

GAHC010015922022



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

Case No. : WP(C)/1032/2022

BIMALENDU DAS AND 27 ORS
S/O LATE BIBHU KR. DAS, BANAMALI ROAD, WARD NO. 4, NEAR P H
SCHOOL FIELD, P.O.-KARIMGANJ, DIST-KARIMGANJ, PIN-788710

2: UTTAM ROY CHOUDHURY
S/O LATE RAMESH ROY CHOUDHURY
R/O BROJENDRA ROAD
P.O.-KARIMGANJ
DIST-KARIMGANJ
PIN-788710

3: FAZLUR RAHMAN AHMED
S/O LATE MD. ANU MIA
R/O VILL- DHIT-BOTARASHI
P.O.-TILLABAZAR
P.S.-KARIMGANJ
DIST- KARIMGANJ
PIN-788709

4: SMTI RITA DHAR
W/O ANIRUDHA SWAMI
R/O STIMARGHAT ROAD
P.O.-KARIMGANJ
DIST-KARIMGANJ
PIN-788710

5: BIPRAJIT DAS GUPTA
S/O LATE BIJOY KRISHNA DAS GUPTA
R/O LONGAI ROAD
P.O.-KARIMGANJ
DIST-KARIMGANJ
PIN-788710

6: SMTI. NANDITA NATH

D/O CHUMILAL NATH
R/O SILCHAR ROAD
P.O.-SARISHA
DIST-KARIMGANJ
PIN-788710

7: SMTI SONA DEY
C/O LATE JITENDRA CH. DEY
R/O SILCHAR ROAD (SARISHA)
P.O.-KARIMGANJ
DIST-KARIMGANJ
PIN-788710

8: AYESHA CHOUDHURY
D/O LATE MATAHIN ALI CHOUDHURY
R/O 770 INATPUR
P.S.-BANAMALI ROAD
WARD NO. 13
P.O.-KARIMGANJ
DIST-KARIMGANJ
PIN-788710

9: PARITOSH ROY
S/O LATE UMESH CH. ROY
R/O FANIRBORID
P.O.-DULARACHERRA
DIST- KARIMGANJ
PIN-788737

10: SWAPAN KUMAR DAS
S/O LATE ATUL CH. DAS
R/O GURAMARA
P.O.-KARIMGANJ
PIN-788720

11: NAZIR AHMED
S/O LATE ABUL HUSSAIN
R/O 1326 NO. GANGPAR L.P. SCHOOL
VILL-GANGPAR
P.O.-JAGANNATHI
DIST-KARIMGANJ
PIN-788709

12: DEBAJANI DAS PURKAYASTHA
D/O LATE ASHUTOSH DAS PURKAYASTHA
R/O ROMANI ROAD 1
NEAR BABYLAND SCHOOL
P.O.-KARIMGANJ

DIST-KARIMGANJ
PIN-788710

13: SUPIYA BEGOM
W/O ABDUL KALAM
R/O AZAD SAGAR ROAD
P.O.-SETTLEMENT ROAD
DIST- KARIMGANJ
PIN-788710

14: NOZMUL ISLAM CHOUDHURY
S/O LATE MOINUL ISLAM CHOUDHURY
R/O VILL- BATARASHI
P.O.-TILLABAZAR
DIST- KARIMGANJ
PIN-788710

15: NAZRUL HUDA CHOWDHURY
S/O LATE IRSHAD AHMED CHOUDHURY
R/O VILL-MALUA
P.O.-MALUA
P.S.-BADARPUR
DIST-KARIMGANJ
PIN-788806

