

GAHC010017002021



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

Case No. : WP(C)/681/2021

ECHAHOQUE ALI AND ANR
ARABIC TEACHER, KOIMARI M.E.MADRASSA, S/O- LT. KHALILUR
RAHMAN, VILL AND P.O. BIDYARDABRI PART-V, P.S. GOLAKGANJ, DIST-
DHUBRI, ASSAM, PIN- 783335

2: BENOJIR RAHMAN AHMED
CHOWKIDAR
KOIMARI M.E.MADRASSA
S/O- MOJAFFAR ALI
VILL AND P.O. CHAGOLIA
P.S. GOLAKGANJ
DIST- DHUBRI
ASSAM
PIN- 78333

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, EDUCATION
DEPTT. (ELEMENTARY), DISPUR, GHY-6

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

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER
DHUBRI
DIST.- DHUBRI
ASSAM PIN- 783301

4:THE BLOCK ELEMENTARY EDUCATION OFFICER
AGOMONI EDUCATION BLOCK
AGOMONI

DIST.- DHUBRI
ASSAM
PIN- 783335

5:THE TREASURY OFFICER
DHUBRI
DIST.- DHUBRI
ASSAM
PIN- 78330

Advocate for the Petitioner : MR. R ISLAM

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH

17.02.2023

Heard Mr. R. Islam, the learned counsel for the petitioners and Mr. N. J. Khataniar, the learned counsel appearing on behalf of the Elementary Education Department. Also heard Mr. R. Borpujari, the learned counsel appearing on behalf of the Treasury Officer, Dhubri.

The case of the petitioners herein is that Koimari M.E. Madrassa was provincialised with effect from 23.02.1980 with five numbers of posts. But, due to some disputes between the members of the Managing Committee of the said institution and local people, the benefit of provincialisation was withheld. Subsequently, the Commissioner & Secretary to the Government of Assam, Education Department vide an order dated 04.08.2008 vacated the order issued for keeping in abeyance the provincialisation of Koimari M.E. Madrassa. The Government of Assam provincialised the Koimari M.E. Madrassa with the staff pattern as Headmaster-1, Assistant Teachers-2,

Arabic Teacher-1 and Grade IV-1. The petitioner No.1 herein is the Arabic Teacher and the petitioner No.2 herein is the Grade-IV employee. It has also been brought to the notice of this Court that amongst the two Assistant Teachers, one Abdul Hoque Ahmed had approached this Court by filing a writ petition, i.e. WP(C) No.665/2010. This Court vide an order dated 19.09.2012 disposed of the writ petition directing the Director of Elementary Education Department to look into the grievances of the petitioner vis-à-vis the respondent No.6 and to pass necessary order. It was also observed that if both the petitioner and the respondent No.6 are entitled to receive the arrear salary up to 31.03.2008 with effect from their respective dates of joining, pursuant to the appointments made, the same shall be directed to be paid to both the persons.

Pursuant thereto, the Director of Elementary Education Department vide an order dated 06.07.2016, considered the case of Md. Abdul Hoque Ahemd. While considering the case of Md. Abdul Hoque Ahmed, it has been duly mentioned in the said order that the petitioner No.1 was appointed as the Arabic Teacher and the petitioner No.2 was appointed as Grade-IV. It further transpires from the perusal of the said order that all the persons, i.e. the Headmaster, two Assistant Teachers, the petitioner No.1 and the petitioner No.2 received their current salary with effect from 01.03.2008. It further appears that the Headmaster of Koimari M.E. Madrassa had submitted a proposal for payment of arrear salary of two teachers, i.e. the Headmaster himself and one Abdul Rafique with effect from the date of their appointment. The higher authority, upon the said proposal, had provided necessary fund for payment of the arrear salary of two teachers. Taking into account that the Abdul Hoque Ahmed was senior

to Abdul Rafique, the writ petition, i.e. WP(C) No.665/2010 was initiated by the said Abdul Hoque Ahmed. It further appears that vide an order dated 06.07.2016, the Director of Elementary Education Department having taken note of the aforesaid aspect of the matter had observed that Abdul Hoque Ahmed was entitled for the arrear salary with effect from the date of joining. It has also been mentioned by the learned counsel appearing on behalf the petitioner that the perusal of the order dated 06.07.2016 would also show that Abdul Rafique has also received the salary for that particular period.

The learned counsel for the petitioner has also drawn the attention of this Court to the fact that the District Elementary Education Officer had also submitted a proposal to the Director of Elementary Education Department on 07.03.2020 wherein it has been mentioned that the petitioner No.1 was entitled to an amount of Rs.10,93,216/- and the petitioner No.2 was entitled to an amount of Rs.9,96,490/-.

Upon perusal of the materials on record it transpires that the petitioners herein are similarly situated to the other three persons, i.e. Headmaster and the two Assistant Teachers who have already received their arrear salary. Consequently, this Court is also of the opinion that they have a legitimate expectation for consideration of their claims for their arrear salary for the period from 1992-1993 to 2007-2008, the details of which have been given in the proposal dated 07.03.2020.

Under such circumstances, this Court disposes of the writ petition directing the Director of Elementary Education Department, Assam to consider the case of the petitioners for payment of their arrear salary in terms with the proposal dated 07.03.2020.

The said exercise be completed within a period of 60 (sixty) days from the date of a certified copy of this order is served upon the Director of Elementary Education Department, Assam.

JUDGE

Comparing Assistant