

GAHC010140932025



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

Case No. : WA/293/2025

THE STATE OF ASSAM AND ORS.
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM.
DEPARTMENT OF SCHOOL EDUCATION ASSAM (CIVIL) SECRETARIAT,
BLOCK-C, DISPUR, GUWAHATI, ASSAM, PIN-781006.

2: THE DIRECTOR OF SECONDARY EDUCATION

ASSAM
KAHILIPARA
PIN 781019

3: THE INSPECTOR OF SCHOOLS

KAMRUP(M)
DIST. CIRCLE
PANBAZAR
DIST. KAMRUP (M)
ASSAM
PIN 78100

VERSUS

MADHAB CHANDRA KALITA AND ANR.
SON OF JOGESWAR KALITA, RESIDENT OF ADINGGIRI PATH, MALIGAON,
P.O- MALIGAON RAILWAY HEADQUARTERS, PIN- 781011, DIST- KAMRUP
(M), ASSAM.

2:NIRMALI CHOUDHURY

R/O P.O. MALIGAON RAILWAY
HEADQUARTERS
PIN 781011
DIST. KAMRUP (M)
ASSAM

Advocate for the appellant : Mr. N.J. Khataniar, GA, Assam.

Advocate for the respondent : Mr. B. Purkayastha, Adv. (R/1).

:::BEFORE:::

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

Date on which judgment is reserved : 02/02/2026

Date of pronouncement of judgment : 05/02/2026

Whether the pronouncement is of the : No

operative part of the judgment ?

Whether the full judgment has been : Yes

pronounced?

JUDGMENT & ORDER (CAV)

(M. Zothankhuma, J)

1. Heard Mr. N.J. Khataniar, learned counsel for the appellant (State). Also heard Mr. B. Purkayastha, learned counsel for the respondent no.1.

2. The case pertains to the appointment of In-charge Head Master of Gotanagar High School following the retirement of the earlier Head Master on 31/07/2024. The respondent no.1 (writ petitioner) has been serving as a Graduate Teacher since 1990 and was granted the graduate scale of pay from 19/11/1991.

3. When the Inspector of Schools submitted a proposal for placing an In-charge Head Master, the respondent no.1's name appeared at Sl. No.1 in the seniority list. However, a complication arose because the petitioner had obtained his B.Ed degree in 2016, without taking prior permission from the appointing authority i.e. the Inspector of Schools, thereby contravening the provisions of Rule 13 of the Assam Services (Conduct) Rules, 1965 (*herein after referred to as 1965 Rules*). Due to the above, the

respondent authorities ignored the claim of the respondent no. 1, who was the senior most Assistant Teacher and instead appointed the respondent no.2 as In-charge Head Master. Being aggrieved, the respondent no.1 filed WP(C) 3929/2024.

4. The case of the respondent no.1 was that Rule 13 of the 1965 Rules stood relaxed by Office Memorandum No. ASE.383/2011/Pt/77 dated 28/07/2014, which allowed teachers of High Schools to pursue and acquire B.Ed degree, by giving prior intimation to the Head of the Institution and the Inspector of Schools. Further, vide OM dated 22/11/2019 issued by the Department of School Education (Secondary Education Department, Government of Assam), B.Ed. degrees which had been obtained through on-line/distance education mode from IGNOU, KKHOU, IDOL etc. were held to be valid for recruitment and promotion. Thus, the B.Ed degree of the respondent no.1 could not be ignored.

5. The case of the appellant (State), on the other hand, was that the respondent no.1 had committed a misconduct under Rule 13 of the 1965 Rules and he had obtained the B.Ed. degree without prior permission of the appointing authority. As such, he could not be given the post of In-charge Head Master. Further, as the post of In-charge Head Master was an *adhoc* appointment, the respondent no.1 could not claim the post as a matter of right.

