

Being dissatisfied with the conferment of status of in-charge Principal cum Secretary of the Governing Body of Lakhimpur Kendriya Mahavidyalaya upon the respondent No 5, the petitioner has approached this Court by filing this application.

2. I have heard Mr SN Sarma, learned senior Advocate assisted by Mr A Sarma for the petitioner. Mr MK Choudhury, learned senior standing counsel for the Education Department assisted by Mr UK Goswami. Mr DC Mahanta, learned senior Advocate assisted by Mr D Baruah for the respondent Nos 3 and 4 and Mr AK Goswami, learned senior Advocate assisted by Mr DJ Dutta for the respondent No 5.

3. The grievance of the petitioner is that he was appointed as Lecturer in Economics in Lakhimpur Kendriya Mahavidyalaya (hereinafter referred to as the college ) on 6.7.1993 and as one of the senior most Lecturer of the college, the petitioner was appointed as Vice Principal of the college as per decision of the Executive Committee dated 22.11.95 and the petitioner accepted the said appointment by signifying his acceptance in writing. The petitioner was also nominated as the ex-officio member of the Governing Body of the college. The aforesaid Vice Principal ship of the petitioner not having approved by the Government, the petitioner vide his letter 3.2.2009 made a request to that effect to the Director of Higher Education. The Governing Body of the college in its meeting dated 30.1.2009 adopted a resolution with regard to the approval for the post of Vice Principal of the college expressing its inability to do anything in favour of the petitioner, inasmuch as, the Inspector of Colleges intimated the college authority that there is an in-charge Principal of the college and there cannot be any Vice Principal when the person is not a Head of the Department of any subject and the petitioner being not a Head of the Department is not entitled to hold the post Vice Principal. The aforesaid stand of the Governing Body having challenged in WP(C) No 528/2009, this Court vide order dated 27.2.2009 directed that the petitioner would be allowed to continue and treat the same status as prevalent prior to Governing Body's deliberation held on 20.2.2009 wherein it is resolved that considering all pros and cons of the matter the Governing Body decided to withdraw maintaining status quo with effect from 20.2.2009 till finalization of the writ petition filed by the petitioner before the High Court. Thereafter in terms of the resolution of the Governing Body and the direction of the Director of Higher Education contained in letter No G(B)AC. 18/2009/8 dated 18.3.2009, the then Principal of the college on 31.3.2009 handed over the charge of the Principal and Secretary of the college to the respondent No 5 who is the Head of the Department of Economics and the senior most Lecturer of the college. The aforesaid resolution of the college was approved by the Director of Higher Education vide order dated 18.3.2009 and the respondent No 5 continued to be the in-charge Principal of the college. The grievance of the petitioner is that since his status as the Vice Principal is being maintained in the earlier writ petition WP(C No 528/2009, the in-charge Principalship of the college ought to have been conferred upon him and that not having done grave injustice has been caused to him.

4. It is contended by the petitioner that the petitioner being Vice Principal of the college he is entitled under the law to be conferred with the status of in-charge Principal cum Secretary of the college.

5. The respondent No 3, the Governing Body of the college, contesting the case has filed an affidavit in opposition denying the contention of the petitioner and instead contended that way back in the year 1998 as per resolution of the Governing Body approval was sought for from the Director of Higher Education for the post of Vice Principal but the same was not accorded due to non-fulfillment of certain conditions by the college. It is further contended that proposal was made for sanctioning the post of Vice Principal but the same is not approved. As regards the claim of the petitioner for being appointed as in-charge Principal

1 of the college, the stand of the Governing Body is that the petitioner is not entitled to hold the post of Vice Principal as he is neither a senior most Lecturer nor a Head of the Department of any subject and accordingly, the claim of the petitioner has got no foundation.

6. The respondent No 5 has also contested the writ petition by filing a separate counter denying the allegations made against her. The respondent No 5 has in tune with the respondent No 3 contended that the writ petitioner does not have the basic qualification to hold the post of in-charge Principal and merely discharging the duties of the Principal when the Principal is on leave or absent, the petitioner is not entitled to be allowed to act as in-charge Principal. It is contended that there is no sanctioned post of Vice Principal of the college and the authority declined to sanction any such post of Vice Principal.

