



IN THE GAUHATI HIGH COURT

(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

W.A No. 57/2019

1. Md. Mudsidul Islam

S/O Late Hasan Ali

Village- Kandhulimari,

P.O- Kandhulimari, Dist. Nagaon, Assam

2. Md. Yeahya Backtiar

S/O Abdul Kaleque

Village-Jarmari

P.S. Balisatra, Dist, Nagaon

.....Appellants

-Versus-

1. The State of Assam

Represented by the Commissioner & Secretary
to the Government of Assam, Education
(Elementary) Department, Dispur, Guwahati-6

**2. The Director of Elementary Education,
Assam, Kahilipara, Guwahati-19**

**3. The Commissioner & Secretary to the
Government of Assam, Finance Department,
Dispur, Guwahati-6**

**4. The District Elementary Education Officer,
Nagaon, Assam**

.....Respondents

W.A No. 63/2019

- 1. Md. Kubbed Ali**
S/O Md. Somor Ali
Village- Simaluati, P.S.-Juria,
P.O.-Kandhulimari, Dist-Nagaon,
Assam, PIN-782124
- 2. Mrs. Husnawara Begum,**
Daughter of Md. Abdur Rahman,
Village-Shalmarabari,
P.O.-Pachmari, District-Nagaon,
Assam, PIN-782140
- 3. Md. Rustom Ali,**
Son of Md. Adam Ali Nunsu,
Village-Choramari,
P.O.-Balisatra, Dist- Nagaon,
Assam, PIN-782122

..... Appellants

-Versus-

1 The State of Assam

Represented by the Commissioner & Secretary to
the Government of Assam, Education
(Elementary) Department, Dispur, Guwahati-6

**2. The Director of Elementary Education,
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Government of Assam, Finance Department,
Dispur, Guwahati-6**

**4. The District Elementary Education Officer,
Nagaon, Assam**

.....Respondents

**- B E F O R E -
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SOUMITRA SAIKIA**

For the Appellant(s) :Ms. D. Borgohain, Advocate
Ms. K. Baruah, Advocate

For the Respondents :Mr. B. Kaushik, Standing Counsel
Elementary Education.

Date of Hearing & Judgment : **21.03.2023**

JUDGMENT & ORDER

(SOUMITRA SAIKIA, J)

The prayer for release of arrear salaries of the two appellants for the services rendered from the date of their regularization namely 24.04.1998 having been rejected by the learned Single Judge vide common Judgment and Order dated 01.09.2016 dismissing the writ petition being W.P.(C) No. 2698/2010, the appellants are before this Court by way of this Writ Appeal.

2. The appellants were appointed as Assistant Teachers in Primary Schools in the district of Nagaon having been appointed by the Managing Committee of their respective Schools. Their services were subsequently regularized with effect from 24.04.1998 by the Director of Elementary Education, Assam in

pursuance to the Government letter No. W.A. 474/94/254 dated 09.12.1998 by considering them as “drop teachers” against the sanctioned posts under the Scheme of Operation Black Board (OBB) 4040. Subsequently, 52 numbers of posts belonging to the OBB 4040 group of teachers, including the posts on which the appellants were regularized, were cancelled by orders of the Commissioner and Secretary to the Government of Assam, Education Department vide letter No. A(1)E.562/99/60-A dated 27.09.1999. All these 52 numbers of teachers including the appellants in several groups approached this Court challenging the order dated 27.09.1999 cancelling their appointments. The writ petition preferred by the present appellants was numbered as W.P(C) No. 6246/1999 challenging the cancellation order. This Court passed interim orders in the writ petition by staying the operation of the cancellation order dated 27.09.1999 and directing the respondents not to give effect to the cancellation orders. Subsequently, following such interim order passed by this Court, the cancellation orders passed by the Department dated 27.09.1999 were all withdrawn. Notwithstanding the withdrawal of the cancellation orders, the petitioners however continued to work in their respective schools without any salary. The writ petition being W.P(C) No. 6246/1999 came to be taken up for final disposal and by Judgment and Order dated 21.07.2004, the writ petition was dismissed holding that since the initial appointments of the petitioners were illegal, no regularization of such illegal appointments could

have been made. The withdrawal of the cancellation order dated 27.09.1999 cancelling the appointments of the writ petitioners along with other similarly situated teachers, was not brought to the notice of this Hon'ble Court at the time of hearing and disposal of W.P(C) No. 6246/1999. The said Judgment was thereafter assailed in an intra-Court appeal by way of W.A. No. 292/2005. By interim order dated 24.08.2005 passed in W.A. No. 292/2005, it was directed that the petitioners should be allowed to continue on their posts until further orders. Subsequently, W.A. No. 292/2005 was also disposed of as infructuous vide Order dated 12.08.2010 as the Department had withdrawn the orders cancelling the regularization of the writ petitioners/appellants.

