

GAHC040006262023



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

Case No. : WP(C) 234/2023

1:Tasi Tamin and Anr.
S/o Shri Tapon Tamin,
Village Sika Bamin,
PO/PS Sille Oyan,
District East Siang, Arunachal Pradesh.
Contact No. 8119027169

2: Atir Gao
D/o Late Pagro Gao

Village Sika Bamin

PO/PS Sille Oyan

District East Siang
Arunachal Pradesh.
Contact No. 961252939

VERSUS

1:THE STATE OF AP and 3 Ors.
Represented by the Secretary/Commissioner Education, Govt. of Arunachal Pradesh,
Itanagar.

2:The Under Secretary (Education II)
Govt. of Arunachal Pradesh
Itanagar.

3:The Director of Elementary Education
Govt. of Arunachal Pradesh
Itanagar.

4: The Deputy Director of School Education
East Siang District
Pasighat
Govt. of Arunachal Pradesh

Advocate for the Petitioner : Tabit Tapak

Advocate for the Respondent : Tagum Jamoh

BEFORE
HONBLE MR. JUSTICE NANI TAGIA

ORDER

Date : 22-05-2023

Heard Mr. T. Tapak, learned counsel for the petitioners. Also heard Mr. T. Jamoh, learned Standing counsel for the Education Department representing the State respondents.

The order put to challenge is dated 20.08.2021, issued by the Under Secretary (Education-II), Government of Arunachal Pradesh, Department of Education, Civil Secretariat, vide File No. SEDN-21017(12)/1/2021-EDN-Section-ED, whereby, the appointment of the writ petitioners as Multi-Tasking Staff (MTS) and Peon, respectively, have been cancelled on the ground that they were appointed without following the proper procedure.

When this writ petition was taken up for consideration on 18.05.2023, Mr. Jamoh, learned standing counsel for the Education Department had pointed out that these writ petitioners had earlier approached this Court by filing a writ petition being no. WP(C) 81/2022, wherein, the order challenged herein was also the subject matter of challenge in WP(C) 81/2022, which writ

petition was withdrawn by the petitioners on 03.03.2022. On being pointed out by Mr. Jamoh, learned standing counsel for the Education Department as above, WP(C) 81/2022(disposed) was requisitioned by this Court by an order dated 18.05.2023, pursuant to which, the records of the WP(C) 81/2022(disposed) has been placed before this Court.

On perusal of the records of the WP(C) 81/2022(disposed), it transpires that the present two writ petitioners along with 4(four) other writ petitioners had challenged the same order, which has been impugned in the present writ petition, but, the WP(C) 81/2022 was closed on withdrawal by the petitioners, vide an order of this Court dated 03.03.2022.

Subsequent to the order passed on 18.05.2023, the petitioners herein have also filed an affidavit on 20.05.2023, whereby, it has not been denied by the petitioners that the petitioners had earlier filed the WP(C) 81/2022, challenging the same order, which has been impugned herein. It has been further stated in the affidavit that the counsel representing the petitioners in the earlier writ petition did not inform the present petitioners that the earlier writ petition was withdrawn without leave of this Court to file another writ petition. Accordingly, the petitioners herein was under the impression that the earlier writ petition was withdrawn by taking leave of this Court to file another writ petition and that is how the present learned counsel representing the petitioners was not informed about the filing of earlier writ petition and the subsequent withdrawal thereof, without leave being granted by this Court to file an another writ petition. Thus, the petitioners, by means of an affidavit filed contend that there was no deliberate attempt and intentional act on the part of the petitioner to conceal the aforesaid facts

while filing the instant writ petition.

Since, the order challenged in the present writ petition is found to have been put to challenge by the petitioners herein in the earlier WP(C) 81/2022 along with 4(four) other petitioners, which was withdrawn on 03.03.2022 without leave being granted by this Court to file a fresh writ petition, challenging the order dated 20.08.2021, issued by the Under Secretary (Education-II), Government of Arunachal Pradesh, Department of Education, Civil Secretariat, vide File No. SEDN-21017(12)/1/2021-EDN-Section-ED, in view of the law laid down by the Hon'ble Supreme Court in *AIR 1987 SC 88* rendered in *Sarguja Transport Service Vs. State Transport Appellate Tribunal, Gwalior and others*, that fresh writ petition under Article 226 of the Constitution of India in respect of the same subject matter is not maintainable if the earlier writ petition had been withdrawn without permission to file a fresh writ petition, this writ petition is dismissed as not maintainable.

JUDGE

Comparing Assistant