6. The learned Single Judge, by relying upon the judgment of this Court in the case of ***Tankeswar Nath Vs. State of Assam and others [(WP(C) 5419/2023)]***, held that while obtaining a degree without permission may be misconduct, it does not invalidate the degree. Since the petitioner was the senior most Assistant Teacher and otherwise qualified, the learned Single Judge upheld the claim of the writ petitioner for holding the post of In-charge Head Master.

7. The learned counsel for the appellant submits that the impugned judgement should be set aside, in view of the fact that there is a disciplinary proceeding that has been initiated against the respondent no.1 and show cause notice had been issued to him, which has been replied to by the respondent no.1 by submitting his written statement of defence. He submits that as the disciplinary proceeding is pending, allowing the respondent no.1 to hold the charge of Head Master may prejudice the inquiry, as records may be manipulated and witnesses can be influenced. He also submits that when no permission has been granted under Rule 13 of the 1965 Rules by the appointing authority for obtaining B.Ed. degree, the said Rules would have to be followed in letter and spirit. Any Office

Memorandum issued in violation of the Rules would have to be considered to be a nullity, as a Office Memorandum cannot override the Rules.

8. The learned counsel for the appellant further submits that as per the OM dated 28/07/2014, the B.Ed. degree can be pursued by those teachers whose services had been provincialized subsequent to 01/01/2015 and the said OM did not apply to the case of the respondent no.1, who had been appointed to the post of Assistant Teacher much prior to 01/01/2015.

9. We have heard the learned counsels for the parties.

10. Though the learned counsel for the respondent no.1 has taken a stand that Rule 13 of the 1965 Rules stood relaxed by way of para 6 of the OM dated 28/07/2014 wherein, it had been provided that teachers who desires to obtain B.Ed degree, may take admission with intimation to the Head of the Institution and the Inspector of Schools, we find that there has been no relaxation of Rule 13. While Rule 13 of the 1965 Rules provides that prior permission of the appointing authority i.e. the Inspector of Schools is necessary for teachers to pursue B.Ed Degree, the OM dated 28/07/2014 requires prior intimation being given to the Head of the Institution and the Inspector of Schools. In the present case, no prior intimation has been given to the Inspector of Schools. Further, no permission has been given to the respondent no.1 to pursue B.Ed. degree by the Inspector of Schools. It is a settled position of law that an executive instruction or Office Memorandum cannot override the Rules.

11. In the case of ***R. Ranjith Singh and others V.s. State of Tamil Nadu*** reported in ***2025 0 INSC 612*** the Supreme Court followed another of it's decision, in the case of ***Jaiveer Singh and others vs. The State of Uttarakhand and others [2023 INSC 1024]***, where it held that Government cannot issue executive instructions in contravention of the statutory Rules. Executive instructions can supplement a statute or cover areas to which the law does not extend but they cannot run contrary to the statutory provisions or whittle down their effect.

12. In the case of ***Tankeswar Nath (Supra)***, a Single Bench of this Court had considered another case of this Court i.e. ***Smt. Mouchumi Saharia Vs. Smriti Rekha Kalita & 3 Ors. [IA(C) 2615/2023]*** wherein, it had held that if a M.A. Degree had been obtained without prior permission of the appointing authority, in violation of Rule 13 of the Rules of 1965, the same would be construed to be a misconduct. In that case, the appropriate remedy would be to initiate a proceeding against such candidate under the Assam Services (Discipline and Appeal) Rules, 1964. However, the same by itself,

cannot invalidate the otherwise valid degree obtained from the respective Universities.