3. Thereafter, the appellants as writ petitioners preferred a writ petition being W.P(C) No. 2698/2010 praying for a direction for release of their salaries for the services rendered by them. The learned Single Judge vide impugned order dated 01.09.2016 passed in W.P(C) No. 2698/2010, rejected the claims of the writ petitioners and the writ petition was dismissed. Being aggrieved, the present writ appeal has been preferred assailing the impugned Judgment and Order dated 01.09.2016 and praying for setting aside of the impugned Judgment and Order. The writ appeal was preferred on the following grounds:

"(a) For that the learned Single Judge erred in facts as well as law in while dismissing the writ petition.

(b) For that the learned Single Judge failed to appreciate that the appellants have been continuously rendering their services since the date of their appointment and this fact has not been rebutted by the party respondents.

(c) For that the learned Single Judge failed to appreciate that though it has been stated in the affidavit-in-opposition filed by the respondent stating that the appellants have been appointed by Managing Committee of provincialised school but in fact the order dated 05.10.2013, by which the services of the present appellants have been regularized shows that the teachers were originally appointed against the allotted post under OBB (4040) Scheme, created vide Government letter No. PMA. 337/95/ptI/152 dated 24.04.1998.

(d) For that the learned Single Judge failed to appreciate that the respondents have stated in the additional affidavit filed on 20.08.2015 that the Government has regularized the services of some of the teachers whose names are reflected in the group of 52 teachers provided they are servicing in their schools as per Rules.

(e) For that the learned Single Judge erred in arriving at the conclusion that the arrear salary was released to 36 Assistant teachers belonging to the group of 52 teachers as the Departmental authority and the standing counsel Education Department failed to bring on record the Judgment and Order dated 21.07.2004 passed in W.P.(C) No. 6249/1999 by which the earlier writ petition preferred by the present appellants along with 20 others was dismissed. In fact a perusal of the of record pertaining to W.P.(C) No. 4932/2009 (Faizul Haque & 13 ors –vs- The State of Assam & ors) will reveal that the judgment and order dated 21.07.2004 passed in W.P.(C) No. 6249/99 was enclosed along with the writ petition and was also placed before the Hon'ble Court.

(f) For that the Learned Single Judge failed to consider that the other petitioners who were along with the present appellants in WP(C) No.6249/1999 had approached the Hon'ble Court praying for a direction to the authorities to release their salary by filing a writ petition which was numbered and registered as WP(C) No.4932/2009 (Md. Falzul Haque & 13 ors –Vs-The State of Assam & Ors.). During the pendency of the writ

petition, the petitioners therein was regularized with effect from 24.04.1998 by the Director of Elementary Education, Assam pursuant to the Government's order dated 19.12.1998 as dropped teachers against sanctioned post under the Scheme of OBB (4040). The Hon'ble Court by order dated 18.11.2011 disposed off the writ petition directing the respondents to release the arrear salary to the petitioners within a period of two months.

(g) For that the Learned Single Judge failed to appreciate the fact that by judgment and order dated 31.03.2009 passed in WP(C) No.2741/2008 the Hon'ble Court while examining the claim of 20 numbers of teachers out of the said group of 52 teachers was of the view that the order of regularization of the petitioners has a reference to writ appeal No. 474/1997 and the order of regularization made in the year 1998 had not been repudiated by the order of regularization issued by the DEEO, Nagaon, as such the said order of regularization cannot be said to be Invalid and they are entitled to salary. The present appellant had claim that they ought to be given similar treatment as in the case of the 20 petitioners in WP(C) No.2741/2008. But the Learned Single Judge failed to make any observation in this regard.

