

- (i) Whether the impugned order, dated the 28th August, 2023, is illegal or arbitrary?
- (ii) Whether the appointment of the petitioner as Assistant Librarian and forwarding of his name for provincialisation, is illegal and arbitrary, in view of his categorical contention that he had never resigned from the post of Library Assistant and that by manipulation of records, he was shown to be appointed as Assistant Librarian?
- (iii) Whether provincialisation of service of the respondent No.7 as Library Assistant is illegal and arbitrary as he lacks requisite qualification?

15. In order to deal with the issues, with greater precisions, this Court deems it appropriate to extract the impugned order, dated 28.08.2023, which reads as under:

“GOVERNMENT OF ASSAM
HIGHER EDUCATION DEPARTMENT
ASSAM SECRETARIAT:::BLOCK ‘C’ GROUND FLOOR
DISPUR::: GUWAHATI-6
email: higherednassam@gmail.com

Ecf No.272628/64-A Dated Dispur, the 28th August,
2023

Speaking Order

Read and perused the order dated 03-01-2023 passed by
Hon’ble Gauhati High Court in WP(C) No 5307/2021 filed by

Rezzaqul Hussain vs. The State of Assam and 7 others. In compliance with the aforesaid court order hearings were conducted on 14/7/2023 & 11/8/2023 respectively he office chamber of Secretary, Higher Education Department in which the petitioner i.e. Rezzaqul Hussain and respondent No.2,3,4 & 7 were present.

Heard both the parties, Chairman, State Level Selection Committee & Chairman, District Scrutiny Committee, Barpeta. The Hon'ble High Court's order dated 03-01-2023, the order of DHE, Assam bearing No. PC/HE/Prov/2/2021/1, dtd. 5-2-2021, report furnished by DHE, Assam vide No. PC/HE/CC/33/2021/169, dtd. 23-05-2023 and the representation of the petitioner have been examined.

Whereas it is found that Rezzaqul Hussain has joined as Library Assistant on 16-03-2006 and subsequently, the Janapriya College authority appointed him as Assistant Librarian on 29-03-2010. As per records produced by ADC(Education), Barpeta, the District Level Committee recommended the name of the petitioner for the post of Assistant Librarian. But, the services of the petitioner Rezzaqul Hussain has not been rovincialized as Assistant Librarian as he obtained BLISC degree from Vinayaka Missions University, Tamilnadu in off Campus mode through Distance Education mode in 2013.

Whereas as per recommendation of the District Scrutiny Committee, Barpeta and State Level-Selection Committee of Higher Education, Assam the services of Babul Hossain, (who was originally appointed as Junior Assistant w.e.f.09-12-2006) has been rovincialized as Library Assistant considering the seniority of date of joining and eligibility for the post in the College under relevant Act in force. As such, DHE's above mentioned order pertaining to appointment of the incumbent is found in order and as such, his salary, both arrear and regular, is to be paid from the date of

rovincializedon of his service w.e.f. 01.01.2021 deducting the salary already paid to him.

Whereas, as per Section 14 of Assam Education (Provincialisation of Services of Non-Teaching staff of Venture Educational Institutions) Act, 2018 the post of Late Saleha Khatun was a personal post to the incumbent. As such these posts shall stand abolished on cessation of the services of the incumbent for any reason whatsoever Including retirement, resignation & death etc. and hence the question of posting someone against the said post doesn't arise.

In view of the above services of Rezzaqul Hussain could not be rovincialized due to above mentioned facts and circumstances

The petitioner's appeal is disposed of and the Hon'ble High Court order is complied with.

Sd./-

Secretary to the Govt. Of Assam
Higher Education Department

Dated Dispur, the 28th August, 2023"

16. It appears that the petitioner herein had joined as Library Assistant on 16.03.2006 and subsequently, he was appointed as Assistant Librarian on 29.03.2010 and the District Level Committee had recommended the name of the petitioner for the post of Assistant Librarian, but his service had not been provincialized as Assistant Librarian as he obtained BLISC degree from Vinayaka Missions University, Tamil Nadu in off-campus mode through distance education mode in 2013.

16.1. It is worth mentioning here in this context that Mr. S. Das, the learned Standing Counsel for the respondent No. 2, as per direction of this court has

produced the relevant departmental files before this court and perusal of the same indicates that in view of Govt. O.M. No. AHE.429/2011/196 dated 01.02.2012, the eligibility of BLISC Degree of the petitioner was not considered by the Director of Higher Education.

