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

Case No. : WA/38/2026

SMTI CHANDANA DEKA
WIFE OF SACHINDRA KUMAR KALITA RESIDENT OF VILLAGE AND PO
BORKURIHA DISTRICT NALBARI

VERSUS

THE STATE OF ASSAM AND 7 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT
OF ASSAM DEPARTMENT OF HIGHER EDUCATION DISPUR GUWAHATI
781006

2:THE DIRECTOR OF HIGHER EDUCATION
GOVERNMENT OF ASSAM KAHILIPARA GUWAHATI 781019

3:THE PRESIDENT OF GOVERNING BODY
NALBARI COLLEGE NALBARI ASSAM 781335 ASSAM

4:THE SELECTION COMMITTEE
REPRESENTED BY ITS CHAIRMAN NALBARI COLLEGE NALBARI ASSAM
781335

5:THE PRINCIPAL CUM SECRETARY
NALBARI COLLEGE NALBARI ASSAM 781335

6:DR SUBHRA SABHAPANDIT
WIFE OF DR RANJAN CHAKRABORTY RESIDENT OF HOUSE NO 10
OPPOSIT BAKUL PATH NH 37 PS JALUKBARI DISTRICT KAMRUP METRO
ASSAM

7:MAHENDRA NARAYAN CHOUDHURY BALIKA MAHAVIDYALAYA
REPRESENTED BY ITS PRESIDENT OF GOVERNING BODY NALBARI
781335 ASSAM

8:THE PRINCIPAL MAHENDRA NARAYAN CHOUDHURY BALIKA
MAHAVIDYALAYA
NALBARI
781335 ASSA

For the appellant(s) : Mr. K. N. Choudhury, Sr. Advocate
Mr. R.M. Deka, Advocate

For respondent(s) : Mr. Indraneel Choudhury,
Sr. Advocate
Mr. S. Hazarika, Advocate
Mr. K. Gogoi, SC, Higher Education

– BEFORE –

HON'BLE THE CHIEF JUSTICE MR. ASHUTOSH KUMAR
HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

20.02.2026

(Ashutosh Kumar, CJ)

We have heard Mr. K. N. Choudhury, learned senior Advocate for the appellant and Mr. Indraneel Choudhury, learned senior Advocate for the respondent No. 6/Subhra Sabhapandit; Mr. K. Gogoi, learned Standing Counsel, Higher Education, Assam.

2. The challenge in this writ appeal is to the judgment dated 19.12.2025 passed by a learned Single Judge of this Court in WP(C) No. 2988/2022, whereby 1 (one) mark allotted to the appellant on the count of “experience” has been found to be faulty and a direction has been given to the respondent authorities, especially, the Director of Higher Education, Assam, to proceed with the selection process in accordance with law and take it to its logical conclusion, thereby directing that out of the 4 (four) marks that the appellant had obtained for her experience, should be assessed at 1 (one) mark less, i.e. only 3 (three) marks for

experience.

3. It may be clarified that there is no dispute with respect to the appellant having obtained 3 marks for her experience. The respondent No. 6 herein would otherwise benefit if the appellant is not awarded 4 marks but gets only 3 marks for her experience, which will make the respondent steal the show at the level of the decision of the Selection Committee.

4. It would be apposite to cull out a few paragraphs of the impugned judgment containing the directions for a proper discussion over the issue.

“19. Thus, from the aforesaid discussions, the following findings could be arrived at, herein this case:

(i) There is absence of materials/pleaded facts to suggest that the respondent No. 6 was engaged as adhoc Lecturer in MNC Valika Mahavidalaya, Nalbari for the period 2009-2010, following the Rules of appointment i.e. the University Grant Commission Regulations, 2010.

(ii) In fact, for the period 2009-2010, which the respondent No.6 claimed to have served as adhoc Lecturer in MNC Valika Mahavidalaya, Nalbari one O.M. dated 12.10.2004, was holding the field, which put a ban on appointment/engagement against any non sanctioned post.