(h) For that the Learned Single Judge failed to appreciate that the Judgment and Order dated 20.07.2004 passed in WP(C) No. 6249/99 was passed on the basis of incorrect facts. The petitioners therein which included the present appellant had challenged the cancellation of the order of regularization. Pursuant to the interim order passed by the Hon'ble Court staying the operation of the impugned order under challenges, the Elementary Education Department withdrew of the cancellation order and allowed the petitioners to continue in their services. The fact that the impugned order were withdrawn by the Department was not brought to the notice of the Hon'ble Court resulting in dismissal of the writ petition. Thereafter, when some of the teachers belonging to the group of 52 moved the Hon'ble Court for release of their salary for the service rendered by them, the Hon'ble Court directed release of their salary considering the fact that the teachers have been allowed to continue in their service after withdrawing the order cancelling the regularization. The Learned Single

Judge failed to appreciate that in view of the subsequent orders passed by the Hon'ble court directing release of salary to teachers who are similarly situated as the present appellants, the Judgment and Order dated 21.07.2004 passed in WP(C) No. 6249/1999 stands diluted.

(i) For that the Learned Single Judge erred in observing that there is no violation of the equal protection clause as in Article 14 of the Constitution of India in not giving the same treatment to the present appellants as has been given to the petitioners in WP(C) No.4932/2009 who were their co-petitioners in WP(C) No.6249/1999 which was dismissed.

(j) For that the Learned Single Judge erred in fact in holding that more than Rs. 4.5 corers had to be released as arrear salary to a group of 36 teachers notwithstanding the clear finding of this court in the Judgment and Order dated 21.07.2004 passed in WP(C) No. 6249/99 that their initial appointments and regularization were illegal. In fact order dated 31.03.2009 passed in WP(C) No.2741/2008, order dated 18.11.2011 passed in WP(C) No.4932/2009 and 02.08.2011 passed in WP(C) No. 5515/2010 has been placed on record to show that the 36 persons were released arrear salary pursuant to such orders passed by the Hon'ble Court.

(k) For that the Learned Single Judge erred in holding that the order dated 21.07.2004 passed in WP(C) No.6249/99 was not placed in record. However, it was urged on behalf of the appellants that the said judgment and Order dated 21.04.2004 was enclosed along with the WP(C) No. 4932/09 in which order dated 18.11.2011 was passed directing release of arrear salary to the petitioners therein.

(l) For that the present appellants are entitled to arrear salaries with effect from the date of their regularization in the year 1998 in view of the fact that in case of another teacher in the group of 52, the Hon'ble Court by judgment and order dated 21.01.2016 passed in W.P.(C) No. 3893/ 2014 (Jayashree Dhar –vs- The State of Assam & ors) has directed release of arrear as well as current salary to the petitioner. The state respondent has not challenged the said judgment and order dated 21.01.2016.

(m) For that in view of the matters the impugned Judgment and Order dated 01.09.2016 is bad in law as well as in facts and thus is liable to be set aside and quashed."

4. The learned counsel for the appellants submits that although the Department contended that the appellants were appointed by the Managing Committees of the Provincialized Schools but in the order dated 05.10.2013 by which the services of the petitioners were regularized, it is reflected that the appellants were originally appointed against the allotted posts under OBB 4040 Scheme created by the Government letter No. PMA.337/95/pt-I/152 dated 24.04.1998. As such, it is evident from their orders of regularization that the petitioners were appointed against posts allotted under the OBB 4040 Scheme and therefore, the finding of the learned Single Judge that their initial appointments were illegal is contrary to the records.

5. The learned counsel for the appellants submits that about 36 numbers of Assistant Teachers belonging to the said group of 52 numbers of Assistant Teachers and who are similarly situated as the appellants have been granted arrear salaries and therefore, denial of the appellants' claim for arrear salaries is arbitrary as the Government had granted the benefits to other similarity situated Assistant Teachers while denying the same to the appellants. It is submitted that the learned Single Judge vide the impugned order dated 01.09.2016 passed in W.P(C) No. 2698/2010 did not appreciate the facts in the