13. Paragraph 4 of the judgement and order dated 28/09/2023 passed in ***Smt. Mouchumi Saharia (Supra)*** is reproduced herein below as follows :-

“4. We have heard Mr. M Dutta, learned counsel for the applicant. Mr. Dutta, learned counsel takes the Court through the provisions of Rule 13 of the Rules of 1965, which is explicit enough that a Government servant cannot join or attend any educational institution or appear at any examination of a recognized board or university without obtaining permission. From such point of view, it would have to be accepted that the writ petitioner may have obtained the M.A Degree in violation of Rule 13 of the Rules of 1965. But, however, we take note that Rule 13 of the Rules of 1965 is a Rule framed under the Assam Civil Services (Conduct) Rules, 1965, meaning thereby that a violation of any provisions thereof would have to be construed to be a misconduct. If the act of the writ petitioner would have to be construed to be a misconduct under the Rules of 1965, the appropriate remedy would be to initiate a disciplinary proceeding against the person for having committed the misconduct under the Assam Services (Discipline and Appeal) Rules, 1964. But, a misconduct of such nature of having obtained a degree from a university without obtaining permission cannot lead to a conclusion that the degree obtained from a university itself is untenable in law.”

14. The Single Bench of this Court in ***Tankeswar Nath (Supra)*** thus held that in view of the decision passed in ***Mouchumi Saharia (supra)***, the Masters’ degree obtained by Tankeswar Nath in violation of Rule 13 of the 1965 Rules, did not invalidate the degree and the authorities were to thus consider allowing the petitioner therein to hold the charge of Principal of a Higher Secondary School.

15. In ***Ranjit Kumar Baruah Vs. the State of Assam and 3 others [WP(C) 1925/2024]***, the decision in ***Tankeswar Nath (Supra)*** was followed wherein, it was again held that the B.Ed. degree which had been obtained without prior permission from the competent authority did not invalidate the degree.

16. As can be seen from the judgements made in ***Tankeswar Nath (Supra)*** and ***Ranjit Kumar Baruah (Supra)***, the 2 (two) decisions have been made on the basis of the order dated 28/09/2023 passed in ***IA(C) 2615/2023 [Mouchumi Saharia Vs. Smriti Rekha Kalita & 3 Ors.]***, wherein violation of any of the provisions of the 1965 Rules would have to be construed to be a misconduct, though the degree would be valid.

17. In view of respondent no.1 obtaining his B.Ed. degree without taking prior permission of the

Inspector of Schools, a departmental proceeding has been initiated against him and a Memorandum of Charge has also been issued to him. The respondent no.1 has also submitted his written statement of defence to the Memorandum of Charge. As such, as on date there is a departmental proceeding pending against the respondent no.1.

18. It is clear that whenever there is a pending departmental enquiry against a delinquent officer/employee, the result of the departmental enquiry is to be kept in sealed cover, which is to be opened only after the selection process is concluded. A person who is not exonerated of the charge in a departmental enquiry cannot be promoted. In the present case, the respondent no.1 cannot have any right to be the in-charge Head Master, as the same is basically a post to be held for administrative convenience, till a regular incumbent is appointed to the post. Further, in the present case, there is a charge of misconduct made against the respondent no.1, for which there is a pending departmental enquiry. As such, it would not be proper for a person undergoing a departmental proceeding to be allowed to hold the post of In-charge Head Master, as the same is a kind of promotion, *albeit* adhoc/temporary. When a delinquent officer is not eligible to be promoted to a higher post during the pendency of a departmental proceeding, the respondent no.1 cannot have any right to be the In-charge Head Master during the pendency of a departmental proceeding.

19. The above being said, we have perused the contents of the writ petition and the writ appeal. No prayer has been made by the respondent no.1 in the writ petition or in the writ appeal, for setting aside the departmental proceeding that has been initiated against the respondent no.1 (writ petitioner).

20. In view of the reasons stated above, we do not agree with the decision of the learned Single Judge in setting aside the impugned order dated 16/07/2024, by which the respondent no. 4 had been allowed to hold the post of In-charge Head Master. Consequently, the impugned judgement and order dated 27/02/2025 being not sustainable, the same is set aside.

21. The writ appeal is allowed.

JUDGE

JUDGE

Comparing Assistant