16: KAMUA ROBIDAS
S/O LATE GIBENDA ROBIDAS
R/O BIPINLAL ROAD
P.O.-KARIMGANJ
DIST-KARIMGANJ
PIN-788710

17: ABDUL HANNAN
S/O LATE ENUS ALI
R/O VILL-BOTARASHI
P.O.-TILLABAZAR
DIST-KARIMGANJ
PIN-788709

18: AMIYA KANTI DAS
S/O LATE AMARENDRA KUMAR DAS
R/O VILL- MARLY
P.O.-BHANGABAZAR
DIST- KARIMGANJ
PIN-788701

19: MD. AMON UDDIN
S/O LATE ABDUL KHALIQUE

R/O VILL-RASULPUR
P.O.-BHANGABAZAR
DIST-KARIMGANJ
PIN-788701

20: CHIRADIP ROY PODDAR
S/O LATE GOGESH CH. ROY PODDAR
R/O LAKHICHARAN ROAD
P.O.-KARIMGANJ
DIST- KARIMGANJ
PIN-788710

21: AKADDAS ALI
S/O LATE H.M. ALI
P.O.-BRAHMAN SHASAN
VILL-BRAHMAN SHASAN
DIST-KARIMGANJ
PIN-788722

22: BISWAJIT SHARMA
S/O LATE BIBEKANANDA SARMA
R/O P.O.-BAZAR GHAT
DIST- KARIMGANJ
PIN-78873

23: FAKRUL ISLAM CHOUDHURY
S/O LATE HELAL UDDIN CHOUDHURY
R/O VILL- BATARASHI
P.O.-TILLABAZAR
DIST- KARIMGANJ
PIN-788709

24: SHILPI DUTTA
C/O HANNA DUTTA
R/O R.C. DAS ROAD
P.O.-KARIMGANJ
DIST-KARIMGANJ
PIN-788710

25: SUBENDU DHAR CHOUDHURY
S/O LATE MANABINDRA CHOUDHURY
R/O NOVAPALLI LANE
LONGAI ROAD
P.O.-KARIMGANJ
DIST- KARIMGANJ
PIN-788712

26: BADRUL ISLAM CHOUDHURY

S/O LATE ABDUL HYE CHOUDHURY
R/O 83 LATU GIRLS L.P.S.
VILL- LATU
DIST- KARIMGANJ
PIN-788781

27: ABDUL KAYUM
S/O LATE NOOR MUHAMMAD
R/O VILL- PATHU
P.O.-PATHU
DIST- KARIMGANJ
PIN-788781

28: FARUK UDDIN
S/O LATE ABDUL HAKIM
R/O VILL- DASGRAM
P.O.-DASGRAM
DIST- KARIMGANJ
PIN-78878

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, ELEMENTARY EDUCATION DEPARTMENT,
DISPUR, GUWAHATI-781006

2:THE DIRECTOR TO THE GOVERNMENT OF ASSAM
ELEMENTARY EDUCATION DEPARTMENT
KAHILIPARA
GUWAHATI-781019

3:THE DEPUTY INSPECTOR OF SCHOOLS
KARIMGANJ DISTRICT CIRCLE
KARIMGANJ
ASSAM
PIN-78871

Advocate for the Petitioner : MR. K N CHOUDHURY

Advocate for the Respondent : SC, EDU

BEFORE
HON'BLR MR. JUSTICE MANASH RANJAN PATHAK

ORDER

16-08-2023

Heard Mr. R. M. Deka, learned counsel for the petitioners and Mr. P. N. Sarma, learned Standing Counsel, Department of School Education (Elementary) for the respondent Nos. 1 to 3.

2) The contentions of the petitioners, 28 in numbers herein are that on the basis of an advertisement dated 28.12.1996 issued by the Director of Elementary Education (DEE), Assam on the basis of a valid district level selection process, the Deputy Inspector of Schools, Karimganj in November, 1999 appointed them as stipendiary teachers in the various Lower Primary Schools of district Karimganj with a monthly stipend of Rs. 900/- per month indicating that they will be deputed to undergo Basic Training for a period of one year, wherein he/she will get, subject to availability of fund, deputation allowance in addition to regular monthly stipend.

3) It is stated by the petitioners that their such appointment orders issued by the Deputy Inspector of Schools, Karimganj in 1999, also indicate that on their successful completion of Training they will be given regular Time Scale of Pay as prescribed in the Revision of Pay Rules, 1990 and other allowances as admissible under the Rules, from the date of announcement of the result, with the rider that if they cannot succeed in the Final Examination, they shall be allowed to appear in the next Final Examination as a Private Candidate, for which no T.A./D.A. will be paid indicating further that if they cannot come out successful in the 2nd chance, even his/her service will be terminated within one month from the date of announcement of the result and for the same their claim/appeal will not be entertained.