correct perspective and the same is therefore, required to be interfered with and set aside and the respondent Department be directed to grant the arrear salaries to the petitioners/appellants with effect from the date of rendering services in the posts as Assistant Teachers in the respective Schools. It is further submitted that the other similarly situated persons who had preferred writ petitions being W.P(C) No. 6249/1999 along with the present appellants had subsequently again approached this Court by filing W.P.(C) No. 4932/2009, W.P(C) No. 2741/2008, W.P(C) No. 5515/2010 and W.P(C) No. 3893/2014. Those writ petitions were disposed of directing the respondents to release arrear salary to those writ petitioners within a period of two months. It is submitted that the appellants being similarly situated Assistant Teachers, they are also entitled to the benefits of arrear salary in terms of the services rendered. Such benefits required to be extended to the appellants ought to have been considered by the learned Single Judge in view of such similar orders passed by the other Co-ordinate Benches. As such, it is submitted that the impugned order passed by the learned Single Judge needs to be suitably interfered with and directions be issued to the Department to release arrear salary to the appellants as have been done in cases of other Assistant Teachers who are similarly situated as the appellants. It is submitted by the learned counsel for the appellants that in view of subsequent orders passed by the Co-ordinate Benches in similar issues, the Judgment and Order dated 21.07.2004

passed in W.P(C) No. 6249/1999, which was relied upon by the learned Single Judge while rendering the impugned Judgment and Order dated 21.07.2004 stands diluted and therefore, the impugned order passed by the learned Single Judge is erroneous in law and on facts and therefore, the same needs to be suitable interfered with and set aside.

6. It is further submitted by the learned counsel for the appellants that in view of subsequent orders passed by this Court directing release of arrear salaries to other similarly situated persons as the appellants, the rejection of the prayer of the appellants for grant of arrear salary is hit by Article 14 and opposed to the principle of judicial discipline. It is submitted that the impugned order having not considered these aspects, it is erroneous and should therefore be set aside and interfered with and the respondents be directed to release the arrear pay of the appellants for the services rendered as Assistant Teachers in their respective schools.

7. The learned counsel appearing for the Department disputes the submissions made by the learned counsel for the appellant. It is submitted that the findings of this Court in W.P(C) No. 6246/1999 vide Judgment and Order dated 21.07.2004 has attained finality. The writ appeal preferred against the said Judgment being W.A. No. 292/2005 before the Division of this Court was subsequently withdrawn. As such, the findings of this Court rendered vide Judgment and Order dated 21.07.2004 in W.P(C) No. 6246/1999 in so far as

the appellants are concerned prevails and the same has attained finality. Under such circumstances, the learned Single Judge has correctly dismissed the writ petition and therefore there is no occasion to allow the instant appeal preferred by the appellants. The appeal needs to be dismissed as being devoid of any merit.

8. The learned counsels for the parties have been heard. The pleadings available on record are carefully perused. The Judgment of the learned Single Judge has also been carefully perused.

9. It is seen that this Court vide Judgment and Order dated 21.07.2004 passed in W.P.(C) No. 6246/1999 upon consideration of the entire controversy had dismissed the writ petition by holding that since the initial appointment of the petitioners therein being illegal, no regularization of such illegal appointments could have been made. This Court by referring to the law laid down vide Judgment and order dated 29.09.2003 passed in W.P.(C) No. 2560/2001 (Jahangir Alam and Ors Vs. State of Assam and ors.) reported in 2003 (3) GLT 544, held that no infirmity can be attributed to the impugned action of the State Government in directing the Director of Elementary Education to recall and/or cancel the regularization made and further held that in view of the findings of this Court in the earlier Judgment of Jahangir Alam (Supra), no relief can also be granted to the petitioners either on the grounds of equity or legitimate expectations.

10. It is not in dispute that the present appellants were also petitioners in W.P.(C) No. 6246/1999. It is also not in dispute that the intra-Court appeal being writ appeal No. 292/2005 although preferred against the Judgment and Order dated 21.07.2004 passed in W.P.(C) No. 6246/1999, was subsequently disposed of as infructuous vide order dated 12.08.2010. Therefore, the Judgment and Order dated 21.07.2004 passed in W.P.(C) No. 6246/1999 had attained finality after disposal of the appeal.

