

GAHC010256132014



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

**Case No. : WP(C) 1234/2014**

1:ABDUL MOZID SK  
S/O- LT. KHOYRAT ALI, VIL.- TELIPARA, P.O.- PURANDIARA, P.S.-  
MANKACHAR, DIST.- DHUBRI, ASSAM.

VERSUS

1:THE STATE OF ASSAM AND 14 ORS  
REP. BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM,  
EDUCATION ELEMENTARY DEPTT., DISPUR, GUWAHATI.

2:THE DIRECTOR  
ELEMANTARY EDUCATION  
ASSAM  
KAHILIPARA  
GHY- 19.

3:THE DIST. ELEMENTARY EDUCATION OFFICER  
DHUBRI  
P.O.  
P.S. and DIST.- DHUBRI  
ASSAM.

4:THE BLOCK ELEMENTARY EDUCATION OFFICER  
MANKACHAR  
P.O.- FEKAMARI  
DIST.- DHUBRI  
ASSAM.

5:AZGOR ALI  
I/C HEADMASTER  
TELIPARA M.E. MADRASSA  
S/O- SAHEB ALI  
VILL.- TELIPARA M.E. MADRASSA  
S/O- SAHEB ALI

VILL.- TELIPARA  
P.O.- PURANDIARA  
P.S.- MANKACHAR  
DIST.- DHUBRI  
ASSAM.

6:THE SCHOOL MANAGING COMMITTEE  
TELIPARA M.E. MADRASSA  
REP. BY ITS PRESIDENT MD. FARAZ ALI TELIPARA M.E. MADRASSA  
S/O- LT. TUSHER UDDIN  
VILL.- TELIPARA  
P.O.- PURANDIARA  
P.S.- MANKACHAR  
DIST.- DHUBRI  
ASSAM  
PIN- 783135.

7:NIZAM UDDIN  
MEMBER TELIPARA M.E. MADRASSA  
S/O- LT. JOBAN ULLAH  
VILL.- TELIPARA  
P.O.- PURANDIARA  
P.S.- MANKACHAR  
DIST.- DHUBRI  
ASSAM  
PIN- 783135.

8:MOHAMMED ALI  
MEMBER TELIPARA M.E. MADRASSA  
S/O- GUSHU BEPARI  
VILL. and P.O.- PURANDIARA  
P.S.- MANKACHAR  
DIST.- DHUBRI  
ASSAM  
PIN- 783135.

9:OMILA KHATUN  
MEMBER TELIPARA M.E. MADRASSA  
W/O- SHUZZEL HOQUE  
VILL.- TELIPARA  
P.O.- PURANDIARA  
P.S.- MANKACHAR  
DIST.- DHUBRI  
ASSAM  
PIN- 783135.

10:SHAHAJAMAL AHMED  
MEMBER TELIPARA M.E. MADRASSA

S/O- LT. MOHIR UDDIN AKOND  
VILL.- TELIPARA  
P.O.- PURANDIARA  
P.S.- MANKACHAR  
DIST.- DHUBRI  
ASSAM  
PIN- 783135.

11:ANSER ALI  
MEMBER TELIPARA M.E. MADRASSA  
S/O- SHAHEB ALI  
VILL.- TELIPARA  
P.O.- PURANDIARA  
P.S.- MANKACHAR  
DIST.- DHUBRI  
ASSAM  
PIN- 783135.

12:SHOWKAT ALI  
MEMBER TELIPARA M.E. MADRASSA  
S/O- LT. HAFEZ UDDIN MUNSHI  
VILL. and P.O.- PURANDIARA  
P.S.- MANKACHAR  
DIST.- DHUBRI  
ASSAM  
PIN- 783135.

13:IMAN UDDIN  
MEMBER TELIPARA M.E. MADRASSA  
S/O- LT. TEMBARU SK  
VILL.- TELIPARA  
P.O.- PURANDIARA  
P.S.- MANKACHAR  
DIST.- DHUBRI  
ASSAM  
PIN- 783135.

14:NUREL HOQUE  
MEMBER TELIPARA M.E. MADRASSA  
S/O- LT. LATIF MONDAL  
VILL. and P.O.- PURANDIARA  
P.S.- MANKACHAR  
DIST.- DHUBRI  
ASSAM  
PIN- 783135.

