

GAHC010004572014



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

Case No. : WP(C)/150/2014

SMTI SABITA MALAKAR
W/O SRI DIDHRAT DEBNATH, R/O P.O. RAMTHAKUR NAGAR, NAGAON,
LUMDING, DIST- NAGAON, ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, EDUCATION ELE DEPARTMENT, DISPUR, GHY-06

2:THE DIRECTOR
ELEMENTARY EDUCATION
KAHILIPARA
GHY-19
DIST- KAMRUP METRO
ASSAM

3:THE INSPECTOR OF SCHOOLS
DIMA HASAO
N.C. HILLS
HAFLONG

4:THE DY. COMMISSIONER CUM CHAIRMAN
DISTRICT SCRUTINY COMMITTEE
DIMA HASAON
HAFLONG

5:THE HEADMASTER CUM SECRETARY
DIMRANG ME SCHOOL
DIMA HASAON
HAFLONG

6:AJEM HAREMGKHOL
HEADMASTER
DIMRANG ME SCHOOL
DIMA HASAON
HAFLON

Advocate for the Petitioner : MS.K KHAN

Advocate for the Respondent :

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

07-02-2023

Heard Ms. P. Chakraborty, learned counsel for the petitioner and Ms. N. Phukan, learned Standing counsel, Department of School (Elementary) Education, Assam for the respondent Nos. 1 & 2. Also heard Mr. A. Khanikar, learned Standing counsel, Dima Hasao (erstwhile North Cachar Hills Autonomous Council) for the respondent Nos. 3 & 4.

Office note dated 23.09.2021 clarifies that though notices on the respondent Nos. 5 & 6 were duly served and after receipt of such notices, the acknowledgment cards have been received back by the Registry, but those two respondents did not appear in the matter.

The School Managing Committee (SMC) of Dimrang M.E. School, Dittokcherra, District-Dima Hasao (hereinafter referred to as said school), a venture educational institution at the relevant point of time, on 01.08.2002 appointed the petitioner as its Headmistress @ Rs. 1285/- per month on the basis of suggestion and selection of the concerned selection committee with the observation that her appointment shall be purely temporary and may be terminated at any point of time without assigning any reason thereof, pursuant to the same, she joined her service on 01.08.2002.

The Inspector of Schools, North Cachar Hills/Dima Hasao, Haflong by its order under memo No. Deh.202/2003/16254-69 dated 16.02.2004 provisionally approved the appointment of the petitioner as a Headmistress of said school w.e.f. 03.08.2002.

The President of the SMC of said school vide No. A-1/2011 dated 30.07.2011 issued a show cause notice to the petitioner stating that inspite of repeated verbal instruction, she did not turn up for her duties since the inception of the school and that such replies should be submitted within a period of 7 (seven) days from the date of issuance of said letter further intimating her that failing on her part to submit such reply to the said show cause notice, stern action shall be taken as per the departmental rules and regulations as deem fit.

It is stated by the petitioner that she received the said show cause notice dated 30.07.2011 from the authorities of the SMC of said School only on 02.11.2011 and that the President of the SMC of said school informed her that her service is no longer required in that school as she abstained from her duties since the inception of the said school inspite of repeated verbal orders and further that as she has already been engaged as an Assistant Teacher of Harangajao Junior College as reported, specifying that she was terminated from her service w.e.f. 13.08.2011 and forwarded copy of the same to the Inspector of Schools, Dima Hasao District, Haflong as well as the Deputy Inspector of Schools, Dima Hasao District, Haflong for their necessary information.

It is also stated by the petitioner that she received her termination letter issued by the President of the SMC of said school on 28.10.2011 and she came to know that the authorities of said school on 13.08.2011 allowed the respondent No. 6 Ajem Hrangkhoh to serve as the Headmaster of the said school and that the Inspector of Schools, Dima Hasao, Haflong on 01.10.2011 provisionally approved the said appointment of the respondent No. 6 w.e.f. the date of his joining.

It is submitted by the petitioner that she was regularly working in said school since her appointment as its Headmistress and in that regard, she annexed copies of the Daily Attendance Register of Teachers of said school as Annexure-7 to this petition that contains her name along with four other teachers and one Grade-IV employee of the said school.

It is also submitted by the petitioner that her impugned termination from service as a Headmistress of said school being in violation of law and without giving her any opportunity, should be set aside and quashed being illegal. As such, she preferred this writ petition challenging the order dated 01.10.2011, noted above.

The petitioner pointed out that the show cause notice that was allegedly issued by the President of the SMC of said school on 30.07.2011 was received by her only on 02.11.2011 and that though 7 (seven) days time was granted to her from the date of issuance of said show cause notice to file her

reply, but as she received the same only on 02.11.2011, she could not submit her reply to the said show cause notice within the said stipulated time.

However, prior to filing any such reply to the said show cause notice, her service was terminated from the said school w.e.f. 13.08.2011 and she received the copy of said termination letter on 28.10.2011.