11. We now refer to the Judgment/Order(s) passed earlier by this Court and which are being relied upon extensively by the learned counsel for the appellants. In W.P(C) No. 2741/2008 ((Md. Saiful Islam & Ors Vs. State of Assam & Ors). A Single Bench of this Court, vide order dated 31.03.2009 had dealt with similar grievances regarding non-payment of salary from the date of the induction of the petitioners therein into service in the year 1998. In the said writ petition, the respondent Department disputed the claims of the petitioners therein on the ground that the names of the petitioners therein did not originally figure in the list of 1012 teachers and that they had not been approved for regularization/ provincialization of the services and they are not entitled to their salary as claimed. The Single Bench after due consideration of the contentions relied upon the order dated 13.11.1998 passed in W.A. No. 474/1997 rejected the objections raised by the Department on the ground that in the regularization orders relating to those petitioners, reference was

made to the order passed in W.A. No. 474/1997. The Single Bench accordingly allowed the writ petition directing the said respondents to take necessary steps to release the salaries of those petitioners without further delay and the entire process was ordered to be completed within a period of six months from today.

12. In W.P(C) No. 5515/2010 (Smti Usha Hazarika & Anr. Vs. State of Assam & Ors), a Single Bench of this Court while dealing with a similar issue vide order dated 28.01.2011 disposed of the case by placing reliance on the order dated 31.03.2009 passed in W.P(C) No. 2741/2008 (Md. Saiful Islam & Ors Vs. State of Assam & Ors). It was urged before the learned Single Judge therein that the petitioners are entitled to similar benefits as granted by this Court vide Order dated 31.03.2009 passed in W.P(C) No. 2741/2008. Accordingly, the learned Single Bench allowed the writ petition directing the respondents to take necessary steps for payment of pay and allowances of the petitioners with service rendered within a period of six months.

13. Similarly in W.P(C) No. 3893/2014, another Single Bench of this Court considered this issue in respect of another set of similarly situated teachers in respect of release of salary from the date of regularization of their services with effect from 24.04.1998. Before the Single Bench, two contradictory reports of the District Elementary Education Officer, Nagaon were placed with

regard to the service of the petitioner therein. While one report said that the petitioner was not in service with effect from 2006, the other report stated that she was in service since 1993. In view of the two reports giving contradictory findings, a further enquiry was conducted by the Deputy Commissioner, Nagaon through the Circle Officer, Doboka which also found that the petitioner therein was serving on the post. Thereafter, the Deputy Commissioner, Nagaon was again directed to look into the matter personally and submit a detailed report. Pursuant to such enquiry, a report came to be furnished from the Office of the Addl. Deputy Commissioner, Nagaon to the effect that the petitioner had been working in the school since her date of joining. The Single Bench found that 36 other teachers whose names were forwarded along with the petitioner therein had since been paid their salaries and such statement made by the petitioner was found to have been not denied by the respondent Department. In the face of such undisputed facts, the writ petition being W.P(C) No. 3893/2014 was allowed directing the respondent Department to make payment of the current salary of the said petitioner from the Month of April, 2016. A further direction was also issued to pay the arrear salary of the petitioner with all increments over the years within a period of four months from the date of the order failing which interest @8% per annum till the date payment to the petitioner.

14. The orders passed by other Single Benches more particularly the order dated 18.11.2011 passed in W.P(C) No 4932/2009 which is referred to by the learned counsel for the appellants issued directions to the Department to do the needful and make available to the petitioners therein, their respective dues/arrears of salary and allowances etc. within three months from the date of receipt of a copy of the order which was a consent order issued on the submissions of the learned Standing Counsel for the Education Department that the Education Department has already initiated steps for payment of arrear dues of the petitioners. In that view of the matter, the directions contained in the order dated 18.11.2011 passed in W.P.(C) No. 4932/2009 are limited in the field of operation to the petitioners in the said writ petition. The present appellants were admittedly not the petitioners in the said writ petition. Further since the directions passed by this Court vide Order dated 18.11.2011 in W.P.(C) No. 4932/2009 was in a consent order, the same cannot be made applicable in the present case, as the State Government cannot be directed to act contrary to the findings of this Court in W.P(C) No. 6246/1999 vide Judgment and Order dated 21.07.2004 which had attained finality. As such, the contentions of the learned counsel for the appellants that similar benefits not being granted to the writ petitioners/appellants in the present case being hit by article 14 cannot be accepted.

15. In W.P(C) No. 2741/2008, there is a reference to order dated 13.11.1998 passed in W.A. No. 474/1998. Since a copy of the order dated 13.11.1998 passed in W.A. NO. 474/1998 is not available in the pleadings, as such a copy of the same was procured from the Registry of this Court. The appellate Court had passed the following order:

"13.11.1998

BEFORE

THE HON'BLE MR JUSTICE AK PATNAIK

THE HON'BLE MR JUSTICE D BISWAS

Heard Mr. PK Goswami, learned counsel for the appellants and Mr. N.H. Sarma, Sr. GA, Assam.