15:LOVELY BEGUM  
MEMBER TELIPARA M.E. MADRASSA

W/O- SOFIAR ROHMAN  
VILL.- TELIPARA  
P.O.- PURANDIARA  
P.S.- MANKACHAR  
DIST.- DHUBRI  
ASSAM  
PIN- 783135

**Advocate for the Petitioner** : MR.S H ZAMAN

**Advocate for the Respondent** : MRG DEKAR-6 and 8 to 14

**BEFORE**

**HON'BLE MR. JUSTICE MANASH RANJAN PATHAK**

**ORDER**

**31-07-2018**

Heard Mr. AR Bhuyan, learned counsel for the petitioner and Mr. C Bhattacharya, learned Standing Counsel, Education for respondent Nos.1 and 4. Also heard Mr. HRA Choudhury, learned senior counsel assisted by Mr. S Islam, learned counsel for the respondent No.5 and Mr. PKR Choudhury, learned counsel for the respondent Nos. 6 and 8 to 14.

2. The petitioner herein contends that pursuant to the resolution No. 4/1 dated 02.01.1996 of Telipara ME Madrassa, Purandiar, district-Dhubri, the Secretary of the said Madrassa vide order No.2/Apptt/TPMEM/96 dated 08.01.1996 appointed him as an Assistant teacher in said ME Madrassa, a venture educational institution and accordingly, he joined his service on 09.01.1996 in the said venture Madrassa. He also stated that the Managing Committee of the said Madrassa by its resolution No.34/1 dated 09.01.2005 resolved to upgrade him as Headmaster of the said Madrassa and accordingly, the Secretary by order No. 10/Apptt/TPMEM/05 dated 10.1.2005 upgraded him as Headmaster of the said Madrassa w.e.f. his date of joining in said duty pursuant to which, the petitioner on 10.01.2005 joined as Headmaster of said Madrassa and his said appointment and joining as the Headmaster of the said Telipara ME Madrassa w.e.f. 09.01.1996, was approved by the District Elementary

Education Officer (DEEO), Dhubri on 02.04.2008. Later, by resolution No.2 dated 12.10.2010, the Managing Committee of said venture Madrassa resolved to suspend the petitioner with immediate effect for his alleged involvement in anti-school activities.

3. In the said meeting dated 12.10.2010, the School Managing Committee (SMC) of the Madrassa considering the fact that Nur Islam, the President of the Madrassa vide his letter dated 04.08.2011 had resigned from his post due to his illness and personal inconvenience as such, the said Committee by its resolution No. 4 selected Mr. Faraj Ali Sk. as the permanent President of the said Madrassa and by resolution No. 5 of the said meeting allowed one Ajgar Ali, respondent No. 5 herein to serve as the in-charge Headmaster of the said Madrassa and to forward the resolution of the said meeting for the departmental approval. The said resolution dated 12.10.2010 was approved by the DEEO, Dhubri on 16.3.2011.

4. As the petitioner, suspended Headmaster of said Madrassa did not hand over the charge to the in-charge Headmaster of said Madrassa, respondent No. 5, the SMC of said Madrassa issued show cause notices to the petitioner on 09.07.2011, 15.07.2011 and 22.07.2011 through registered post with A/D and the SMC of the said Madrassa in its meeting held on 05.08.2011 came to a finding that since the petitioner refused to receive those show cause notices, as such, notices were assumed to be served upon him and therefore, the said Committee of the Madrassa by its resolution dated 05.08.2011 unanimously resolved to dismiss the petitioner from his service with immediate effect.

5. The petitioner stated that no such suspension order or termination order were served upon him and he preferred a suit being T.S. 162/2011 before the learned Munsiff, Dhubri praying for a declaration of a decree that he is now working as the Headmaster of said Telipara ME Madrassa and also to declare the resolution adopted by the SMC with regard to him as null and void. It is also stated by the petitioner that during pendency of said suit, the Managing Committee of the Madrassa was newly constituted and the said Committee resolved to reinstate the petitioner as Headmaster of said Madrassa. But, said resolution of the SMC of the Madrassa was not approved by the concerned Block Elementary Education Officer (BEEO). As the respondents did not recommend the petitioner for provincialisation of his service inspite of his request, having no other alternative, the petitioner preferred a writ

petition being WP(C) No. 4952/2012 praying for a direction to the DEEO, Dhubri to issue prescribed application form for provincialisation of his service.

6. Said WP(C) No. 4952/2012 preferred by the petitioner was disposed of on 12.10.2012 directing the DEEO, Dhubri to provide prescribed form for provincialisation of service of the petitioner within 3 days from the date of receipt of certified copy of the said order to be submitted by the petitioner.