The Inspector of Schools, Dima Hasao, Haflong respondent No. 3 filed an affidavit in the matter stating that the appointment of the petitioner in said school was during its venture stage and that the period in which her service was terminated, the said school was in adhoc stage where the SMC was solely authorized to look into the matter of said school.

The said respondent No. 3, Inspector of Schools, Dima Hasao, Haflong also stated that as reported by the SMC of said school, the petitioner remained absent in the school unauthorizedly for which a show cause notice was issued to her on 30.07.2011 to which she did not file any reply. As such, she was terminated from service.

In the said affidavit, the respondent No. 3, Inspector of Schools, Dima Hasao, also stated that from the minutes of the SMC of said school, he could come to know that the petitioner had joined as a Lecturer in a private junior college at Harangajao in terms of her appointment letter dated 23.07.2008 and since she joined as a Lecturer in the said junior college, the Managing Committee of Dimrang M.E. School resolved to discharge her duties and to fill up the vacant post of Headmaster in said school and the same was immediately filled up in connection with the submission of necessary proposal for provincialisation of said school. Accordingly, the respondent No. 6 was appointed as a Headmaster of said school.

The respondent No. 3 in its said affidavit further stated that the SMC of said school submitted the lists of teachers serving in said school before the District Scrutiny Committee for their provincialisation of services and that the name of the private respondent No. 6 had been dropped from the final provincialisation list.

During the deliberation of the matter, Mr. Khanikar, learned Standing counsel, Dima Hasao, on instructions, submitted that said school was provincialised in the year 2013 under the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011.

Mr. Khanikar, learned Standing counsel, Dima Hasao submitted that since the entire action

against the petitioner was prior to provincialisation of said school, therefore, this petition filed by the petitioner being not maintainable, should be dismissed.

It is to be noted herein that a full Bench of this Court in the case of *Abdul Gafur Mondal Vs. State of Assam and others* reported in 2015 (2) GLT 337 decided on 11.11.2014 while determining the rights of teaching and non-teaching employees of venture/non-government educational institution of the State of Assam with regard to their services, where the maintainability of said writ petition was an issue, the Court while observing that a venture educational institution is purely a private body and though no writ petition is maintainable but the Full Bench clarified that in a given case whether the decision of such venture educational institution is erroneous on the face of the records or when adequate materials are available before the Court, the Writ Court may decide itself to resolve the issue.

In the said full Bench judgment, the Court issued writ of mandamus to the State Government to establish Educational Tribunals in the concerned districts to adjudicate disputes relating to teaching and non-teaching staff of the non-government educational institutions as well as the disputes of disciplinary actions and claim for provincialisation in respect of teaching and non-teaching staff of venture educational institutions.

Pursuant to the same, the State Government in the Education Department vide Notification No. ELC/WP(C)2272/2013/403/194 dated 03.12.2015 as well as Notification No. ELC/WP(C) 2272/2013/403/196 dated 02.06.2016 allowed to constitute Educational Tribunals to be chaired by the concerned District Judges as well as the concerned Additional District Judges of each district to adjudicate the disputes of the teaching and non-teaching staff of such non-government educational institutions and disputes relating to disciplinary actions and claim for provincialisation that are applicable for Elementary, Secondary and Higher Education Departments of the State.

In the case in hand, the respondent No. 5, authorities of said Dimrang M.E. School as well as the respondent No. 6, Ajem Haremgkhol, inspite of receipt of notice, did not appear in the matter as noted above. As such, the averments and allegations made by the petitioner without being countered by these respondents, amounts to acceptance of the same by these respondents.

It is seen from the above that the petitioner was terminated from service without giving her due notice and her termination which is stigmatic in nature and it is in violation of principle of natural justice. Therefore, said termination of the petitioner is illegal in nature.

Accordingly, the impugned order of termination of the petitioner that was received by her on 28.10.2011 issued by the authorities of Dimrang M.E. School pursuant to the resolution adopted by it on 13.08.2011 is set aside and quashed.

The petitioner shall submit a certified copy of this order along with copy of this writ petition including the annexures appended thereto, copy of the affidavit filed by the respondent No. 3, Inspector of Schools, Dima Hasao, Haflong and her reply to the said affidavit of the said respondent No. 3 before the President of the SMC of said Dimrang M.E. School, Dittokcherra, District-Dima Hasao as well as the Headmaster/Headmistress of said school forthwith obtaining necessary acknowledgment from them in the regard.

Needless to say that in the event of filing such particulars by the petitioner before the President of the SMC of said Dimrang M.E. School, Dittokcherra, District-Dima Hasao as well as the Headmaster/Headmistress of said school, the authorities of said school may initiate fresh departmental proceeding, if so advised, but in accordance with law.

With the above observation and direction, this writ petition is allowed to that extent.

JUDGE

Comparing Assistant