

GAHC010094742022



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

Case No. : WP(C)/3297/2022

JYOTI SINGH PATHAK
W/O. MR. TIRTHANKAR PATHAK, R/O. BYE LANE NO.03, B.O.C. GATE,
DIST. DIBRUGARH, PIN-786602, ASSAM.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM, EDUCATION
(HIGHER) DEPTT., DISPUR, GUWAHATI-781006.

2:THE DIRECTOR OF HIGHER EDUCATION

ASSAM
KAHILIPARA
GUWAHATI-781019.

3:DULIAJAN COLLEGE

REP. BY THE PRINCIPAL
P.O. DULIAJAN
PIN-786602
DIST. DIBRUGARH.

4:THE GOVERNING BODY

DULIAJAN COLLEGE
REP. BY THE PRESIDENT
P.O. DULIAJAN
PIN-786602
DIST. DIBRUGARH.

5:THE PRINCIPAL

DULIAJAN COLLEGE
REP. BY THE PRINCIPAL
P.O. DULIAJAN
PIN-786602
DIST. DIBRUGARH.

6:NAYAN JYOTI HAZARIKA

ASSTT. PROFESSOR
DULIAJAN COLLEGE
P.O. DULIAJAN
PIN-786602
DIST. DIBRUGARH

Advocate for the Petitioner : MR. M SARMA

Advocate for the Respondent : SC, EDU

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

ORDER

08.06.2022

Heard Mr. M Sarma, learned counsel for the petitioner. Also heard Mr. S Bhuyan, learned counsel for the respondents No.1 and 2 being the authorities under the Higher Education Department, Government of Assam.

Issue notice, returnable by six weeks.

Extra copies of the writ petition be served on the learned counsel for the respondents as indicated hereinabove within three days.

Petitioner to take steps for service of notice on the respondents No.3, 4, 5 and 6 by registered post with A/D within three days.

The petitioner Jyoti Singh Pathak is an Associate Professor in the Department

of English in the Duliajan College and as per the OM dated 05.07.2012 of the Government of Assam in the Higher Education Department, the HOD in a department of a provincialised college is to be made/selected amongst the Associate Professors of the respective department in order of seniority. If an Associate Professor is not available in the department, the senior-most Assistant Professor of the concerned department may be made/selected as the HOD of the department with the approval of the Governing Body.

The petitioner by virtue of being an Associate Professor was made the HOD in the Department of English in the Duliajan College, but by an order which was not made available to the petitioner, she was removed from being the HOD in the Department of English. When the petitioner made a query before the Principal through her representations dated 09.11.2021 and 22.12.2021, the reply thereof is that certain flaws were noticed on the functioning of the writ petitioner during the year 2021 to the extent that during the second lock-down period the petitioner did not make herself available for taking certain on-line classes in the department.

If we go by the reasoning of the Principal, it may be an allegation against the petitioner, but for the purpose of taking an action to remove the petitioner from being the HOD of the department, such allegation would remain an unsubstantiated allegation without any opportunity being given to the petitioner.

In the circumstance, it has to be viewed that the petitioner was removed from being the HDO on the basis of certain unsubstantiated allegation without affording the petitioner any opportunity of hearing.

On the *prima facie* case being made out and considering the balance of convenience and irreparable loss that the petitioner may suffer, in the interim, it

is provided that the writ petitioner shall not be removed from being the HOD of the English Department in the Duliajan College without following the due procedure of law and if any other alternative arrangement has been made in the meantime, the same be not given its effect until further order(s).

List after six weeks.

JUDGE

Comparing Assistant