7. The in-charge Headmaster of said Madrassa, respondent No.5 herein being aggrieved with the said order dated 12.10.2012 passed in WP(C) No. 4952/2012 preferred a review petition being Review Pet. No. 146/2012 and the Court by order dated 11.06.2013 allowed the said Review Petition, recalled the order dated 12.10.2012 passed in WP(C) No. 4952/2012, holding that the writ petition preferred by the petitioner needs a thorough effective hearing.

8. The petitioner contends that without selecting a regular President of the said Madrassa, its Managing committee with their vested interest suspended him from the post of Headmaster of said Madrassa and also purportedly terminated him from service, without issuing/serving the termination order upon him, restraining him from discharging his duties. Hence, this writ petition by the petitioner challenging the impugned resolutions dated 12.10.2010 and 05.08.2011 adopted by the SMC of said Telipara ME Madrassa pertaining to suspension as well as termination of the petitioner from service and praying for setting aside and quash the Managing Committee of the said Madrassa headed by Md. Faraj Ali as its President.

9. The respondent No.5 has filed his affidavit in this petition stating that the petitioner contested the Panchayat Election held in April 2002 and on being elected as Anchalik Panchayat Member (APM) from Purandiara Gaon Panchayat under Fekamari Development Block continued as APM till March, 2007 and also received monthly remuneration during his said tenure from April 2002 to March 2007 and that while serving as an APM, the then SMC of said Madrassa illegally upgraded the petitioner to the post of Headmaster by resolution adopted on 09.01.2005. It is also stated by the respondent No. 5 that since 29.04.2010 the petitioner unauthorisedly remained absent in the said Madrassa and illegally took some

decision, acting against the interest of the said Madrassa that too without informing its SMC and therefore, by its resolution dated 12.10.2010, the SMC of said Madrassa placed the petitioner under suspension and after giving reasonable opportunity to him, by subsequent resolution dated 05.08.2011 the SMC dismissed the petitioner from service and that since 05.08.2011, the petitioner is no longer in service in the said Madrassa.

10. It is also stated by the respondent No. 5 that the SMC of said Madrassa issued show cause notice to the petitioner on 19.08.2010, 28.08.2010 and 07.09.2010 and the petitioner submitted his reply to those show cause notices. But, as his replies were not found to be satisfactory, the SMC of said Madrassa in its meeting dated 12.10.2010, after a threadbare discussion, unanimously resolved to suspend the petitioner from the post of Headmaster of said Madrassa with immediate effect and allowed the said deponent to work as in-charge Headmaster of said Madrassa.

11. The respondent No. 5 also stated that as the petitioner did not hand over the charge of Headmastership, the SMC by registered post with A/D issued show cause notices to the petitioner on 09.07.2011, 15.07.2011 and 22.07.2011 respectively asking him to show cause as to why he should not be dismissed from his service but, the petitioner refused to receive those notices and the unserved notices were received by the SMC on 25.07.2011, 26.07.2011 and 01.08.2011 respectively. Thereafter, the SMC in its meeting held on 5.8.2011 unanimously adopted the resolution to dismiss the petitioner from service with immediate effect, which was intimated to him on 06.08.2011 by the office peon but, the petitioner refused to accept the same. He also stated that said resolution of the SMC was forwarded to the BEEO, Mankachar on 06.03.2012 for necessary approval and on 12.03.2012, the BEEO, Mankachar forwarded the same to the DEEO, Dhubri. However, the DEEO, Dhubri by its letter dated 02.08.2012 informed the BEEO, Mankachar that the SMC of a venture educational institution is the competent authority to take any internal decision regarding appointment/upgradation/suspension termination etc.

12. The respondent No.5 also denied the fact of holding any meeting on 14.03.2012 pertaining to reinstatement of the petitioner and further stated that after expiry of the term of the earlier SMC, a general meeting was convened by him on 17.03.2011 for constitution of a new SMC of said Telipara ME Madrassa, which was accordingly constituted and is headed by

Md. Faraj Ali, respondent No. 6 as its President. For such reasons and for suppression of the facts before the Court by the petitioner, the respondent No.5 submits that the present writ petition should be dismissed.

