

REPORTABLE

GAHC010202282023



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

Case No. : WP(C)/5338/2023

DR. HARWE INGTI KATHARPI

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY TO THE
GOVERNMENT OF ASSAM, DEPARTMENT OF HIGHER EDUCATION,
DISPUR, GUWAHATI, ASSAM, PIN-781006

2:THE DIRECTOR OF HIGHER EDUCATION DEPARTMENT
ASSAM
KAHILIPARA
GUWAHATI
ASSAM
PIN-781019

3:KARBI ANGLONG AUTONOMOUS COUNCIL
REPRESENTED BY THE PRINCIPAL SECRETARY
DIPHU
KARBI ANGLONG
ASSAM
PIN-782460

4:ADDITIONAL DIRECTOR OF EDUCATION
KARBI ANGLONG AUTONOMOUS COUNCIL
DIPHU
DIST- KARBI ANGLONG
ASSAM
PIN-782460

5:THE PRINCIPAL (I/C)
RUKASEN COLLEGE
BAKALIA
P.O.-BOKOLIA
DIST- KARBI ANGLONG
ASSAM
PIN-78248

Advocate for the Petitioner : MR. M SARANIA

Advocate for the Respondent : SC, HIGHER EDU

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

ORDER

09.10.2023

Heard Mr. M Sarania, learned counsel for the petitioner. Also heard Mr. D Upamanyu, learned counsel for the Higher Education Department, Government of Assam and Mr. J Chutia, learned counsel for the respondents in the Karbi Anglong Autonomous Council.

2. The order dated 03.07.2023 of the Additional Director of Education Karbi Anglong Autonomous Council (for short, KAAC) is assailed in this writ petition by which the writ petitioner, Dr. Harwe Ingti Katharpi, Assistant Professor and H.O.D. in the Department of History at Rukasen College, Bakalia, Karbi Anglong is placed under suspension pending drawal of departmental proceeding. The

order of suspension dated 03.07.2023 is assailed on a preliminary ground that the Additional Director of Education KAAC being an authority under the KAAC and not being an authority in the Government of Assam in the Higher Education Department does not have the jurisdiction to pass an order of suspension in respect of an Assistant Professor in a college, *inasmuch as*, college education is not a transferred subject to the KAAC under the Sixth Schedule to the Constitution of India.

3. Mr. J Chutia, learned counsel for the KAAC refers to the Notification No.HAD.57/95/268-269 dated 25.09.1996 of the Governor of Assam made under paragraph 6 (2) of the Sixth Schedule to the Constitution of India by which at Entry 23, college education, in general, had also been included as a transferred subject to the KAAC.

4. Mr. J Chutia, learned standing counsel for the KAAC also raises a contention that the Additional Director of Education, KAAC is otherwise an officer of the Government of Assam in the Higher Education Department and, therefore, he is to be construed to be an authority under the Higher Education Department of the Government of Assam. The said submission, *prima facie*, does not find acceptance, *inasmuch as*, the Additional Director may otherwise be a member of the Higher Education Services of the Government of Assam, but upon being placed at the services of the KAAC, for the relevant period for which he continues to remain there, the Additional Director of Education would have to be understood to be an authority under the KAAC and not to be an authority under the Government of Assam.

5. As regards, the Notification dated 25.09.1996 of the Government of Assam under paragraph 6(2) of the Sixth Schedule providing for college education, in general, at Entry 23 to be also a transferred subject, we take note that the concept of transferred subject is provided under paragraph 3 of the Sixth Schedule wherein certain subjects have been provided under Clauses (a) to (j) and the subjects provided therein are constitutionally to be understood to be the transferred subjects. Paragraph 3(A) which was subsequently brought in by the Sixth Schedule to the Constitution (Seventy Seventh Amendment) Act,1995 provides for certain additional power of the Autonomous Councils including the KAAC wherein in Clause (d) thereof provides for primary and secondary education.

6. A conjoint reading of the paragraph 3 and paragraph 3A makes it discernible that as per the sub-clause (d) of paragraph 3A, primary and secondary education is also a transferred subject to the KAAC, but conspicuously college education or higher education does not find place amongst the transferred subjects of paragraph 3A.

7. We also take note that the Notification dated 25.09.1996 had been issued by the Governor of Assam in exercise of the powers under paragraph 6(2) of the Sixth Schedule to the Constitution of India, which, *inter alia*, provides that the Governor may with the consent of any District Council entrust either conditionally or unconditionally to that Council or to its officers, functions in relation to agriculture, animal husbandry, community projects, cooperative societies, social welfare, village places or any other matter to which the executive power of the State extends.

8. A reading of paragraph 6(2) would make it discernible that the Governor of Assam may with the consent of any District Council entrust either conditionally or unconditionally to that council or to its officers, functions in relation to the departments stated therein, namely, agriculture, animal husbandry, community projects, cooperative societies, social welfare, village places or any other matter to which the executive power of the State extends. The expression 'or any other matter' to which the executive power of the State extends' is sought to be relied upon to justify the Notification dated 25.09.1996 of the Governor of Assam by which even college education, in general, had been entrusted to the KAAC.

9. Paragraph 3 and paragraph 3A of the Sixth Schedule constitutionally provides for the power of the Autonomous District Councils to make laws with respect to the subjects stated therein, whereas, paragraph 6(2) provides for the power of the Governor with consent of the District Councils to entrust conditionally or unconditionally to that Council or its officers functions in relation to the subjects stated therein and in addition a residuary power in any other matter to which the executive power of the State extends.

10. Admittedly, the executive power of the State otherwise extends to the Education Department including the Higher Education Department and if in exercise of the powers under paragraph 6(2) of the Sixth Schedule to the Constitution of India, the Governor of Assam in consultation with the District Council had also transferred college education, as a transferred subject to the KAAC, *prima facie*, it cannot be discerned that Entry 23 Notification dated 25.09.1996 would be without jurisdiction and authority. From such point of view,

we do not notice any *prima facie* case being made out by the petitioner that the Additional Director of Education KAAC did not have the jurisdiction to issue the impugned order dated 03.07.2023 placing the petitioner under suspension.

11. Also considering the balance of convenience and the irreparable loss as regards the Council on their decision to place the petitioner Dr. Harwe Ingti Katharpi, Assistant Professor on suspension, we are not inclined to pass an interim order for the present, on the submission of the petitioner that the Additional Director of Education KAAC did not have the jurisdiction to pass the order of suspension.

12. List again on 12.10.2023.

13. The respondents, in the meantime, to file their affidavits.

JUDGE

Comparing Assistant