

GAHC010017812014



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

Case No. : WP(C)/5802/2014

ABDUL KARIM LASKAR
S/O SONAHAR ALI LASKAR, R/O DUDPUR, P.O. VICHINGCHA, P.S. and DIST-
HAILAKANDI, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM, EDUCATION
DEPTT., DISPUR, GHY-6

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

3:THE DY. INSPECTOR OF SCHOOLS
HAILAKANDI
P.O. and DIST- HAILAKANDI
ASSAM

4:DISTRICT ELEMENTARY EDUCATION OFFICER
HAILAKANDI
P.O. and DIST- HAILAKANDI
ASSAM

5:NOOR UDDIN MAZUMDAR
EX- HEAD TEACHER OF 278 NO. TUNDURKANDI L. P. SCHOOL
S/O R/O VILL- UJANKHUPA PART-I
P.O.- UJANKHUPA
DIST- HAILAKANDI
ASSAM
PIN-788152.

6:KHALILUR RAHMAN MAJARBHUIYA

EX- HEAD TEACHER OF 278 NO. TUNDURKANDI L. P. SCHOOL
S/O R/O VILL- UJANKHUPA PART-I
P.O.- UJANKHUPA
DIST- HAILAKANDI
ASSAM
PIN-788152

Advocate for the Petitioner : MR.L R MAZUMDER

Advocate for the Respondent : SC, EDU

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 30.03.2023

Heard Mr. L.R. Mazumdar, the learned counsel appearing on behalf of the petitioner. Mr. P.N. Sarma, the learned counsel appearing on behalf of the Elementary Education Department. None appears on behalf of the respondent Nos. 5 and 6 on call.

2. The instant writ petition has been filed by the petitioner seeking a direction that his services may be regularized as a L.P. School teacher considering his long period of experience and further seeking his due arrear salary for the period from January, 1999 till date along with compensation.

3. From a perusal of the writ petition, it transpires that the petitioner claims to have been appointed on the basis of an order dated 12/1/1999 as a stipendiary teacher in Nitainagar Girls L.P.School against the vacant post of one Ishak Ali Laskar, Head Teacher (retired). It is the case of the petitioner that though the petitioner was initially appointed to that particular school but his services were

attached to 287 No. Tundurakandi L.P.School with a monthly stipend of Rs. 900/- per month and thereafter he joined in the service on 13/1/1999. Admittedly the petitioner was never sent for any training as is required under Rule 4 of the Assam Elementary Education (Provincialisation) Service and Conduct Rules, 1981.

4. It further reveals that the petitioner had approached this Court earlier by filing a writ petition along with 6 others for a direction to release his pay and allowances while serving as a stipendiary teacher in the L.P. School in the district of Hailakandi. The said writ petition was registered and numbered as W.P.(C) No.1620/2003.

5. This Court vide an order dated 7/3/2003 had disposed of the said writ petition with a direction to the respondents to examine the claim of the writ petitioners therein and if they are found to be legally entitled to the current as well as arrear pay and allowances as claimed, the same be released within a period of 3 months from the date when the copy of the order alongwith the copy of the writ petition are furnished to the respondent authorities.

6. It further appears that even after the said order being passed the petitioner did not receive any salaries. It is also relevant at this stage to take note of that sometime in the year 1996 the Government of Assam was placed in a situation wherein it was found there were lot of teachers appointed beyond the permissible vacant sanctioned posts. In order to streamline and to find out the discrepancies in the appointments, a committee under one Shri Monohoran IAS, which was commonly known as the Monohoron Committee was constituted. The said committee took steps and classified the teachers into 3 groups. The first category pertained to those persons who were legally appointed; the 2nd

category pertained to those who were irregularly appointed ; and the third category pertained to those persons whose appointments were illegal.

7. It is also apparent as could be culled out from the submission of Mr. P.N. Sarma, the learned counsel appearing on behalf of the Elementary Education Department that the Government of Assam had taken a decision to regularise those teachers whose appointments were irregular and as such some time in the month of August, 2005 onwards these teachers whose appointments were irregular were regularised and brought into the fold of the services of the Government of Assam. The learned Standing Counsel further submitted that the petitioner's case does not fall within the ambit of those irregular or legally appointed teachers.

8. Be that as it may, the further case of the petitioner herein as could be seen from the writ petition is that the petitioner seeks for the relief of regularisation of his services as well as for payment of the arrear salary since the date of his appointment. As regards the first prayer, the Constitution Bench of the Supreme Court in the case of **State of Kerala Vs. Uma Devi** (3) reported in (2004) 6 SCC 1 had categorically observed that this Court in exercise of jurisdiction under Article 226 of the Constitution should not direct regularisation unless it is within the permissible constitutional mandate. Taking into account the said law as declared by the Constitution Bench of the Supreme Court, the first prayer made in the writ petition cannot be granted.

9. The next relief which has been sought for is as regards the arrear salary of the petitioner from the month of January, 1999 i.e. from the point the petitioner had joined till the date of filing of the writ petition. Taking into account that the petitioner has failed to show that he has been appointed to a valid sanctioned post in the provincialised school and further also taking into

account the affidavits filed by both respondent No. 5 and 6 wherein there is a categorical denial that the petitioner had never worked in the school in question since the month of January,1999, this Court is of the unhesitant opinion that the relief of arrear salary as sought for in the writ petition cannot be granted to the petitioner.

10. Consequently, the writ petition stands dismissed. However, in the facts of the instant case, there shall be not order for costs.

JUDGE

Comparing Assistant