16.2. In the case of Purnendu Sekhar Debnath(supra), and other connected matters, so referred by Mr. Abedin, learned counsel for the private respondent No.7, a co-ordinate bench of this Court has held that –

“The regulation promulgated by the UGC from time to time makes it clear that so far as the State University is concerned, it cannot have a Study Centre outside from the territorial jurisdiction of the State whereas for a deemed university the restrictions are more severe inasmuch as there cannot be Study Centre outside the campus of the Deemed University even in the same State.”

Thereafter, it has held that –

“The respondent No. 4 in the first writ petition (No. 2983/2017) had admittedly obtained his M.A. Degree from the Agartala Study Centre of the Madurai Kamaraj University which is in the State of Tamil Nadu. Similarly, the respondent No. 7 in WP(C) 2706/2017 had obtained his M.A. Degree in Mathematics from the Cachar Study Centre of the Sam Higginbottom University, a Deemed University in the State of U.P.”

Then it has held that –

“in the two cases, admittedly, there was no approval from the UGC or the Distance Education Bureau earlier (IGNOU) and in absence of such approval, the post graduate degrees said to be obtained by the private respondents are non-est in law.”

16.3. Thereafter, it had interfered with the appointment of the respondent No. 4

Shri Asit Baran Paul as Principal of the Bhikamchand Balika Bidyaniketan H.S. School, Karimganj and the respondent No. 7 in WP(C) 2706/2017, Shri Bijon Nath as the Principal in the Swarna Lakshmi Higher Secondary, School, Narshingpur, Cachar on the ground that the said incumbents do not possess valid post-graduate degrees which is an essential requirement under the Rules.

16.4. But, the petitioner, namely, Purnendu Sekhar Debnath had challenged the finding of the learned Single Judge in Writ Appeal, being WA No. 197/2020, and the same had been interfered with.

16.5. Though the finding of the learned Single Judge is interfered with in appeal, yet, the proposition of law, which had been discussed in the writ petition, i.e. "The regulation promulgated by the UGC from time to time makes it clear that so far as the State University is concerned, it cannot have a Study Centre outside from the territorial jurisdiction of the State whereas for a deemed university the restrictions are more severe inasmuch as there cannot be Study Centre outside the campus of the Deemed University even in the same State," and that "approval from the UGC or the Distance Education Bureau earlier (IGNOU) has to be obtained and in absence of such approval, the post graduate degrees said to be obtained by the private respondents are non-est in law, remained untouched.

16.6. In the case in hand also, the petitioner has failed to demonstrate from the record that while granting him BLISC degree by the Vinayak Mission University, Tamil Nadu, he had the requisite approval from the UGC or the Distance Education Bureau earlier (IGNOU). And in absence of such approval, the degree so obtained by the petitioner cannot be held to be a valid degree. Thus, the decision referred by Mr. Abedin has strengthened his submission.

16.7. It also appears from the contention of the petitioner, especially from the prayer portion of the petition and from the submission of Mr. Sikdar, learned counsel for the petitioner that the grievance of the petitioner is not for denying him provincialisation as Assistant Librarian. He is mainly aggrieved by the impugned order for provincialisation of the service of private respondent No.7 as Library Assistant, instead of him. In his affidavit-in-opposition, dated 25.01.2024, in I.A. No. 85/2024 filed by the respondent No.7 for vacating the interim order dated 11.10.2023, the petitioner in paragraph No.7 he almost admitted that he has no eligibility/degree of Library Science for being appointed as Assistant Librarian.

17. Further, it appears that as per recommendation of the District Level Committee, Barpeta and the State Level Scrutiny Committee of Higher Education, the service of Babul Hossain/respondent No. 7, who was originally appointed as Junior Assistant w.e.f. 09.12.2006, had been provincialized as Library Assistant considering the seniority of the date of his joining for the post in the college under the relevant act in force and his appointment was found in order.

17.1. It also appears that the Director of Higher Education, Assam, has submitted a report (Annexure-18) on the appeal filed by the petitioner, and in the said report, he had recorded a finding that the service of Babul Hossain, (who was originally appointed as Junior Assistant w.e.f 09-12-2006) has been provincialised as Library Assistant considering the seniority of date of joining and eligibility of posts for the college under relevant Act in force. In the said report he had also observed that in the mean time, Rezzaqul Hussain has submitted a petition dated 28-04-2023 before this Directorato requesting to provincialise his service as Library Assistant. According to Rezzaqul Hussain, he

has rendered sometimes as Tutor in Philosophy, sometimes as Librarian and sometimes as Assistant Librarian, but he never resigned from his original post as Library Assistant. The former Principal Late Dewan Abul Hussain has manipulated his up-gradation resolution and appointment as Assistant Librarian (Annexure-R). However, in fact it appears to be not a finding, but the allegation of the petitioner.