13. The petitioner filed his reply to the affidavit of respondent No. 5 denying the allegations lodged against him by the said respondent and stated that he contested the Panchayat election for Purandiara Anachalik Panchayat in the year 2002 as the SMC of said Madrassa granted him permission for the same by adopting necessary resolution on 20.10.2001 with the observation that he can continue to be an Assistant Teacher of said Madrassa irrespective of his win or defeat in the said election since the said Madrassa is a purely venture educational institution. He also stated that during his continuation as an APM, he also discharged his duties as teacher in the said Madrassa and its SMC on 09.01.2005 upgraded him to the post of Headmaster. It is also denied by the petitioner that he remained absent unauthorisedly since 29.04.2010 for which he was suspended on 12.10.2010 and terminated him from service on 05.08.2011. It is also submitted by the petitioner that the SMC of the said Madrassa did not serve the resolution terminating him from service till date and contended that with regard to the employees serving in venture/non-government educational institution, like the said Madrassa, its SMCs, the employers are required to follow the provisions of Section 15 of the Assam Non-Government Educational Institution (Regulation and Management) Act, 2006 and Rules 17 to 22 of the Assam Non-Government Educational Institution (Regulation and Management) Rules, 2007 while making appointment and taking disciplinary action against its employees and the SMC of the said Madrassa by the impugned resolutions suspended and terminated the petitioner from his service violating the provisions of said 2006 Act and 2007 Rules. The petitioner also submitted that though the respondent No. 5 in his affidavit stated that notice was issued to the petitioner on 09.07.2011, 15.07.2011 and 22.07.2011 respectively which he refused to accept but, the said respondent did not annex any such unserved notice or A/D card in support of his contention. The petitioner also placed before the Court the judgment of the Division Bench of this Court dated 08.09.2014 passed in WA No. 237/2014 wherein the Hon'ble Division Bench set aside the termination of a teacher serving in such venture educational institution as the same was not in conformity with the provisions of Section 15 of said 2006 Act and the provisions of



2007 Rules.

14. The respondent No. 6 and respondent Nos. 8 to 14 have also filed affidavit in the matter stating the same as that of the respondent No. 5. However, in their said affidavit, those respondents have annexed the photocopy of the envelopes and the notices dated 09.07.2011, 15.07.2011 and 22.07.2011 with the report of process server dated 25.07.2011, 26.07.2011 and 01.08.2011 respectively, to show that the petitioner had refused to accept the notices sent to him by the SMC of said Madrassa through registered post with A/D. The said respondents have also annexed the copies of the daily attendance register of said Madrassa to show that the petitioner remained unauthorisedly absent since 29.04.2010.

15. The respondents also submitted that pursuant to the decision of a Full Bench of this Court in the case of *Abdul Gafur Mandal Vs. State of Assam and others*, reported in 2015 (2) GLT 337 (FB), the State Government in the Education Department have constituted Education Tribunal in each of the districts of Assam to adjudicate the disputes relating to disciplinary action and claim for provincialisation of service of teaching and non-teaching staff of non-government/ venture educational institutions within their respective jurisdiction and since said Telipara ME Madrassa is a venture educational institution, as held by the Full Bench of this Court in the case of *Abdul Gafur Mandal* (supra), this writ petition being not maintainable should be dismissed and the petitioner may approach the concerned Educational Tribunal for redressal of his grievance if any.

16. Negating the said submission of the respondents, petitioner submits that the same very Full Bench of this Court in the case of *Abdul Gafur Mandal* (supra), also held that – it is difficult, nay, impossible to catalogue situation where writ remedy is available and indicated that such remedy will be available where there is a violation of statutory provision or where decision of non-government educational institution affects public interest.

17. It is seen that both the petitioner and the respondents on the other side have raised disputed questions of fact in the writ petition, affidavits and rejoinder like appointing the petitioner as Headmaster in the concerned ME Madrassa involved in the case, while he was holding the post of Anchalik Panchayat Member of Purandiara Gaon Panchayat under Fekamari Development Block; about petitioner's unauthorized absence in service in said

Madrassa since 29.04.2010 by placing photocopies of the attendance register of the teaching staff of the Madrassa involved in the case, regarding service of show cause notice on the petitioner sent by registered post with A/D that he refused to accept and all these can be proved only by way of recording evidence. Moreover, the petitioner himself submitted that he has preferred civil suit for a decree that he is now working as the Headmaster of said Telipara ME Madrassa and to declare the resolutions adopted by the SMC of said Madrassa with regard to him as null and void, where those resolutions are also challenged in this writ petition.

18. A writ Court in such circumstances cannot record evidence and determine any disputed questions of facts. In that view of the matter, this writ petition being not maintainable stands rejected with liberty to the petitioner to approach the appropriate Educational Tribunal for redressal of his grievances, if so advised.

19. In the event of approaching the concerned Educational Tribunal by the petitioner, needless to say that the Tribunal, in accordance with law, after hearing the petitioner as well as the authorities of said Telipara ME Madrassa and on perusal of the records in original, if necessary, by recording evidence to be adduced by the parties, shall consider the case of the petitioner.

**JUDGE**

**Comparing Assistant**