4) Petitioners have also placed that by their such appointment orders, the Deputy Inspector of Schools, Karimganj specified that their appointments were subject to satisfactory Police Verification and subject to the result of the litigations pending in the Hon'ble Supreme Court of India and the Hon'ble Gauhati High Court. Petitioners stated that on 13.11.1999 a

list of 72 persons were fraudulently published and from the said list several persons were appointed in the district of Karimganj against the posts which the petitioners were holding due to which their salaries were not paid. As such, the petitioners by filing different petitions approached this Court praying for a direction to the respondent authorities to pay their regular monthly salaries.

5) It is stated by the petitioners that during the pendency of those writ petitions, the Deputy Commissioner, Karimganj conducted an enquiry in respect of the select list prepared pursuant to the selection process initiated in terms of the advertisement issued in the year 1999, wherein, the said Deputy Commissioner on the basis of an enquiry report of one Mr. A.N.B. Singh, ACS, Sub-Divisional Officer (Sadar), Karimganj, in a letter of March, 2002 to the Commissioner and Secretary to the Government of Assam in the Finance Department wrote that 111 numbers of selected L. P. Teachers as per the Sub-Divisional Level Selection Board meeting on 27.10.1999 and appointed on 20.11.1999 are genuine and may be given them due salaries/stipends.

6) By common judgment and order dated 02.11.2006 in WP(C) Nos. 2521/2001, 2565/2001, 3454/2001, 3455/201, 3456/2001, 4079/2001, 4248/2001, 4408/2001, 4594/2001, 4595/2001, 4970/2001 and 3137/2005 a co-ordinate Bench of this Court after discussing the issues in each of those writ petitions observed as follows —

“In short, as the facts, set out, in brief, indicate, there are, according to the parties to the writ petitions, three select lists prepared and published following the said selection process. While one set of petitioners claim that the list, dated 27.10.99, contained the names of 129 successful candidates, the other set of petitioners assert that the list dated 27.10.1999, contained the names of 112 candidates. The private respondents, who are said to be beneficiaries of the forged and fraudulent select list, dated 13.11.99, claim that they too are duly selected candidates and that the total number of selected candidates were as many as 184, (i.e. 112+72).

In a case of present nature, it is clear that there is a dispute as regards the correctness, veracity and validity of the select lists. The stand of the State respondents is in brief, thus : An enquiry was conducted by the Deputy Commissioner, Karimganj and according to the report of the enquiry, no definite conclusion as regards the correctness of the select list, dated 27.10.99, could be drawn, but it appears that the total number of selected candidate as per select list, dated 27.10.99, was 111 and as far as 72 numbers of teachers in the select-list, dated 13.11.99, are concerned, they appear not to have been selected. The original records are, however, not available. As it now transpires, the total number of vacant posts on the date of publication of the

advertisement dated 28.12.96, was 34 in the district of Karimganj. In course of time, number of vacancy rose from 34 to 143 on 27.09.99, when the select list, which some of the petitioners reply upon, containing 112 names was published. The select list, dated 27.10.90 which contained the names of 111 candidates appears to be the only genuine select list.

From the affidavit filed by the Government, it is abundantly clear that none from the Government swore to the correctness of any of the three lists. As a matter of fact, according to the Government, there were not three, but only two select list, namely, select lists, dated 27.10.99 and 13.11.99 and whereas the select list, dated 27.10.99 contained the names of 111/112 candidates, the list dated, 13.11.99, contained 72 names of selected candidates. The Government, thus, disputes the correctness of the select list, dated 27.10.99, which according to some of the writ petitioners, contained 129 names of selected candidates.

What is, however, curious to note is that the advertisement, dated 28.12.96, did not specify the total number of vacant sanctioned posts of teachers to be filled up in the district of Karimganj. The Government, thus, kept the number of sanctioned post vacant of teachers to be filled up completely vague. At any rate, the numbers of vacancies, as on 27.10.99, were not sufficient to accommodate all the alleged selected candidates or even those candidates, who are shown to have been appointed by various orders passed.