17.2. Though Mr. Sikdar, learned counsel for the petitioner has pointed out that the record has been manipulated by the college authority in respect of the petitioner, yet such allegation is denied by the respondent No.5, the In-Charge-Principal of the College. Thus, it appears to be a disputed question fact.

17.3. However, in the case of **M/S A.P. Electrical Equipment Corporation vs. The Tahsildar & Ors. etc. (Civil Appeal Nos. 4526-4527 of 2024)** Hon'ble Supreme Court while dealing with the issue held as under:-.

“48. Normally, the disputed questions of fact are not investigated or adjudicated by a writ court while exercising powers under Article 226 of the Constitution of India. But the mere existence of the disputed question of fact, by itself, does not take away the jurisdiction of this writ court in granting appropriate relief to the petitioner. In a case where the Court is satisfied, like the one on hand, that the facts are disputed by the State merely to CA Nos. 4526-4527 of 2024 Page 134 of 145 create a ground for the rejection of the writ petition on the ground of disputed questions of fact, it is the duty of the writ court to reject such contention and to investigate the disputed facts and record its finding if the particular facts of the case, like the one at hand, was required in the interest of justice.

49. There is nothing in Article 226 of the Constitution to indicate that the High Court in the proceedings, like the one on hand, is debarred from holding such an inquiry. The proposition that a petition under Article 226 must be rejected simply on the ground that it cannot be decided without determining the disputed question of fact is not warranted by any provisions of law nor by any decision of this Court. A rigid application of such proposition or to treat such proposition as an inflexible rule of law or of discretion will necessarily make the provisions of Article 226 wholly illusory and ineffective more particularly Section 10(5) and 10(6) of the Act, 1976 CA Nos. 4526-4527 of 2024 Page 135 of 145 respectively. Obviously, the High Court must avoid such consequences.”

17.4. In the case of State of Orissa v. Dr. (Miss) Binapani Dei reported in AIR 1967 SC 1269, in paragraph 6 at p. 1270 of the said judgment, Hon'ble Supreme Court has held as under:-

“Under Art. 226 of the Constitution the High Court is not precluded from entering upon a decision on questions of fact raised by the petition. Where an enquiry into complicated questions of fact arises in a petition under Art. 226 of the Constitution before the right of an aggrieved party to obtain relief claimed may be determined. The High Court may in appropriate cases decline to enter upon that enquiry and may refer the party claiming relief to a suit. But the question is one of discretion and not of jurisdiction of the Court.”

(Emphasis supplied)

17.5. Thus, it appears that the power to decide disputed question of fact is discretionary. There is nothing in Article 226 of the Constitution to indicate that

the High Court, in the writ proceeding, is debarred from holding such an inquiry. In the case in hand, the disputed question is whether records of the college with respect to appointing the petitioner as Assistant Librarian, were manipulated or not. And to decide such a question, a detailed enquiry will be required. But, in the instant case, necessary facts and proofs have not been placed on record. For which, such an enquiry cannot be delved into.

18. Moreover, from the Annexure-10 of the I.A. at page No. 68, it becomes apparent that while submitting individual information by the petitioner for provincialisation of service, he had mentioned the post being held by him, as Assistant Librarian. His signature is also there. From a careful perusal of the said Annexure-10, it cannot be said that the said document is a manipulated document. Further, it appears that with the said Annexure 10 he had also annexed his educational qualification certificates such as the BLISC, and the mark sheets. From these documents, it cannot be said that the name of the petitioner was forwarded for being provincialisation as Assistant Librarian.

19. Though the petitioner herein has taken a stand that he had never resigned from his post of Library Assistant and that the respondent authority had produced his appointment letter, but they failed to produce his resignation letter, yet his appointment as Assistant Librarian and thereafter, working in the said post, has weakened his argument that he has never resigned from that post. There is no rule permitting a person to work in two posts.

20. It also appears from the Annexure 10, at page No. 45 of the writ petition, that the private respondent No. 7 has possessed B.A. degree from Gauhati University. He had never served as Library Assistant. However, from the impugned speaking order, and from the affidavit-in-opposition of the respondent No. 5, it becomes apparent that the respondent No. 7 is senior in service and

the post of Library Assistant and Junior Assistant are of the same rank.

