

GAHC010021292017



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

Case No. : WP(C)/2545/2017

ARABINDA BARO
S/O LT. BOGA RAM BARO R/O VILL- MATHATULI P.O. BARAMA, DIST.
BAKSA, BTAD, PIN - 781346.

VERSUS

THE STATE OF ASSAM and 7 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
EDUCATION DEPARTMENT, DISPUR, GUWAHATI - 781006.

2:THE DIRECTOR

SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI -781019.

3:THE PRINCIPAL SECRETARY
BODOLAND TERRITORIAL COUNCIL
KOKRAJHAR.

4:THE DIRECTOR OF EDUCATION

BODOLAND TERRITORIAL COUNCIL
KOKRAJHAR

5:THE SECRETARY OF EDUCATION

BODOLAND TERRITORIAL COUNCIL
KOKRAJHAR

6:THE INSPECTOR OF SCHOOLS

BAKSA DISTRICT CIRCLE
BAKSA
BTAD

7:THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI -6.

8:THE HEAD MASTER

BARAMA GIRLS HIGH SCHOOL
P.O. BARAMA DIST. BAKSA
BTAD
PIN - 781346
ASSA

Advocate for the Petitioner : MR.A R SHOME

Advocate for the Respondent : SC, SECONDARY EDUCATION

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 20.03.2023

Heard Mr. A.R. Shome, learned counsel for the petitioner, Mr. R. Mazumdar, learned standing counsel for the Secondary Education Department appearing for respondent nos. 1 and 2, Mr. S. Boro, learned counsel appearing on behalf of Mr. R.K. Musahary, learned standing counsel for the BTC appearing for respondent nos. 3 to 6 and 8 and Mr. P. Nayak, learned standing counsel for the Finance Department, appearing for respondent no.8.

2. By filing this writ petition under Article 226 of the Constitution of

India, the petitioner is seeking a direction upon the respondent authorities to set aside the impugned order dated 05.02.2009 passed by the learned Director of Education, BTC by which his service was terminated.

3. In brief, the case of the petitioner is that by an order dated 21.11.1997, he was appointed by the School Managing Committee as the Gardener in the Barama Girls High School. Thereafter, by order dated 06.03.2003, he was adjusted against the vacancy caused by death of one Jogendra Nath Haloi w.e.f. 01.02.2003 to 31.07.2003. However, while rendering service, by an order dated 05.02.2009, services of several teaching and non-teaching staff including the employment of the petitioner were terminated. It is projected that despite termination of his service, the petitioner has been rendering service in the said Barama Girls High School as Grade-IV employee against the vacancy caused by death of one Prafulla Kumar Das, Grade-IV employee which was lying vacant since 19.02.2010.

4. It is projected that this Court had quashed the impugned order dated 05.02.2009 vide order dated 20.09.2016 passed in WP(C) 266/2009 and WP(C) 3644/2010 whereby the respondent authorities were directed to pass an appropriate order regarding the service of the writ petitioner therein. Although the petitioner has submitted a representation dated 28.02.2017, but his request for regularization of service was not considered by the authority. Hence, this writ petition.

5. It is observed that the Secretary, BTC by an order under memo no. BTC/EDN-8/2007/743-(A) dated 04.12.2008 had examined the report of the

Inspector of Schools, Baksa- Mushalpur in connection with show cause notice issued and personal hearing taken in connection with observance of formalities in respect of appointment of teachers and in respect of the petitioner, it is reflected that he had failed to submit documents to the Director of Education, BTC on his authorized officer in connection with the process of show-cause notice issued to him at the time of personal hearing. As per the said order, the petitioner was supposed to produce the following papers, viz., (a) advertisement issued by the Inspector of Schools, Nalbari, calling upon the candidates to submit the application as a candidate to fill up the posts in the school as stated in the advertisement, (b) Approval of State Level Empower Committee of the Personnel Department of Govt. of Assam to fill up the posts, (c) the records of holding interview and preparation of score sheet by the Interview Board, (d) List of selected candidates indicating vacancies of the schools to fill up the selected candidates, and (e) Approval of EBAC for the appointment.

6. In the absence of production of any of the said documents, the Secretary, BTC held that the appointment of the petitioner was illegal and therefore, the Director of Education, BTC was directed to take necessary steps for termination of service of the petitioner and for submission of proposal for filling up the vacancy arising out of such termination.

7. In the present proceeding, the petitioner has failed to demonstrate that he was appointed by following the due process of employment in public service. Therefore, although the petitioner is found to have rendered service between the period from 21.11.1997 to till date, as projected, but as the petitioner has not been able to show that appointment was made in accordance

with law, despite the rendered service, the Court is unable to issue a direction for regularization of service of the petitioner in view of the decision of the Supreme Court of India in the case of *Secretary, State of Karnataka Vs. Uma Devi, (2006) 4 SCC 1*.

8. Accordingly, this writ petition is dismissed, leaving the parties to bear their own cost.

JUDGE

Comparing Assistant