

GAHC010008182018



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

Case No. : Review.Pet./16/2018

THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, EDUCATION (ELEMENTARY) DEPARTMENT, DISPUR,
GUWAHATI

VERSUS

SMT DOLEY PHUKAN
R/O. WARD NO.9, SONARI TOWN, P.O. SONARI,

Advocate for the Petitioner : MR. D SAIKIA

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 06.04.2023

Heard Mr. N.J. Khataniar, learned standing counsel Elementary Education Department.

2. It is seen that although this review petition was filed on 12.01.2018,

but notice has not yet been issued on the sole respondent, who is the writ petitioner in the connected WP(C) 4126/2012.

3. This review petition is directed against the judgment and order dated 20.09.2016 passed by this Court in WP(C) 4126/2012. By virtue of the said order, the petitioner no.2 i.e. the Director of Elementary Education Department was specifically directed to release the due salary of the petitioner from the date of the passing of the Basic Training Course by the petitioner less the amount already paid to her within a period of 3(three) months from the date of receipt of a certified copy of the order, further directing that the current salary of the writ petitioner i.e. the respondent shall be released effective from 01.11.2016.

4. The learned counsel for the petitioners has submitted that this Court by judgment and order dated 02.03.2010 passed in WP(C) 1048/2004 and other connected matters, directed that the teachers who had been irregularly appointed in lower primary and upper primary schools be examined and in the meanwhile, jurisdictional screening committee were appointed to examine the matter and it was also directed that a policy be framed in accordance with law for accommodation of the 328 number of irregularly/ illegally appointed teachers, who have been identified on field verification. This led to a Cabinet decision being taken in the meeting held on 25.02.2011 in compliance with order dated 02.03.2010 passed in WP(C) 1048/2004. Accordingly, with a view to examine the selection procedure, the nature of appointment, status of post, working status, status of salary, status of academic qualification, etc., the petitioner no.2 i.e. the Director of Elementary Education Department had invited application from these irregularly/ illegally appointed teachers during the year 1991 to 2001 by publishing advertisement dated 01.02.2012 throughout the

State.

5. The learned counsel for the petitioners has also referred to order dated 05.03.2010 passed in WP(C) 1457/2010 and it is submitted that the petitioner authorities had moved this Court with a interlocutory application seeking leave of the Court to initiate process of recruitment in the provincialised elementary schools by relaxing the order dated 05.03.2010 passed in WP(C) 1457/2010 and as against order dated 25.01.2012 passed therein, the petitioner authorities had preferred an application for Special Leave to Appeal being Appeal (Civil) No. (s) 4340/2012 before the Supreme Court of India and the said Court by order dated 05.03.2010, lifted the restraintment order dated 05.03.2010 passed by this Court and therefore, in terms of the cabinet decision, the Government had regularized the service of all the OBB teachers (4040) + (7066) teachers in the year 2010, who had been validly appointed. In the meanwhile the proceeding of WP(C) 1457/2010 was disposed of by this Court.

6. The learned counsel for the petitioners has submitted that 5(five) Screening Committees were constituted under the Divisional Commissioners of Upper Assam Division, Lower Assam Division, North Assam Division, Hills and Barak Valley Division, BTC Area and as per the Screening Committee reports, 136 numbers of teachers were found working till date and they were recommended for appointment, 250 numbers of teachers were recommended but discontinued the service, 8706 numbers of teachers were not recommended, but working till date, and 2664 numbers of teachers were not recommended and their services were discontinued and accordingly, all 11756 numbers of teachers were screened. It is submitted that the respondent in this case did not participated in the re-verification process and accordingly, the

respondent has been placed under the illegally appointed teacher category and she is not entitled to claim her salary as she was an illegally appointed teacher and on the said ground this review petition has been filed for reviewing the order dated 20.09.2016 passed by this Court in WP(C) 4126/2012.