(iii) There is no material to suggest that the respondent No.6 was appointed against a sanctioned post, rather the affidavit of respondent No.7 and 8 clearly indicates absence of any sanctioned post of Lecturer in Sanskrit in the said College, at the relevant point of time i.e. 2009-2010.

(iv) Though a co-ordinate Bench of this Court, in the judgment and order dated 14.6.2016, in W.P.(C) No. 3245/2015, held that the experience certificate, obtained by the respondent No. 6 from the respondent No.8, is a document based on original records which can be acted upon for the purpose of giving award of marks towards experience, yet, the decision is not binding upon the petitioner herein, as she was not a party in the said writ proceeding.

(v) The principle of Constructive Res-Judicata is not applicable herein this case since present petitioner was not a party in the W.P.(C) No. 3245/2015.

(vi) Further, the O.M. dated 12.10.2004, which was holding the field, and which put a ban on appointment/engagement against any non sanctioned posts, was not placed before the Court in W.P.(C) No. 3245/2015.

(vii) The finding, so recorded by the co-ordinate Bench of this Court in W.P.

(C) No. 3245/2015, cannot be read as a binding precedent as the said observations has to be read in the context in which they appears and since the O.M. dated 12.10.2004, was not placed before the said Bench, it makes a lot of difference in the precedential value of the said decision, as held in the case of Palitana Sugar Mill (P) Ltd. (supra).

(viii) The De-facto Doctrine, as contended by the learned Senior Counsel for the respondent No. 6, is not applicable in the given factual scenario of the case in hand.

(ix) Since the Selection Committee had completed the selection process by awarding marks to the respondent No.6, on the basis of the purported experience certificate, despite objection being filed by the petitioner, it cannot be said that present writ petition is pre-mature.

(x) Breach of O.M. does not confer any right on the public to ask for a writ under Article 226 of the Constitution, but it does when such breach violates the fundamental right of the candidates guaranteed under Article 14 and 16(1) of the Constitution of India.

20. In view of the legal and factual matrix discussed herein above, the issue No. (i), so formulated herein above, has to be decided in affirmative and accordingly same is decided in favour of the petitioner.

21. In view of affirmative decision in issue No. (i), this Court finds sufficient merit in this petition and accordingly, the same stands allowed. Consequently, the decision of the Selection Committee, to award one mark to the respondent No. 6 based on the experience certificate, issued by the respondent No. 8, stands set aside and quashed.

22. In view of the above, the respondent authorities are directed to proceed with the selection process, in accordance with law and to take the same to a logical conclusion, in the light of the finding recorded herein above.

23. The aforementioned exercise has to be carried out within a period of 6 (six) weeks from the date of receipt of the certified copy of this judgment and order.”

5. An advertisement was issued on 04.07.2015 by the Principal-cum-Secretary of Nalbari College, inviting applications from eligible candidates for filling up a vacant post of Assistant Professor in the department of Sanskrit in that college. Pursuant to the afore-noted advertisement, the appellant and the respondent No. 6 along with others participated in the selection process. After the interview, the respondent No. 6 came to learn that the Selection Committee had awarded 4 marks

to the appellant and, in his estimation, 1 mark in excess was given to the appellant mistakenly for her experience as an *ad hoc* Lecturer in a college at the time when there was a ban on engagement of any teaching or non-teaching staff in deficit grant-in-aid colleges in absence of any sanctioned post for the subject. On the strength of the fact that the certificate of experience offered by the appellant for having taught in a college during the years 2009-2010, 2010-2011 and 2011-2012, during which period there was no sanctioned post of Sanskrit in the college which had given the certificate to the appellant, a writ petition was filed by the respondent No. 6 herein, questioning the evaluation/marking of the appellant on her experience.