This writ appeal has been filed against the order dated 25.06.97 of the learned Single Judge. By the said order, the learned Single Judge dismissed the writ petition of the appellants-petitioners for provincialisation of the service of the working teachers in different M.E. and ME Madrassa Schools in the State of Assam on various grounds.

This Writ Appeal was heard by us at length on 12.06.98 and an interim order was passed directing that out of 4040 posts of teachers in Upper Primary Schools sanctioned by the Government of India and created by the Government of Assam vide order dated 24.04.98, 1123 posts will not be filled up. The aforesaid interim order was passed with a view to ensure that in case the appellants succeed in this Writ Appeal, 1123 teachers in different ME Schools and ME Madrassas in the State of Assam on whose behalf this Writ Appeal has been filled could be accommodated in the said 1123 posts.

When the case was listed on 10.11.98, the learned counsel for the petitioners Mr. P.K. Goswami and Mr. HN Sarma, GA, Assam, apprised the Court that the Government was taking steps to regularize the services of 1123 ME School and ME Madrassa founder teachers on whose behalf this Writ Appeal has been filed by the appellant association.

In fact, the counsel for the appellants, Mr. Goswami produced before us orders of the Secretary to the Govt. of Assam, Education Department passed on 13.10.98 and the orders of the Minister, Education, Assam passed on 27.10.98 which would indicate the steps are being taken to release 1123 posts for regularization of services of 1123 Assistant Teachers dropped at the time of provincialisation of ME Schools and ME Madrassas during the year 1991-92. Mr. HN Sarma, GA, Assam similarly produced a letter dated 9.11.98 of the Joint Secretary to the Govt of Assam, Education Department, to Shri BP Bora, Sr. GA, Assam which indicates that the Govt of Assam has already initiated steps to regularize the services of the teachers on whose behalf the instant appeal has been filed. The aforesaid order dated 13.10.98 and 27.10.98 of the Secretary to the Govt of Assam, Education Department and the Minister, Education, Assam respectively and the letter dated 9.11.98 of the Joint Secretary to the Govt of Assam, Education Department, Govt of Assam are kept as a part of records of this appeal.

In view of the aforesaid developments, we dispose of this appeal with a direction that the process of regularization/provincialisation of 1123 teachers dropped at the time of provincialisation of ME and ME Madrassas during the year 1991-92 would be completed within a period of 3 months from today. In the order dated 13.10.98 of the Secretary to the Govt of Assam, Education Department, it has been stated that the aforesaid regularization of service of 1123 assistant teachers should not be made till clearance is obtained from this Court in view of the ban imposed by this Court on appointment in CR No. 2943/98. We have perused the records of the said CR No. 2943/98 and we find that by the interim order dated 24.6.98 appointments pursuant to the advertisement dated 28.12.96 which has been annexed to the said Civil Rule as Annexure-E have been ordered not to be made until further direction from this Court. The said interim order dated 24.6.98 in CR No. 2943, therefore, does not stand in the way of regularization/provincialisation of the services of 1123 Assistant Teachers dropped at the time of provincialisation of ME and ME Madrassas during 1991-92. Liberty is granted to the parties to move this Court for appropriate order in case of any difficulty.

For the purpose of enabling the Government to process of regularization/provincialisation, the appellants association will furnish all necessary documents and particulars including name of concerned assistant teachers to the Director of Elementary Education, Assam, within 2 weeks from today. It will be open for the State Government to consider

regularization/provincialisation of Assistant teachers dropped at the time of provincialisation of ME and ME Madrassas during the year 1991-92 in addition to 1123 Assistant teachers they find genuineness in the claims of such additional assistant teachers.

The impugned order dated 25.06.97 of the learned single Judge passed in CR No. 2833/97 is set aside and the writ appeal is disposed of in terms of the aforesaid directions. But considering however, the facts and circumstances of the case, the parties shall bear their own costs.

