

GAHC010019102015



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

Case No. : WP(C)/4757/2015

BACCHU DEB NATH
SON OF SRI BANKA BIHARY DEB NATH, RESIDENT OF VILLAGE-
SALAKATI, P.O.-SALAKATI, P.S.-BASUGAON, DIST.-KOKRAJHAR, ASSAM,
PIN-783369

VERSUS

THE STATE OF ASSAM AND 8 ORS
REPRESENTED BY THE COMMISSIONER and SECETAY TO TH
GOVERNMENT OF ASSAM, EDUCATION ELEMENTARY DEPARTMENT,
DISPUR, GUWAHATI-781006.

2:THE SECRETARY TO THE GOVT. OF ASSAM
EDUCATION PLANNING DEPARTMENT
DISPUR
GUWAHATI-781006. ASSAM

3:THE JOINT SECRETARY
GOVT. OF ASSAM
FINANCE EC-III DEPARTMENT
DISPUR
GUWAHATI-781006
ASSAM.

4:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-781019.

5:THE SECETARY
EDUCATION DEPARTMENT

BODOLAND TERRITORIAL COUNCIL
KOKRAJHAR
ASSAM
PIN-783370

6:THE DIRECTOR OF EDUCATION

BODOLAND TERRITORIAL COUNCIL
KOKRAJHAR
ASSAM
PIN-783370.

7:THE DY. INSPECTOR OF SCHOOLS

KOKRAJHAR
ASSAM

8:THE PRESIDENT

SCHOOL MANAGING COMMITTEE OF 472 NO. SALAKATI LOWER
PRIMARY SCHOOL
VILL.-SALAKATI
P.O.-SALAKATI
DIST.-KOKRAJHAR
ASSAM. PIN-783369.

9:THE HEAD MISTRESS

472 NO. SALAKATI LOWER PRIMARY SCHOOL
VILL.-SALAKATI
P.O.-SALAKATI
DIST.-KOKRAJHAR
ASSAM
PIN-783369

Advocate for the Petitioner : MRS.R S DEURI

Advocate for the Respondent : SC, BPCR-5,6

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

03-03-2023

Heard Ms. R. S. Deuri, learned counsel for the petitioner and Mr. U. Sarma, learned Standing

counsel, Department of School Education, Assam for the respondent Nos. 1, 2 & 4. Also heard Mr. A. Chaliha, learned Standing counsel, Finance Department, Assam for the respondent No. 3 and Ms. R.B.Borah, learned Standing counsel, BTC for the respondent Nos. 5 to 7.

2. It is submitted by the petitioner that on being appointed by the School Managing Committee of 472 No. Salakati Lower Primary School, District-Kokrajhar pursuant to the resolution dated 30.08.1997, the petitioner namely, Bacchu Deb Nath is serving as an Assistant Teacher of 472 No. Salakati L.P. School on honorary basis since 30.08.1997. In that regard, the Headmistress of said School on 19.06.2015 issued a certificate to the petitioner annexed to this petition as Annexure-D.

3. It is submitted by the petitioner that though she is discharging her duties as an Assistant Teacher like a regular employee for more than 14 years without any break in service but her service has not yet been regularized for which she is still serving as an honorary teacher in said School.

4. The Assam Elementary Education (Provincialisation) Rules, 1977, a statutory Rule under Article 309 of the Constitution of India regulates the recruitment and condition of service of teachers of the elementary schools that were provincialised under the Assam Elementary Education (Provincialisation) Act, 1974.

5. Prior to coming into force of the Right of Children to Free and Compulsory Education Act, 2009 and the Assam Right of Children to Free and Compulsory Education Rules, 2011, the required eligibility criteria for the post of an Assistant Teacher in such provincialised elementary school was specified in said 1977 Rules and all along, the appointment of an Assistant Teacher in such elementary school is to be made by a Direct recruitment following the provisions of Articles 14 and 16 of the constitution of India, i.e., by advertisement and selection on merit.

6. In the case in hand, though the petitioner has prayed for regularization of her service as an Assistant Teacher in said 472 No. Salakati L.P. School but it is seen that said School is provincialised prior to the appointment of the petitioner made by the School Managing Committee of said School on 30.08.1997.

7. On being enquired, Ms. Deuri, learned counsel for the petitioner submits that the petitioner did not report for her service after the Pandemic Covid-19.

8. It is well settled in law that once a school is provincialised, the School Managing Committee does not have any right to appoint any teacher on honorary basis since any such recruitment in a

provincialised elementary school is made in accordance with the specific recruitment Rules.

9. Considering the case of provincialisation, this Court in the case of *Jahangir Alam and others Vs. State of Assam* and *others* reported in *2003 (3) GLT 544* have already settled the law that any such honorary teacher appointed by the School Managing Committee in a provincialised elementary school, does not have any right to claim for regularization as his/her appointment is not in accordance with the statutory Rules of recruitment and in violation of the provisions of Articles 14 and 16 of the constitution of India.

10. In view of the above, this writ petition being devoid of merit, stands dismissed.

JUDGE

Comparing Assistant