6. The learned Single Judge found that the Office Memorandum dated 12.10.2004 was in currency at the time of the appellant having taught in the college without any sanctioned post of Sanskrit and, therefore, the appellant could not have been awarded any mark for such experience. If that be so, mark allotted to the appellant was inappropriate and was liable to be interfered with.

7. We have already extracted the relevant denouement of the judgment, finding fault with the assessment by the Selection Board in awarding 1 mark for the Experience Certificate submitted by the appellant for the year 2009-2010 of having taught in a college, which was a deficit grant-in-aid college with no sanctioned post in Sanskrit available at that time.

8. The afore-noted judgment has been questioned by the appellant on several grounds, but primarily on the issue of the learned Single Judge

having interfered with the selection process at an inchoate stage when the recommendation of the Selection Committee was yet to be vetted by the Directorate of Higher Education and a final selection was to be made.

9. It was argued by Mr. K. N. Choudhury, learned senior Advocate that the Selection Committee had held its meeting on 25.04.2022 and had recommended the appellant for the post in question, which recommendation is yet to be placed before the Governing Body of the college for its approval as per the Assam College Employees (Provincialisation) Rules, 2010 (hereinafter referred to as "Rules of 2010"). According to the Rules of 2010, such recommendation was to have the approval of the Governing Body of the college concerned, which would then be sent to the respondent No. 2, i.e. Director of Higher Education, Assam, for final approval and issuance of appointment order. Only after the approval of the respondent No. 2 would the appointment have been made. In that view of the matter, the writ petition preferred by the respondent No. 6 was premature and the learned Single Judge ought not to have interfered at that stage as it tantamounted to interfering in a domain in which the Courts do not have any expertise, namely, evaluation and awarding of marks for experience to the candidates for the post of Lecturer.

10. It was further argued by Mr. Choudhury that the O.M. dated 25.06.2012 provided for the manner of distribution of 5 marks in respect of selection to the post of Assistant Professor, viz. 1 mark each for each completed years of service in an affiliated Government Degree college,

with the upper limit of 5 marks. The appellant, it is reiterated by Mr. Choudhury, had submitted certificates of experience and one such certificate, which is the core dispute between the appellant and the respondent No. 6, is the certificate of experience given by the Principal of Mahendra Narayan Choudhury Balika Mahavidyalaya, Nalbari.

The source/materials for the appellant being awarded the other 3 marks is not in question.

11. The second ground of challenge is that the learned Single Judge relied upon the Circular/O.M. dated 12.10.2004, which prohibited engagement of teaching and non-teaching staff in a deficit grant-in-aid colleges without any sanctioned post.

12. It has been contended on behalf of the appellant that the college which had given the certificate of experience to the appellant had been provincialized in the year 2005 making the O.M. dated 12.10.2004 inapplicable in the case of the said college.

13. The last of the contentions raised on behalf of the appellant is that there is no proscription in the advertisement that "experience" shall be counted only for the tenure of the applicant as a regular teacher, thus leaving it open for the applicants with experience as *ad hoc* or part-time lecturer in a college to project it as experience of teaching.

14. Mr. K. N. Choudhury, learned senior Advocate also pointed out that in the past, when the appellant was appointed Assistant Professor in the department of Sanskrit in Anandaram Dhekial Phukan College (ADP College), Nagaon, her appointment was challenged by one Chandan Hazarika, another applicant, by filing WP(C) No. 3245/2015 on the ground

that out of 4 (four) marks awarded to the appellant, 1 (one) mark in excess was given for her experience, making her the highest scorer, on the basis of a certificate of one year *ad hoc* teaching experience in the same Sanskrit College in the session 2009-2010. The benefit of such certificate was doubted and it was argued against her that she had never rendered service for one year in Mahendra Mohan Choudhury Valika Mahavidyalaya.

While deciding the afore-noted writ petition, a Bench of this Court found that there was nothing on record to dispute that the appellant herein had served for one year in the college during the relevant period. The Court had looked at the Acquittance Roll, which appeared to be a genuine document and which indicated that the appellant herein had served the college in question for one year; she had also drawn salary and classes were held.