21. Section 4 of the Assam Education (Provincialisation of Services of Non-teaching Staff of Venture Educational Institutions) Act, 2018 provides that non-teaching staff to be Government servants. Sub-Section (2) of Section 4 deals with the employee to be provincialised under the said Act -

- (i) must have been working in the concerned Venture Educational Institution that have been recognized by the competent authority on or before 1.1.2006;
- (ii) must have minimum educational and professional qualifications as laid down under relevant Service Rules as on 1.1.2011;
- (iii) must have rendered at least six years continuous service as on 1.1.2017 from the date of joining in the concerned Venture Educational Institution which must be on 31.12.2010 or prior to that date.

21.1. Though Mr. Sikdar, learned counsel for the petitioner, submits that the private respondent No. 7 was appointed as Junior Assistant on 06.12.2006 as per Governing Body Resolution dated 03.12.2006 and he never served in the post of Library Assistant and his provincialisation as Library Assistant, vide impugned order dated 05.02.2021, has been done in violation of mandatory pre-condition to serve at least six years continuous period as on 01.01.2017 from the date of joining in the concerned Venture Educational Institution which be on 31.12.2010 or prior to that date as prescribed under Section 4 (2) (iii) of 2018 Act, is highly illegal and is liable to be interfered with, yet, in view of the discussion and finding in paragraph No. 17 above, this Court is unable to accept such contention.

21.2. Indisputably, the private respondent No. 7 was appointed as Junior Assistant on 06.12.2006. Since then he has been rendering his service as Junior Assistant. And as contended by respondent No.5, the respondent No. 7 is senior in service and the posts of Library Assistant and Junior Assistant are of the same rank.

21.3. This Court has also gone through the decision in **Manashi Goswami (supra)** so referred to by Mr. Sikdar, learned counsel for the petitioner. In the said case, a co-ordinate bench of this court held that any appointment dehors the provision of relevant Service Rules, would be stillborn, null and void, and thereafter dismissed the writ petition preferred by the petitioner of said petition. However, in view of the aforesaid discussion and finding, this Court is of the view that the ratio, laid down in the said case, would not advance his argument, as the petitioner has failed to demonstrate from the record that the provincialisation of service of the petitioner is in contravention of any provision of law. Though he has pointed it out about contravention of Section 4(2) (iii) of the Assam Education (Provincialisation of Services of Non-teaching Staff of Venture Educational Institutions) Act, 2018 and the requirement of said provision is that the employee must have rendered at least six years continuous service as on 1.1.2017, from the date of joining in the concerned Venture Educational Institution which must be on 31.12.2010 or prior to that date, yet it appears that the private respondent No. 7 was appointed as Junior Assistant on 06.12.2006, and since then he has been rendering his service. And if the post of Library Assistant and Junior Assistant are of the same rank, then the submission of Mr. Sikdar cannot be accepted.

22. Over and above, it is well settled in the case of **Commissioner of Police vs. Raj Kumar**, reported in **MANU/SC/0565/2021**, that public service

employers, like any others, have the element and latitude of choice, while determining the suitability of candidates applying for service. Relevant paragraph is extracted herein below for ready reference:-

“29. Public service - like any other, pre-supposes that the state employer has an element of latitude or choice on who should enter its service. Norms, based on principles, govern essential aspects such as qualification, experience, age, number of attempts permitted to a candidate, etc. These, broadly constitute eligibility conditions required of each candidate or applicant aspiring to enter public service. Judicial review, under the Constitution, is permissible to ensure that those norms are fair and reasonable, and applied fairly, in a non-discriminatory manner. However, suitability is entirely different; the autonomy or choice of the public employer, is greatest, as long as the process of decision making is neither illegal, unfair, or lacking in bona fides.”

22.1. Thus, an employer is best suited to determine the eligibility and suitability of a candidate according to the requirements of the post and the nature of work and also to assess whether a candidate meets the post requirements. The Courts ordinarily do not substitute their view for the employer's on suitability, provided the recruitment rules and advertisement are to be followed. It is the employer to determine the eligibility and suitability. However, this principle does not allow the employer to act arbitrarily or contrary to the advertised criteria, because courts have also held that ambiguity in qualifications should generally be resolved in favour of the candidate.

23. In view of the aforesaid discussion and findings, the issue No. (i) (ii) and (iii), so formulated and discussed herein above, all are to be answered in

negative, and accordingly, the same stands answered.

24. Under the given facts and circumstances, the present writ petition and the I.A.(Civil) No. 85 of 2024 stand disposed of, with the following observation and directions:-

- (i) The writ petition same stands dismissed for want of merit;
- (ii) The I.A.(Civil) No. 85/2024 stands allowed and consequently, the interim order dated 11.10.2023, so passed in WP(C) No. 5544/2023 stands vacated;
- (iii) The parties have to bear their own costs.

JUDGE

Comparing Assistant