It is also worth noticing that under Rule 3(vi) of the Assam Elementary Education (Provincialised) Rules, 1977, the Selection Board, after finalizing the list of only as many successful candidates as are advertised vacancies with Roll Numbers and names of the candidates in order of merit, has to submit the same to the Director of Elementary Education, whereupon the Director shall authenticate and get the select list, so prepared, published by affixing a copy thereof and until the Notice Board of the Director of Secondary Schools, District Elementary Officer, Board of Elementary Education Officer and District Inspector of Schools and the appointments are to be made in order of merit from such authenticated select list, In the present case, none of the parties to the writ petition has been able to show as to whether any of the select lists aforementioned was ever authenticated and published by the Director of Elementary Education, Assam, in terms of Rule 3(vi) of the said Rules. In fact, the Government concedes that no records can be traced out with regard to authentication of any of the lists, which form the subject-matter of the present set of writ petitions."

7) After considering the entire aspect, the learned Single Judge by the said common judgment and order dated 02.11.2006, closed those WP(C) Nos. 2521/2001, 2565/2001, 3454/2001, 3455/201, 3456/2001, 4079/2001, 4248/2001, 4408/2001, 4594/2001, 4595/2001, 4970/2001 and 3137/2005 with the following directions —

"In the circumstances, indicated above, it is clear that until the time it is conclusively decided as to whether any of the three select lists, which have surfaced in the present set of writ petitioners, is a genuine, correct and legally valid one and if so, which list shall be regarded as genuine, legal and correct list, no direction for payment

of salary in favour of either the writ petitioners or the private respondents can be given. The writ petitions need detailed enquiry and investigation. Such roving enquiry is not possible in a writ proceeding and without a clear, cogent and categorical finding, no relief can be given to any of the parties to the writ petition.

The parties to these writ petitions are directed to seek necessary relief with regard to the correctness or legality of their respective appointments and their right to receive salary in the civil court of competent jurisdiction.

With the above observations and directions, all these writ petitions shall stand closed.

No order as to costs."

8) Petitioners stated that against the said order dated 02.11.2006 similarly placed Assistant Teachers (i.e., 4 petitioners of WP(C) No. 2521/2001, namely, (i) Hasan Bakt Choudhury, (ii) Abdul Jalil Jaigirdar, (iii) Smti. Jahanara Begum and (iv) Abbar Uddin) filed an appeal being WA No. 111/2007 and the Hon'ble Division Bench by order dated 28.03.2007 closed the said WA No. 111/2007 with the following observation —

"The petitioners in W.P.(C)No. 2521/2001 have approached this Court in this appellate jurisdiction feeling aggrieved with the impugned order passed by the learned Single Judge on 2.11.06. The petitioners who claim to have been regularly appointed on the basis of the selection conducted by the authority are serving as L. P. School teachers in various L.P. Schools in the district of Karimganj since 1999. The grievance of the petitioners is that although they are rendering their services, their salaries/stipend has not been released by the respondents.

The learned Single Judge after meticulous examination of the pleadings of the parties inter-alia found that in fact there are two select list which have been surfaced in this proceeding i.e., the select list dated 27.10.99 and 13.11.99. Whereas the select list dated 27.10.99 contained the names of 112 selected candidates, the selected list dated 13.11.99 contained 72 selected candidates. The learned Single Judge regarding correctness of the select list dated 27.10.1999 found that there were 129 names of the selected candidates in place of 112 candidates. The learned Single Judge also observed that although select list is required to be published in terms of Rule 3(vi) of the Assam Elementary Education (Provincialised) Rules, 1977, there was no such authentication and publication of the aforesaid select lists. The learned Single Judge also observed that the matter need detail enquiry and investigation at the Government level and accordingly directed the parties to seek necessary relief with regard to the correctness or legality of their respective appointments and their right to receive salary in the civil Court of competent jurisdiction.

Mr. Mahanta submits that in terms of the affidavit submitted by the Government it cannot be said that the petitioners were genuinely appointed. In such a situation, it is difficult to accept it at this stage inasmuch as pointed out by Mr. Thomas, learned standing counsel, Education Department that there is no such concrete statement to

that effect from the side of the respondent authority.

Be that as it may, the concerned authority while looking into the matter shall also taken note of the report of the Deputy Commissioner dated 13.3.2002 along with the reports contained therein while passing an appropriate order as directed by the learned Single Judge.

Subject to the aforesaid observation, this appeal stands closed."

