

GAHC010019692015



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

Case No. : WP(C)/5012/2015

SMTI. HAZUMA BEGUM and 4 ORS
D/O. ABDUR RAHIM, HINDI TEACHER OF KANDHULIMARI KHAIRAMARI
HIGH MADRASSA AT VILL.-NO.2 KANDHULIMARI, P.O.- KANDHULIMARI,
P.S.-DHING, DIST.- NAGAON, ASSAM.

2: RISHI KR. UPADHYAYA

S/O. LT. JAGANNATH UPADHYAYA
HINDI TEACHER OF BORGHULI HIGH MADRASSA
VILL.- BORGHULI
P.O.- BORGHULISAPMARI
P.S.- ULUANI
DIST.- NAGAON
ASSAM.

3: ABDUR RAHMAN

S/O. LT. ABDUR RASHIK
HINDI TEACHER OF TARABARI GIRLS HIGH MADRASSA AT VILL.-
DAKHIN KHATOWAL
P.O.- TARABARI
P.S.- RUPAHI
DIST.- NAGAON
ASSAM
PIN-782125.

4: SMT. ALIA JEBIN CHOUDHURY

D/O. KHALILUR RAHMAN CHOUDHURY
HINDI TEACHER OF AFAZ UDDIN GIRLS HIGH MAKRASSA AT VILL.-
CHAMDHARA
P.O.- DAGAON
P.S.- JURIA
DIST. NAGAON

ASSAM. PIN-782124.

5: LUKMAN ALI

LT. JUBED ALI MUNSI
HINDI TEACHER OF ALHAJ NURUL HUSSAIN HIGHCMADRASSA AT VILL.-
BHAGAMUR
P.O.- KAOIMARI
P.S.- SAMAGURI
DIST.- NAGAON
ASSAM
PIN-782140

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM,
EDU. SECONDARY DEPTT., DISPUR, GHY-06.

2:THE DIRECTOR

SECONDARY EDUCATION
ASSAM
KAHILIPARA
GHY-19.

3:THE INSPECTOR OF SCHOOLS

NAGAON DIST. CIRCLENDC
NAGAON
P.O. and DIST.- NAGAON
ASSAM
PIN-782001

Advocate for the Petitioner : MR.A K AZAD

Advocate for the Respondent : SC, SECONDARY EDUCATIONR-1,2

**BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR**

ORDER

Date : 24.08.2023

Heard Mr. N.Hoque, learned counsel for the petitioner. Also heard Mr. U.Sharma, learned standing counsel, Secondary Education Department for all the respondents.

2. The petitioners were all initially appointed as Hindi Teachers under different Madrassas in the district of Nagaon between the years 1990-2009.

3. The services of the petitioners were thereafter provincialised by different orders all dated 3rd of June, 2013 w.e.f 01.01.2013.

4. The petitioners in the present writ petition is assailing the order dated 30th of June, 2015, whereby, the provincialisation orders issued by the Directorate were withdrawn on the ground that no students opted for Hindi as MIL in Class-X.

5. It is the case of the petitioners that they were provincialised in their respective posts under their respective Madrassas on 3rd of June, 2013 by following the due process of law and as per rules. Therefore, the question of withdrawal of their provincialisation orders does not arise at this stage as the same amounts to termination of their services. The further case of the petitioner is that they were issued with show cause notices dated 19th of November, 2014, under Rule 9 of the Assam (Services Discipline and Appeal) Rules, 1964 (Rules of 1964 in short). The petitioners thereafter replied to the said show cause notice. However, without proceeding any further in terms of the provisions of

the Rules of 1964, the impugned order dated 30th of June, 2015 was passed.

6. It is undisputed that the services of the petitioners were provincialised after following the due process of law. The benefit of provincialisation is sought to be taken away by the State merely on the ground that no students in Hindi subject is available in the said Schools. Lack of students in a particular subject cannot be a reason for revoking the provincialisation of services of the petitioners. Further, after the show cause notice dated 19th of November, 2014, was issued, the petitioners replied to the said show cause notice and thereafter nothing proceeded any further in accordance with the Rules of 1964 and the impugned order was merely passed on 30th of June, 2015.

7. A perusal of the order dated 30th of June, 2015 also indicates that as no students opted for Hindi as MIL, the provincialisation orders of the petitioners were withdrawn. The respondents cannot nullify the provincialisation of the petitioners in the manner that has been sought to be done by the impugned order dated 30th of June, 2015, except by resorting to lawful process that has been laid down. This Court therefore is of the considered opinion that the provincialisation of the services of the petitioners cannot be taken away for the reasons mentioned in the impugned order dated 30th of June, 2015.

In that view of the matter, the impugned order dated 30th of June, 2015 is set aside and quashed.

Writ petition is accordingly allowed.

JUDGE

Comparing Assistant