7. While this writ petition was taken up by this Court on 13.5.2009, after hearing the learned Standing Counsel for the Education Department as well as the learned counsel for the respondent No 3, this Court passed an interim order to the effect that the impugned order dated 18.3.2009 shall not be extended, directly or indirectly, by the official respondents without leave of this Court.

8. The Principal of the college went on superannuation on 31.3.2009 and as per resolution No 7 adopted by the Governing Body in its meeting held on 20.1.2009; the charge of the Principal was handed over to the respondent No 5 who is the Head of the Department of Economics and senior most Lecturer and allowed to act as the in-charge Principal and Secretary of the college with effect from 1.4.2009. The appointment of the in-charge Principal was necessary as there was no selected candidate eligible to be appointed as the Principal of the college and no list of eligible candidates selected by the respondent authorities was published till date. It is submitted by Mr Choudhury, the learned Standing Counsel for the Education Department, that the interview, selection and other process for selecting candidates for being appointed to the vacant posts of Principal of different colleges of the State of Assam is already over and 51 persons have been selected but the select list is not yet published. Upon instruction Mr Choudhury submits that the relevant Rules as required under section 12 of the Assam College Employees (Provincialization) Act, 2005, has not yet been framed leading to difficulties in making appointment to the vacant posts of Principals. Although there were objections regarding number of candidates selected in comparison to 51 number of vacant posts of Principal and in view of provisions of section 10 of the Assam Education Department Selection Rules, 1981, the selection board is required to select candidates for the post of Lecturers and Principals numbering at least three times of the existing vacant posts, but the same is to be considered and applied in terms of the provisions of the Assam Fiscal Responsibility and Budget Management Act, 2005. No doubt the Assam Education Department Selection Rules, 1981, on the basis of which selection was made contains that the selection board shall prepare lists of selected candidates for Lecturers and Principals numbering at least three times of the existing vacancies and shall forward the lists so prepared to the Government, but by the enactment of the Assam Fiscal Responsibility and Budget Management Act, 2005, it is made statutorily compulsory, as per provisions of section 7(1)(g), that notwithstanding any other provision contained in any Act or Rules, the select list prepared for the fresh appointments to vacant sanctioned posts shall contain names equal to the number of vacant posts notified at the time of calling for applications for filling up the posts. The aforesaid Act was enacted to provide for the responsibility of the State Government to ensure fiscal stability, sustainability, improve efficiency and transparency in management of the public finances of the State, enhance the availability of the resources by achieving sufficient revenue surplus, reduce fiscal deficit and to remove the impediments to effective conduct of fiscal policy and prudent debt management for improving the social and physical infrastructure and human development in the State. Section 4 of the Act lays down the fiscal management principles, section 5 provides measures for fiscal transparency, section 6 provides

the measures to enforce compliance and section 7 provides measures to ensure fiscal discipline. Section 7(1)(g) as indicated above begin with a non-obstante clause. In view of the aforesaid enactment, the provisions of Rule 10 of the Assam Education Department Selection Rules, 1981, as framed by the Government in exercise of its executive power and not being any statutory Rule under any enactment would not be available to assail for not selecting candidates three times more than the vacancies. The aforesaid enactment was made in the year, 2005, for the purpose of fiscal discipline in the State.

9. In that view of the matter, the selection of candidates to 51 vacancies to be appointed as Principals to different colleges of the State of Assam as indicated above cannot be said to be illegal or improper. The said select list is in conformity with the provisions of the Assam Fiscal Responsibility and Budget Management Act, 2005.

10. Now let us consider as to the justification of not publication of the select list after it is made final by the authority, which is the crux of the dispute raised in the present litigation. Mr Choudhury referring to the instructions received from the Principal Secretary to the Government of Assam, Higher Education Department dated 21.6.2009 submits that the selection board has already made necessary selection complying with the provisions of the Acts and Rules selecting equal number of candidates for equal number of notified vacancies. No Rule laying down the procedure to be adopted in making appointment have been framed as yet. But the Department has, in the meantime, framed a draft Rule under the provisions of the Assam College Employees (Provincialization) Act, 2005, the same is yet in the draft stage. It is submitted that after publication of the select list, the Government would proceed to appoint the selected candidates against the colleges on the basis of the preference given by them and position in the merit list and thereafter send such names to the colleges requiring the Governing Body to issue the appointment letters. Accordingly, all the selected candidates would be required to indicate their preferences for appointment in the colleges of their choice. The person holding first position in the select list would be taken up first and would be slotted against his first preference. Thereafter the colleges against which he has been slotted would be taken out from the list of colleges and the subsequent candidates would be considered in the similar manner on the basis of their preference and position in the merit list. In the absence of any Rule, the said draft Rules would hold the position of an executive instruction and in the absence of any Rule such instruction would hold the field.