The same certificate is being questioned here as inadmissible for the reason of the ban under the O.M. of 2004 operating, preventing engagement of any teaching and non-teaching staff in a deficit grant-in-aid college and, that too, without any sanctioned post of Sanskrit in such college.

15. The contention of the appellant that she was rightly marked for such experience is further sought to be buttressed by the position of law, which was postulated by the Supreme Court in **Asim Kumar Bose v. Union of India, (1983) 1 SCC 345**. In the afore-noted case, Dr. Asim Kumar Bose (appellant therein) was appointed to the specialised grade in substantive capacity as Radiologist in Irwin Hospital, Delhi, which is a teaching hospital. He was

also treated as an Associate Professor (ex-officio) in both the Irwin Hospital as well as the Maulana Azad Medical College, to which Irwin Hospital was affiliated. He was actively associated with teaching undergraduate and post-graduate students of that college. Although Dr. Bose had high academic and professional qualifications and had good teaching experience, he was not considered for regular appointment to the post of Associate Professor in Radiotherapy in that college on the ground that his teaching experience as ex-officio Associate Professor was not to be counted.

The appellant therein had filed a writ petition but the same was dismissed. In the meanwhile, while the appeal against the dismissal of the writ petition of Dr. Bose was pending, a vacancy for the post of Professor in Radiotherapy occurred in that college, which had to be filled up by direct recruitment under Rule 8(2) of the Central Health Service Rules, 1963 [as amended by Central Health Service (Amendment) Rules, 1966]. The UPSC had called Dr. Bose for an interview in response to his application for that post. The appeal of Dr. Bose was allowed with costs, directing the UPSC to readvertise the post of Professor of Radiotherapy. The Supreme Court in the afore-noted case held as follows:

“29. It is necessary to emphasise that the recruitment rules nowhere provide that the teaching experience gained by a Specialist in a teaching hospital in the capacity of an Associate Professor (ex-officio) shall not count towards the requisite teaching experience. There is no provision made in the Rules that the teaching experience must be gained on a regular appointment. There is hardly any difference so far as teaching experience is concerned whether it is acquired on regular appointment or as Specialist in a teaching hospital with the ex-officio designation. As the statutory rules do not provide that the teaching experience

gained in an ex-officio capacity shall not count towards the requisite teaching experience, the teaching experience gained by the appellant while holding the post of Radiologist-cum- Associate Professor of Radiology (ex-officio) in the Irwin Hospital cannot be ignored in determining his eligibility for appointment as Professor of Radiology in Maulana Azad Medical College.”

Following this decision, Mr. K. N. Choudhury, learned senior Advocate has argued, a Division Bench of this Court in **Dilip Kumar Sarma v. State of Assam & Ors., 2022 (5) GLT 324**, also held that if the Rules do not mention that only experience after regular appointment shall be considered and the experience gained while on *ad hoc* or such nature cannot be considered, no such plea could be taken by any one for discounting such experience for evaluation of a candidate. If the experience required under the Rules does not pertain to the nature of appointment, any evaluation on such experience cannot be questioned.

16. Additionally, it was also argued that the learned Single Judge, if at all got inclined to enter into such thickets of facts with respect to the evaluation and selection of candidates *inter se*, he was also obligated to take into account the doctrine of de facto equity where the experience, in whichever capacity it is garnered, be it part-time or *ad hoc*, was not to be discounted.

17. Per contra, Mr. Indraneel Choudhury, learned senior Advocate representing the respondent No. 6/writ petitioner argued that the learned Single Judge rightly interfered with the evaluation done by the Selection Committee, which had wrongly awarded 1 mark to the appellant for her experience on the strength of a certificate which was obtained in the year 2015, which certificate was very different from the

earlier certificate issued to her in the year 2011. He vehemently argued that the doctrine of de facto equity would not be applicable for the claim of experience as a part-time Lecturer, which engagement, either as part-time or *ad hoc*, was void *ab initio* in view of the complete ban on such engagement during the period when the O.M. dated 12.10.2004 was in currency.