9) Petitioners stated that pursuant to the query made by the State Government in the Elementary Education Department vide letter No. ELC/WA 111/2007/151/204 dated 09.10.2007 with regard to the said WA No. 111/2007 (Hasan Bakt Choudhury and others), the Director of Elementary Education, Assam on 31.10.2007 informed the respondents in the Elementary Education Department of the State that as per the report of the Deputy Inspector of Schools, Karimganj dated 24.10.2007 the original Proceeding Book was not traceable in the office of the said Inspector and that the appointments of 111 persons were made against valid sanctioned posts.

10) In pursuance of the orders of the Court dated 24.03.2008 passed in WA No. 86/2008, dated 15.02.2008 in WA No. 418/2007, dated 29.01.2007 in WA No. 9/2007 and dated 28.03.2007 in WA No.111/2007 the State Government in the Elementary Education Department by Order No. ELC/WA 86/2008/107/71 dated 19.08.2009 came to the conclusion that in the absence of Proceeding Books of the meeting of the Sub-Divisional Level Selection Board, Karimganj, the list of 111 persons prepared in the meeting held on 27.10.1999 appeared to be the only available reliable document to proceed with the processing of recruitment from the said list and accordingly, in compliance of the order dated 24.03.2008 passed in WA No. 86/2008, the Secretary to the Government of Assam in the Education (Elementary) Department by the said order dated 19.08.2009 directed the Director of Elementary Education, Assam to appoint the persons in the select list prepared in the meeting of the Sub-Divisional Level Selection Board, Karimganj, held on 27.10.1999 and authenticated by its Chairman.

11) In terms of the said Speaking Order dated 19.08.2009 of the State Government in the Elementary Education Department, the Director of Elementary Education, Assam by order Nos. EHA(B).57/08/93 and EHA(B).57/08/97 both dated 22.12.2009 appointed the petitioners against the vacant Non-Plan posts as Assistant Teachers in Lower Primary Schools and posted

them in the Schools shown against their names in the fixed pay of Rs. 1800/- per month under the Deputy Inspector of Schools, Karimganj w.e.f., the date of their joining as per the select list prepared in the meeting of the Sub-Divisional Level Selection Board, Karimganj, held on 27.10.1999.

12) Those two appointment orders, noted above, issued by the DEE, Assam on 22.12.2009 were with the concurrence with the Finance (SIU) Department dated 21.06.2007, 31.12.2008 and 30.05.2009 and the petitioners were informed that they have to undergo Junior Basic Training in due course and in case they are not succeeded in the Final Examination they will be allowed to appear in the Final Examination as a second chance as a private candidate for which no T.A./D.A. will be paid and if they cannot come out successful in second chance their service will be terminated as per existing Rules and that after successful completion of Junior Basic Training, they will get the Time Scale of Pay as per existing Rules.

13) By the said appointment orders dated 22.12.2009, the DEE, Assam also informed the petitioners that they individually have to furnish an undertaking along with their joining report as prescribed by the Finance (Budget) Department vide letter dated 25.01.2005 regarding introduction of New Pension Rules, with specific observation that any order of appointment and adjustment made earlier against the selection of L.P. School Teachers dated 27.10.1999 under the Deputy Inspector of Schools, Karimganj have been treated as cancelled in compliance with the direction of the Hon'ble High Court order dated 24.03.2008, passed in WA No. 86/2008.

14) As per their said appointment orders dated 22.12.2009 issued by DEE, Assam, noted above; 95 persons, including the present petitioners accepted their said appointment orders dated 22.12.2009 and they submitted their respective joining reports as well as their self declarations.

15) The DEE, Assam by order under Memo EDC-5/2012/79 dated 27.02.2013 altogether allowed 108 teachers including the present petitioners to draw Time Scale of Pay under Pay Band-2 Rs. 5,200/- to Rs. 20,200/- per month plus other allowances as admissible under the Rules w.e.f., the date of passing the 1st and 2nd Semester of Junior Basic Training Examination conducted by the Director of SCERT, Assam as shown against their respective

names informing the Deputy Inspector of Schools, Karimganj that if any deviation is found in that regard then the Drawing and Disbursing Officer will be held personally responsible and action will be initiated as per the provisions of the AFBRM Act, 2005. In that regard, the Block Elementary Education Officers of South Karimganj, North Karimganj, Badarpur, Patherkandi and Ramkrishna Nagar were also informed for their necessary action as well as the concerned Treasury Officers of Karimganj, Badarpur and Ramkrishna Nagar.