11. Mr Choudhury submits that the aforesaid action as regards appointment of the Lecturers and other employees by the Governing Body being proposed to be made in terms of the earlier Rules, it is proposed that after publication of the select list, options would required to be obtained from the selected candidates indicating their preference for appointment in any particular college and any person not giving such preference to a certain college is apprehended not to be considered subsequently. This apprehension of the authority is not tenable in view of the fact that the number of existing vacancies and the number of selected candidates are equal. Each one of the selected candidates would be entitled to be appointed as Principal in any of the colleges, of course, that may not be the college of his choice depending on his position in merit list. In that event, some selected candidates forego their appointments that would not make redundant their selection.

12. In view of the aforesaid submission, at this stage in absence of any statutory rules and on the face of existing draft rules, this Court feels it necessary to issue appropriate direction for publication of select list of the candidates and for appointment of Principals in different colleges in Assam. Accordingly, the concerned respondents are directed to publish the aforesaid select list of the candidate for appointment to the post of Principals, which is ready for publication within a period of two weeks from the date of receipt of a certified c

copy of this order. In the said select list it shall also be indicated that the selected candidates would furnish their preference specifically in writing within a specified time for being appointed as Principal in any college preference wise and such preference obviously would be entitled to be provided for 51 vacancies. After getting preference from the selected candidates, the Director of Higher Education shall scrutinize the preference in order of position of the candidates in the merit list and accordingly intimate all such colleges for taking necessary steps for appointment. The Director of Higher Education in making such exercise shall strictly follow the position of the candidates in the merit list / select list and there shall be no departure from this principle. In the event any candidate offering any option do not entitle him to be appointed in any college there would be still open for him for further option for the remaining vacancies in terms of his position in the merit list. The entire exercise shall be completed within a period not later than three months from the date of receipt of a certified copy of this order.

13. As discussed above, the authority has already been directed to take necessary steps for filling up the vacant post of Principals in different colleges as per merit select list of the State and hence that would not create any difficulty for continuing with the present system as it existed now till such appointment.

14. So far as the claim of the present petitioner, no rule or regulation disclose that the post of Vice Principal is a cadred post. The post of the Vice Principal is allowed in certain college specifically on fulfillment of certain norms and such status is offered normally to senior most Lecturer and Head of the Department of a particular subject. In the instant case, the present petitioner is neither a Head of Department of any particular subject of the college nor the senior most Lecturer. On earlier occasion, the respondent No 5 who did not accept the offer of the Vice Principal, accepted the offer of in-charge Principal. There is no provision under the Rules or in any law that the Vice Principal is to be allowed to hold the post of in-charge Principal although such Vice Principal is not qualified to be appointed or offered the status of Vice Principal. On the other hand, the respondent No 5 is the Head of the Department of Economics and is the senior most Lecturer of the College. In that view of the matter, the petitioner is not entitled to canvass any superior claim over the respondent No 5 to be appointed as in-charge Principal. Since the respondent No 5 is already holding the post of in-charge Principalship in all fairness and balancing the right, vis- -vis, equity, it is considered proper and justified that such situation would continue for further period of three months, ie, till the final appointment of regular Principal, in view of the directions contained hereinabove. Accordingly, the position of in-charge Principal held by the respondent No 5 as on date shall continue for another period of three months.

15. With the above observations and directions, this writ petition stands finally disposed of. The original instruction so received from the Principal Secretary, Education Department, Assam, and produced by the learned standing counsel, is kept as part of this records.

16 No costs.

A copy of this order be furnished to Mr MK Choudhury, learned Standing Counsel, for necessary compliance within the stipulated period, as indicated above.