JUDGE

JUDGE"

16. It is evident from the perusal of the order dated 13.11.1998 passed in W.A. No. 474/1998 that the same was passed on the basis of the orders issued by the Department at the relevant point in time to the effect that the Government was taking steps to regularize the services of 1123 ME School and ME Madrassa Founder Teachers. No finding was arrived at with regard to the claims raised by the appellants as the matter was disposed of on the basis of averments made by the respondent Department that the Government has already initiated steps for regularization/provincialization of ME Schools and ME Madrassa founder teachers. In the face of such averments made by the contesting parties before the appellate Court, the writ appeal No. 474/1998 was accordingly disposed of vide order dated 13.11.1998 passing directions to complete the process of regularization/provincialization by the Government.

17. The Single Bench of this Court in W.P(C) No. 2741/2008 vide order dated 31.03.2009 allowed the writ petition directing the Department to make payment of arrear salary by placing reliance of the order dated 13.11.1998 passed in W.A. No. 474/1998. The order dated 28.01.2011 passed in W.P(C) No. 5515/2010 was also passed by placing reliance on the order dated 31.03.2009 passed in W.P.(C) No. 2741/2008. Similarly, order dated 18.11.2011 passed in W.P.(C) No. 4932/2009 was also disposed of as a consent order in view of the submissions made by the respondent Department that steps have been initiated for payment of arrears dues of the petitioner and order dated 21.01.2019 passed in W.P(C) No. 3893/2014.

18. In W.P.(C) No. 2698/2010 vide order dated 01.09.2016 which is under appeal presently, there was a categorical finding by the learned Single Judge and which is not disputed on facts available on the record. The appellants approached this Court challenging the cancellation order of their regularization passed by the Government on the ground that their initial appointments were made by the Managing Committees of their respective schools after the provincialization of the schools, which was not permissible. The cancellation of their regularization was challenged by the petitioner in W.P(C) No. 6246/1999. Initially an interim order was granted in the writ petition filed directing the respondents not to the give effect to the cancellation order. Following such interim order, the cancellation orders were

in fact withdrawn by the Government. However, the said fact for some reason was not brought to the notice of this Court. Accordingly, when W.P.(C) No. 6246/1999 came to be heard finally by this Court vide Judgment and Order dated 21.07.2004, the writ petition was dismissed. The Single Bench of this Court placed reliance upon an earlier Judgment dated 29.09.2003 of this Court rendered in W.P.(C) No. 2560/2001 and other connected writ petition (Jahangir Alam & Ors Vs. State of Assam and Ors.). Against this order dated 21.07.2004 passed in W.P.(C) No. 6246/1999, an appeal being W.A. No. 292/2005 was filed challenging the correctness of the said Judgment and order. Initially an interim order was passed on 24.08.2005 to the effect that if the appellants were in service they should be allowed to continue until further order and on the strength of that order, the petitioners/appellant continued in service but no salary was paid to them. Subsequently, the W.A. No. 292/2005 was disposed of as being infructuous by order dated 12.08.2010. A copy of the said order is available at Page-107 of the Paper Book. Under such circumstances, the findings arrived at vide Judgment and Order dated 21.07.2004 passed in W.P.(C) No. 6246/1999 attained finality in so far as the writ petitioners/appellants are concerned.

19. Once a Court renders a Judgment on the issues viz-a-viz the rights of the parties, such a Judgment can only be re-visited by the established judicial norms, namely, a review or an appeal or revision in some cases. Unless, the

findings of a Court arrived at by way of legal proceeding is sought to be reopened in the manner discussed above, the conclusions arrived at in the Judgment viz-a-viz the parties to the case will attain finality. The binding nature of any adjudication expressed in the operative part of the order governs the rights/claims of the parties. This is the view expressed by the Apex Court in *A.R. Antulay Vs. R.S. Nayak & Anr*, reported in (1988) 2 SCC 602. In this case, the issue regarding effect of actions taken under a judgment subsequently declared to be “per incuriam” came up for consideration before the apex court in the case of ***A.R. Antulay vs. R.S. Nayak & Anr***, reported in **(1988) 2 SCC 602** and the apex court, while dealing with the issue, held as under:

"183. But the point is that the circumstance that a decision is reached per incuriam, merely serves to denude the decision of its precedent value. Such a decision would not be binding as a judicial precedent. A co-ordinate Bench can disagree with it and decline to follow it. A larger Bench can overrule such decision. When a previous decision is so overruled it does not happen — nor has the overruling Bench any jurisdiction so to do — that the finality of the operative order, inter partes, in the previous decision is overturned. In this context the word 'decision' means only the reason for the previous order and not the operative order in the previous decision, binding inter partes. Even if a previous decision is overruled by a larger Bench, the efficacy and binding nature, of the adjudication expressed in the operative order remains undisturbed inter partes. Even if the earlier decision of the Five-Judge Bench is per incuriam the operative part of the order cannot be interfered within the manner now sought to be done. That apart the Five-Judge Bench gave its reason. The reason, in our opinion, may or may not be sufficient. There is advertence to Section 7(1) of the 1952 Act and to the exclusive jurisdiction created thereunder. There is also reference to Section

407 of the Criminal Procedure Code. Can such a decision be characterised as one reached per incuriam? Indeed, Ranganath Misra, J. says this on the point: (para 105)

"Overruling when made by a larger Bench of an earlier decision of a smaller one is intended to take away the precedent value of the decision without effecting the binding effect of the decision in the particular case. Antulay, therefore, is not entitled to take advantage of the matter being before a larger Bench."

[Emphasis Supplied]

20. In wake of the above discussion, the contentions of the learned counsel for the appellants that in face of the order dated 18.11.2011 passed in W.P(C) No. 4932/2009, the effect of the earlier order dated 21.07.2004 passed in W.P(C) No. 6246/1999 has been watered down also cannot be accepted. The Judgment in W.P.(C) No. 6246/1999 dated 21.07.2004 is a Judgment which will bind the parties to the *//s*. The appeal filed against the Judgment by the appellants being W.A. No 292/2005 having been disposed of as infructuous, the findings of this Court in W.P.(C) No. 6246/1999 vide the Judgment and Order dated 21.07.2004 will continue to bind the parties to the *//s* unless the same is interfered with by a higher forum or the same is subjected to any review. The order of this Court passed in W.P.(C) 4932/2009 dated 18.11.2011 will not wipe away the directions and the findings of another Co-ordinate Bench passed in a separate proceeding.

21. The Apex Court in ***State of Bihar Vs. Devendra Sharma***, reported in ***(2020) 15 SCC 466*** while examining the claims for the grant of salary and other service benefits held that the right to salary '*stricto sensu*' springs from a legal right to validly hold the post for which salary is claimed. It is a right consequential to a valid appointment to such post. The rights to salary, pension and other service benefits are entirely statutory in nature in public service. Therefore, these rights including the right to salary, spring from a valid and legal appointment to the post. Once it is found that the very appointment is illegal and is non est in the eye of law, no statutory entitlement for salary or consequential rights of pension and other monetary benefits can arise.

22. That apart, this Court earlier by Judgment and Order dated 29.09.2003 passed in W.P(C) No. 2560/2001 (Jahangir Alam Vs. State of Assam) has already held that there can be no right for regularization when teachers are appointed dehors the rules. In the said Judgment, this Court after taking into consideration all aspects as well as several Judgments of the Apex Court had held that doctrine of legitimate expectation cannot be resorted to for the purpose of regularization of the service of such teachers. The doctrine of legitimate expectation being an equitable principle must follow the law and cannot be applied to achieve what is not contemplated under the law. Such findings of another Co-ordinate Bench case are well supported by the law as laid down by the Apex Court in several Judgments. We concur with the

findings arrived at by this Court in the Judgment and order dated 29.09.2003 passed in W.P(C) No. 2560/2001. The learned Single Judge had carefully considered the Judgments and Orders which have been rendered by this Court in several different matters involving analogous controversy. Upon such consideration, the learned Single Judge has arrived at a well reasoned conclusion declining to grant relief to the writ petitioners/appellants as prayed for.

23. We have carefully perused the Judgment of the learned Single Judge and we find that the learned Single Judge had correctly arrived at the conclusions upon consideration of the entire matter as well as the Judgments and Orders passed by this Court in other matters. We are not persuaded to take a different view from the views and conclusions arrived at by the learned Single Judge, in our intra-Court appellate jurisdiction.

24. Under such circumstances, the writ appeal fails as it is found to be devoid of any merit.

25. The writ appeals are accordingly dismissed. No order as to costs.

26. Interim order(s) if any, stands vacated.

JUDGE

CHIEF JUSTICE

Comparing Assistant