7. On a perusal of the order dated 20.09.2016 passed by this Court in WP(C) 4126/2012, the relevant observation of this Court is quoted hereinbelow:

“A perusal of the order dated 06.07.2011 would go to show that the said order was passed following the order of this Court dated 14.12.2007, passed in WP(C) No.6 364/2007 filed by the petitioner and four others. As per the said order, case of the petitioners were directed to be scrutinized by the Expert Committee constituted by the Govt. following the decision of this Court in Sudhendu Mohan Talukdar (supra). From the finding recorded by the departmental Commissioner & Secretary, it is evident that petitioner was a selected candidate selected by the Sub-Divisional Level Advisory Board, Charaideo, Sonari. Petitioner received her salary upto 28.02.2009 against a retired vacant post and she is working in her School. On examination of the report and recommendation of the Expert Committee, the Departmental Commissioner & Secretary decided that salary of the petitioner be released from the due date. However, it was decided not to make any order regarding payment of salary of the other petitioners.

From the order of the Departmental Commissioner & Secretary dated 06.07.2011 as discussed above, it is more than evident that there is no dispute regarding appointment of the petitioner and her continuance in service. Departmental Commissioner & Secretary has taken the decision that petitioner is entitled to her salary from the due date. That being the position, respondents, more particularly, respondent No.2 i.e., Director of Elementary Education, Assam is directed to release the due salary of the petitioner from the date of passing of the Basic Training course by the petitioner less the amount already paid to the petitioner within a period of three (3) months from the date of receipt of a certified copy of this order. The

current salary of the petitioner shall be released effective from 01.11.2016."

8. It would also be relevant to quote the order dated 14.12.2007 passed by this Court in WP(C) 6364/2007- *Smt. Dolly Phukan & 4 Ors. Vs. the State of Assam & 4 Ors.*

"This writ petition relates to demand for payment of alleged unpaid salary and allowances of the petitioners, who claim to have been serving as Assistant Teachers in various LP Schools in the District of Sivasagar. In terms of the directions, contained in Sudhendu Mohan Talukdar Vs. State of Assam, reported in 2006 (2) GLT 216, the State Government has already constituted a Committee for examination of the claims of non-payment of salary and allowances of school teachers. In view of the above, the respondents are hereby directed to place the claim of the present petitioners for examination by the said Committee. The Committee aforementioned shall examine the matter, in terms of the directions contained in Sudhendu Mohan Talukdar (supra), in the light of the relevant facts and in accordance with law. The petitioners may, within a period of two weeks from today, submit a certified copy of this order along with copies of the writ petition and Annexure(s) thereto to the respondent No.2, namely, Director, Elementary Education, Assam, who shall, in turn, do the needful for placing the matter before the Committee concerned. With the above observations and directions, this writ petition shall stand disposed of. No costs."

9. From the conjoint reading of the both the orders as extracted above, it is observed that there is categorical finding of this Court in order dated 20.09.2016 that a decision is already taken by the Commissioner & Secretary to the Govt. of Assam, Elementary Education Department to release the salary of the respondent from the due date and this Court had also recorded that there was no dispute regarding appointment of the respondent and continuance in service. Therefore, in the considered opinion of this Court, there was no

requirement of the respondent to subject herself to a fresh scrutiny as it is not the case of the Elementary Education Department that an earlier Screening Committee/ Expert Committee report concerning the petitioner was erroneous.

10. Accordingly, as the respondent was already subjected to an examination by the Expert Committee and the Departmental Commissioner and Secretary have already decided that the salary of the respondent herein be released from the due date, the Court is of the considered opinion that review petitioner has not been able to make out the case for review of the order dated 20.09.2016 passed by this Court in WP(C) 4126/2012.

11. The Court does not find that the order is vitiated by any error apparent on the face of record. It is not also the case of petitioner that any new material has come out, which despite due diligence could not be produced before this Court. Rather, materials available on record point towards the direction that the case of the respondent was already examined by the then Committee and she was found working. Therefore, repetitive exercise to screen the legality of the appointment of the respondent cannot be the basis for non-compliance of the order of this case.

12. Moreover, if the petitioners had any doubt as to the genuineness of the appointment of the respondent, they could have issued a specific notice on her to subject herself to scrutiny but the same was not done. It appears that the petitioners had not been put to notice that earlier screening report would not be valid for determining her status and accordingly, non-appearance of the respondent before the subsequent screening committee cannot be faulted with.

13. Therefore, no case has been made out to modify/ vary the order

20.09.2016 passed by this Court in WP(C) 4126/2012. Therefore, this review petition is dismissed without issuance of notice on the respondent.

14. Be that as it may, it is clarified that in this order, the Court has not determined the status of respondent.

JUDGE

Comparing Assistant