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

Case No. : WP(C)/3018/2025

DR MD YAMIN HASSAN
S/O LATE EMDADUL HAQUE, R/O COLLEGE NAGAR, P.O. AND P.S.-
MANKACHAR, DIST- SOUTH SALMARA MANKACHAR, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
THROUGH THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT
OF ASSAM, HIGHER EDUCATION DEPARTMENT, DISPUR, GUWAHATI-
781006

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

3:THE UNIVERSITY GRANTS COMMISSION
REPRESENTED BY ITS SECRETARY
BAHADUR SHAH JAFAR MARG
NEW DELHI-110002

4:THE GOVERNING BODY
REPRESENTED BY ITS PRESIDENT
MANKACHAR COLLEGE
P.O. AND P.S. MANKACHAR
DIST- SOUTH SALMARA MANKACHAR
ASSAM
PIN-783131

5:THE SELECTION COMMITTEE FOR SELECTION OF PRINCIPAL
MANKACHAR

REPRESENTED BY ITS CHAIRMAN CUM VICE CHANCELLOR
GAUHATI UNIVERSIT

Advocate for the Petitioner : MR. R P SARMAH, MR I HASSAN

Advocate for the Respondent : SC, HIGHER EDU, SC, G U,SC, U G C

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

02.06.2025

1. Heard Shri R.P. Sarmah, learned Senior Counsel for the petitioner.
2. This petition has been moved by taking special permission as the same is connected with WP(C)/5045/2024 which has been listed today.
3. As per the facts projected, pursuant to an advertisement dated 21.02.2021 for filling up of the post of Principal, Mankachar College, the petitioner along with 3 (three) other candidates had participated.
4. The petitioner claims that he was the best amongst the lot with an API score of 242.1 whereas the other 3 (three) candidates were having lesser API score and he had also drawn the attention of this Court to the evaluation sheet which contains certain adverse remark against the other candidates with regard to their qualifications.
5. Be that as it may, one Dr. Azibur Rahman was selected in place of the petitioner leading to filing of WP(C)/5045/2024. However, during the pendency of the said case, the present advertisement has been published on 29.05.2025 for the said post inasmuch as the earlier incumbent Dr Azibur Rahman had passed away in the meantime.
6. The learned Senior Counsel has submitted that in the year 2022 itself, he had filed WP(C)/4683/2022 in connection with the said selection. However, the said writ

petition was disposed of vide an order dated 27.07.2022 dismissing the writ petition with an observation that a final decision be taken by the Director. Consequently, Dr. Azibur Rahman was appointed which is the subject matter of challenge in the 2nd writ petition.

7. The learned Senior Counsel has submitted that after expiry of the earlier incumbent, it is the duty of the authority to appoint the petitioner in the said post as he has better qualification and on the other hand, they have issued the impugned advertisement dated 29.05.2025.

8. *Per contra*, Shri M. Ahmed learned counsel appearing for the Governing Body has submitted that as per instructions received, in the first selection process initiated vide advertisement dated 21.02.2021, only one candidate, i.e., Dr. Azibur Rahman was recommended and the said list did not have any other names. He submits that even by way of merit, the petitioner was third and above him, there was another candidate. He further submits that the earlier incumbent, Dr. Azibur Rahman was appointed on 20.08.2024 and unfortunately the said incumbent had passed away on 13.02.2025 leaving the post vacant and therefore, a request was made by the Governing Body on 24.02.2025 to the Director of Higher Education seeking permission to issue a fresh advertisement which had accordingly been done on 29.05.2025. He accordingly submits that there is no merit at all in this case.

9. Shri S. Das, learned Standing Counsel, Higher Education Department while endorsing the submission of Shri Ahmed, the learned counsel has also placed before this Court the Assam FRBM Act, 2005, more specifically Section 7(1) (g), as per which, there is a mandate to have a select list which is equal in number to the vacant post and in the instant case, the select list was only of one candidate. He has further submitted that once the appointment was made on 20.08.2024, the recruitment process had come to an end and any subsequent vacancies would have to be filled up by a fresh selection process which is the mandate of law.

10. The rival submissions have been duly considered.
11. Let notice be issued, returnable by 4 (four) weeks.
12. Shri S. Das, learned Standing Counsel, Higher Education Department accepts notice on behalf of the respondent nos. 1 and 2, Shri R. Bhuyan, learned counsel appearing on instructions of Shri A. Chamuah, learned Standing Counsel, UGC accepts notice on behalf of respondent No. 3, Shri M. Ahmed, learned counsel accepts notice on behalf of the respondent no. 4 –Governing Body, Mankachar College and Shri P.J. Phukan, learned Standing Counsel, Gauhati University accepts notice on behalf of respondent no. 5. Let extra copies of the writ petition be served upon the learned counsel for the respondents by tomorrow, i.e., 03.06.2025.
13. Shri Sarmah, the learned Senior Counsel prays for an interim order.
14. After consideration of the rival submission and also taking into consideration the Assam FRBM Act of 2005, this Court is of the view that no blanket interim order can be passed. It is accordingly provided that while the petitioner would be at liberty to submit his candidature in the present recruitment process vide advertisement dated 29.05.2025, the same would be without prejudice to his rights espoused in WP(C)/5045/2024. It is also provided that no final decisions for appointment be taken in the new recruitment process without taking leave of this Court.

JUDGE

Comparing Assistant