

GAHC010012802017



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

Case No. : WP(C)/878/2017

JEUTI DAS

W/O- LT. DIPAK KR. BAISHYA, R/O- BLOCK NO- AH 504, GAMES VILLAGE,
LALMATI, BARSAJAI, GUWAHATI, P.O. and P.S.- BASISTHA, DIST.- KAMRUP,
ASSAM.

VERSUS

THE STATE OF ASSAM and 3 ORS.
REP. BY THE COMMISSIONER AND SECY., ELEMENTARY EDUCATION
DEPTT., DISPUR, GHY- 6.

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

3:THE DIST. ELEMENTARY EDUCATION OFFICER
KAMRUP M
ASSAM.

4:THE DY. INSPECTOR OF SCHOOLS
GUWAHATI
KAMRUP
ASSAM.

5:THE SECRETARY AND COMMISSIONER
TO THE GOVERNMENT OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI

Advocate for the Petitioner : MS.B GOGOI

Advocate for the Respondent : SC, EDUCATION

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 22.03.2023

Heard Mr. P.J. Saikia, learned counsel for the petitioner. Also heard Mr. A. Phukan, learned standing counsel for the Elementary Education Department, representing respondent nos.1 to 4 and Mr. A. Chaliha, learned standing counsel for the Finance Department, respondent no.5.

2. The case of the petitioner, in brief, is that pursuant to advertisement dated 03.09.1991, she had offered her candidature for the post of Assistant Teacher and although her name appeared in the select list, the petitioner had no knowledge of the same. However, by order dated 21.05.1993, issued by the Director of Elementary Education, Assam as well as consequential order dated 09.07.1993, issued by the District Elementary Officer, Kamrup (Metropolitan), Guwahati (DEEO for short), the petitioner was appointed as Assistant Teacher in Betkuchi M.E. School and she is currently the Head Mistress of Jyotikuchi L.P. School. The petitioner claims that she is continuously receiving her salary w.e.f. 19.06.2001 as well as yearly increment from the year 2001, although she was appointed on 21.05.1993. It is submitted by the learned counsel for the petitioner that she has been given yearly increment only from the year 2001 instead of from 21.05.1993. Accordingly, the competent authority, vide letter number PMA.377/2005/25 dated 24.03.2006 had directed to release a sum of

Rs.3,26,583/- towards payment of arrear salary to the petitioner for the period from 01.07.1995 to 18.06.2001 and placed the matter at the disposal of the Deputy Inspector of Schools, Guwahati. The said communication was made pursuant to sanction/ concurrence received by from the Finance (BT) Department vide U/O No.BB.877/2006 dated 13.03.2006. In the meanwhile, budget allocation vide letter dated 28.03.2006 was made for a sum of Rs.3,26,583/-, issued by the respondent no.2 and placed at the disposal of the respondent no.4. However, only an amount of Rs.2,93,480/- was paid to the petitioner. Thereafter, the impugned communication was issued by the respondent no.4 for recovery of a sum of Rs.2,93,480/- on or before 15.10.2008. Accordingly, the aggrieved petitioner has filed this writ petition under Article 226 of the Constitution of India.

3. The respondent in the Elementary Education Department has not filed their response, although notice of motion was issued by order dated 15.02.2017. Accordingly, the Court is inclined to invoke the *doctrine of non traverse* to presume that the statements made in this writ petition are correct.

4. The learned standing counsel for the Finance Department has submitted that although the Finance Department was impleaded as respondent by order dated 11.01.2021, but the Finance Department has no role in the matter as the proposal for releasing of the money and the increment, if any will be granted by the concerned DDO, in this case, the Deputy Inspector of Schools, Kamrup (Metropolitan), Guwahati. It is submitted that only thereafter the Finance Department would take a call in the matter.

5. Be that as it may, in this writ petition, the petitioner has

demonstrated that she had joined her service as Assistant Teacher in Betkuchi M.E. School w.e.f. 09.07.1993, and therefore, her claim, if any, for any increment would be referable from 09.07.1993. From the communication under memo no.EEC-25/2004/177 dated 28/03/2006, it appears that vide letter no. PMA.377/2005/25 dated 24.03.2006, a sum of Rs.3,26,583/- was sanctioned for payment of arrear salary of the petitioner. Therefore, it appears that the entitlement of the petitioner for arrear salary, at least for the period from 01.07.1995 to 18.06.2001, is an admitted fact.

6. The respondent authorities have not been able to demonstrate any cogent reason for issuance of order no. 4299 dated 30.09.2008, directing the recovery of the amount of Rs.2,93,480/- from the petitioner. The respondent authorities have also not been able to demonstrate that in this case, the payment was drawn by the petitioner by fraudulent or illegal means that she was responsible for the over drawal, if any.

7. In that view of the matter, the Court finds that the petitioner is entitled for the rule being made absolute in terms of the prayer made. Accordingly, the Court is inclined to set aside and quash the order no. 4299 dated 30.09.2008, issued by the Deputy Inspector of Schools, Guwahati.

8. Insofar as the claim of the petitioner for entitlement of her annual increment from 09.07.1993 is concerned, the Court is inclined to direct the Deputy Inspector of Schools, Guwahati to carry out the exercise of determining the entitlement of the petitioner for annual increment and shall pass appropriate orders and forward the same to the competent authority for approval, sanction and for placement of funds for payment.

9. The said exercise shall be carried out by the respondent no.4 or any other competent authority of the Elementary Education Department within a period of 1 (one) month from the date of service of certified copy of this order, and consequential steps shall be taken by the competent authority within an outer period of 2 (two) months thereafter.

10. Accordingly, the writ petition stands allowed to the extent as indicted above, with no order as to cost.

JUDGE

Comparing Assistant