18. After having gone through the records of this case and after having heard the learned counsel for the parties, we are unhesitatingly of the view that the learned Single Judge had interfered at a stage when the selection process was not even completed. That apart, when the writ petition was entertained and the arguments were heard, the learned Single Judge ought to have gone into the question whether the certificate offered by the appellant was genuine, and if it were, there would be a presumption that the experience certificate was to be counted for. The question, whether the same could or could not have been made the basis of evaluation for the reason of the ban operating on engagement in deficit grant-in-aid college against a post which was not sanctioned, could have been decided by the learned Single Judge only after an inquiry whether the college, which had given the certificate of experience to the appellant, was a deficit grant-in-aid college or whether it had been provincialized where the ban did or did not apply. The Court was also required to take into account whether the embargo contained in O.M. of 2004 applied to provincialised colleges as well.

19. The projection here is that the college in question was a provincialized college.

Mr. Indraneel Choudhury, however, submits that this issue was never raised by the appellant during the hearing of the writ petition and, therefore, there was no occasion to find out whether the college in question was a provincialized college or still running as a deficit grant-in-aid college.

20. In any view of the matter, Mr. Indraneel Choudhury suggests that if this ground is pressed by the appellant, then the appellant would be well advised to go before the learned Single Judge in review jurisdiction and raise such issue with attendant evidence in support of such assertion.

21. The objection raised on behalf of the respondent No. 6 appears to be unsustainable to us for the reason that this factual position has not been specifically discounted at this stage. That apart, the experience of teaching, be it as a part-time or *ad hoc* lecturer, gained by the appellant in a college was taken into account by the Selection Committee in absence of any specific prescription to the effect that only the experience gained as a permanent employee or a regular employee would be counted for.

22. The question, thus, now is whether the engagement of the appellant as an *ad hoc* or part-time Lecturer in the college in question was void *ab initio*?

23. We have already noted above that there is a clear statement made by the appellant that the college in question was provincialised in the year 2005 and, therefore, the ban never operated there.

24. There is yet another aspect of the matter, which concerns us at the moment, namely, the Writ Court not considering the further stages of

evaluation, which could have completed the recruitment process, and that it was always open for the Governing Body or the Director of Higher Education, Assam to differ with the recommendation of the Selection Committee, which issue could not have been prejudged by the learned Single Judge at that stage of the appointment process. With such detailed directions having been issued by the learned Single Judge, the authority and responsibility of the Governing Body and the Director of Higher Education have been rendered absolutely *otiose* and meaningless.

25. The interference by the learned Single Judge at that stage was uncalled for.

26. For the afore-noted reasons, we cannot put our imprimatur to the judgment impugned in this appeal and, perforce, we set it aside.

27. However, after having said so, we are further of the view that if there is nothing on record to demonstrate that the Selection Committee had, before evaluating the appellant, made enquires with respect to the engagement of the appellant being within law, then the assessment so made by the Selection Committee is required to be given a relook.

28. We, thus, direct that the existing Selection Committee shall re-evaluate the candidates, including the appellant and the respondent No.6 and shall thereafter send the recommendation to the Governing Body of the college, whereafter the Governing Body shall send the same to the Director of Higher Education, Assam, for its approval.

We make it very clear that the Selection Committee shall not take into account the observations made by the learned Single Judge, or any

discussion made in the present judgment while evaluating the candidates, including the appellant and the respondent No. 6 on their experience afresh, after making all the inquiries relevant for the purpose.

29. The entire exercise, directed above, must be completed within a period of 6 (six) weeks from today for the reason that the post in question has remained vacant all this while because of this litigation.

30. The appeal stands allowed to the extent as indicated above.

JUDGE

CHIEF JUSTICE

Comparing Assistant