16) The petitioners thereafter filed representations before the Deputy Inspector of Schools on 13.05.2014 with a reminder dated 05.02.2015 praying for the Old Pension benefits stating that they have joined the service as per the appointment orders dated 20.11.1999 and they should be paid their salaries since 20.11.1999 to 22.12.2009.

17) As the representations of the petitioners for their arrear salaries and the benefit of the Assam Service (Pension) Rules, 1969 have not been considered in spite of their representation dated 13.05.2014 and 05.02.2015, the petitioners have filed this writ petition on 25.01.2022 for issuance of a Writ of Mandamus to the respondent authorities in the Elementary Education Department to grant them the said relief.

18) Notice in this case was issued on 16.02.2022 but as the respondents in the Elementary Education Department did not bother to file any affidavit in the matter till date nor placed any written information before the Court.

19) It is seen by this Court that in compliance of the orders of the Court dated 24.03.2008 passed in WA No. 86/2008, dated 15.02.2008 in WA No. 418/2007, dated 29.01.2007 in WA No. 9/2007 and dated 28.03.2007 in WA No.111/2007 No. ELC/WA 86/2008/ 107/71 dated 19.08.2009, the State Government in the Elementary Education Department passed the Order No. ELC/WA 86/2008/107/71 dated 19.08.2009 (Annexure-G, pages - 68 & 69 to this petition). Following the said order dated 19.08.2009 of the State Government in the Elementary Education Department, the Director of Elementary Education, Assam by orders dated 22.12.2009 issued under Nos. EHA(B).57/08/93 and EHA(B).57/08/97 appointed the petitioners against the vacant Non Plan posts as Assistant Teachers in Lower Primary Schools and posted them in the Schools shown against their names in the fixed pay of Rs. 1800/- per month under the Deputy Inspector of Schools, Karimganj w.e.f., the date of their joining as

per the select list prepared in the meeting of the Sub-Divisional Level Selection Board, Karimganj, held on 27.10.1999 (Annexure-I, pages – 77 to 80 and 81 to 83 to this petition). The petitioners accepted their those appointment orders dated 22.12.2009 issued by the DEE, Assam submitted their joining reports as well as self declarations as per said appointment orders dated 22.12.2009.

20) The Court noticed that the Director of Elementary Education, Assam in those order Nos. EHA(B).57/08/93 and EHA(B).57/08/97 both dated 22.12.2009 (Annexure-I to this petition), whereby, the petitioners were appointed against the vacant Non Plan posts as Assistant Teachers in Lower Primary Schools and posted them under the Deputy Inspector of Schools, Karimganj, specifically provided and intimated that — *any order of appointment and adjustment made earlier against the selection of L.P. School Teachers dated 27.10.1999 under the Deputy Inspector of Schools, Karimganj have been treated as cancelled in compliance with the direction of the Hon'ble High Court order dated 24.03.2008, passed in WA No. 86/2008.*

21) While accepting their appointment orders dated 22.12.2009 issued by the DEE, Assam vide order Nos. EHA(B).57/08/93 and EHA(B).57/08/97 (Annexure-I to this petition), the petitioners have also accepted the said specific observation of the DEE, Assam dated 22.12.2009 regarding their appointment and adjustment made earlier against the selection of L. P. School Teachers dated 27.10.1999 under the Deputy Inspector of Schools, Karimganj treating them as cancelled.

22) Petitioners, since 22.12.2009 till date, did not object the said specific observation of the DEE, Assam and by efflux of time, the said observation of the DEE, Assam specifically mentioned in the last paragraph of the Orders under Nos. EHA(B).57/08/93 and EHA(B).57/08/97, both dated 22.12.2009 have become final and absolute.

23) As such, this Court is of the view that at this belated stage, the claim of the petitioners, as prayed for in this writ petition is not sustainable in law.

24) Accordingly, this writ petition being devoid of merit, stands dismissed.

JUDGE

Comparing Assistant