

GAHC010029662023



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

Case No. : WP(C)/818/2023

BHUPEN DIHINGIA
S/O. LT. BHURAM GOGOI, VILL. DHOLPETA, P.O. KEKURI, P.S.
DHAKUAKHANA, DIST. LAKHIMPUR, ASSAM, PIN-787055.

VERSUS

THE STATE OF ASSAM AND 4 OTHERS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, EDUCATION
(ELEMENTARY) DEPT., DISPUR, GUWAHATI-06.

2:THE DIRECTOR OF ELEMENTARY EDUCATION ASSAM
KAHILIPARA GUWAHATI-19.

3:THE DEPUTY INSPECTOR OF SCHOOLS DHAKUAKHANA LAKHIMPUR.

4:THE HEAD MASTER BORBARI KONENG M.E. SCHOOL LAKHIMPUR.

5:SMT. UMESWARI DOLEY W/O. TULAN PEGU VILL. BORBARI
P.O. JALBHARI P.S. DHAKUAKHANA DIST. LAKHIMPUR

Advocate for the Petitioner : MRS. R DEVI

Advocate for the Respondent : SC, ELEM. EDU

Linked Case : WP(C)/1483/2020

UMESWARI DOLEY
W/O. TULAN PEGU
VILL. BORBARI
P.O. JALBHARI
P.S. DHAKUWAKHANA
DIST. LAKHIMPUR
PIN-787055.

VERSUS

THE STATE OF ASSAM AND 7 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM
EDUCATION DEPTT. (ELEMENTARY)
DISPUR
ASSAM
GHY.-06.

2:THE DIRECTOR
ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-781019.

3:THE DISTRICT LEVEL SCRUTINY COMMITTEE
REP. BY THE DY. COMMISSIONER
NORTH LAKHIMPUR
ASSAM.

4:THE DIST. ELEMENTARY EDUCATION OFFICERLAKHIMPUR
DIST. NORTH LAKHIMPUR ASSAM PIN-787001.

5:THE BLOCK ELEMENTARY EDUCATION OFFICER
BORDOLONI (GHILAMORA) DIST. NORTH LAKHIMPUR ASSAM.

6:JIBAN PEGU HEADMASTER BORBARI KONENG M.E. SCHOOL
VILL. AND P.O. BORBARI P.S. DHAKUAKHANA
DIST. NORTH LAKHIMPUR PIN-787055.

7:DURNA KT KONCH S/O. LT. TILESWAR KONCH VILL. BHURTAL
P.O. JALBHARI P.S. DHAKUWAKHANA DIST. LAKHIMPUR PIN-787055.

8:BHUPEN DIHINGIA P.O. SONARI CHAPORI P.S. DHAKUWAKHANA
DIST. NORTH LAKHIMPUR ASSAM PIN-787055.

Advocate for : MR J PAYENG

Advocate for : SC

EDU appearing for THE STATE OF ASSAM AND 7 ORS.

Linked Case : I.A.(Civil)/2771/2023

BHUPEN DIHINGIA
S/O LATE BHURAM GOGOI
R/O VILL. DHOLPETA

P.O. KEKURI
P.S. DHAKUWAKHANA
DIST. LAKHIMPUR
ASSAM
PIN-787055.

VERSUS

UMESWARI DOLEY AND 7 ORS.
W/O. TULAN PEGU
VILL. BORBARI
P.O. JALBHARI
P.S. DHAKUWAKHANA
DIST. LAKHIMPUR
ASSAM
PIN-787055.

2:THE STATE OF ASSAM

REP. BY THE SECRETARY TO THE GOVT. OF ASSAM
EDUCATION DEPTT. (ELEMENTARY)
DISPUR ASSAM GHY.-06.

3:THE DIRECTOR ELEMENTARY EDUCATION
ASSAM KAHILIPARA GUWAHATI-781019.

4:THE DISTRICT LEVEL SCRUTINY COMMITTEE
REP. BY THE DY. COMMISSIONER NORTH LAKHIMPUR ASSAM.

5:THE DIST. ELEMENTARY EDUCATION OFFICER LAKHIMPUR
DIST. NORTH LAKHIMPUR ASSAM PIN-787001.

6:THE BLOCK ELEMENTARY EDUCATION OFFICER
BORDOLONI (GHILAMORA)
DIST. NORTH LAKHIMPUR ASSAM.

7:JIBAN PEGU HEADMASTER BORBARI KONENG M.E. SCHOOL
VILL. AND P.O. BORBARI P.S. DHAKUWAKHANA
DIST. NORTH LAKHIMPUR PIN-787055.

8:DURNA KT KONCH S/O. LT. TILSWAR KONCH VILL. BHURTAL
P.O. JALBHARI P.S. DHAKUWAKHANA DIST. LAKHIMPUR PIN-787055.

Advocate for : MRS. R DEVI
Advocate for : SC ELEM. EDU appearing for UMESWARI DOLEY AND 7 ORS.

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

ORDER

Date : 13.12.2023

Heard Ms. R. Devi, learned counsel for the petitioner.

The service of the petitioner in the present proceeding was provincialized as Tutor(Science) in Borbari Koneng M.E. School, Lakhimpur, vide order, dated 05.02.2021, and the petitioner in terms thereof, had joined his service. While continuing in such provincialized service, the petitioner received an order, dated 10.11.2022, issued by the Director, Elementary Education Department, Government of Assam, by which, in view of the interim direction passed by the Court on 28.02.2020, in WP(c)1483/2020, the provincialization effected in his case, was withdrawn. The petitioner, thereafter, approached this Court by instituting an interlocutory application being IA(c)2771/2023(in WP(c)1483/2020), praying for modification/vacation of the interim order, dated 28.02.2020, passed in WP(c)1483/2020. This Court, vide order, dated 04.10.2023, after hearing the parties, allowed the said interlocutory application with the following order:

“Heard Ms. R Devi, learned counsel for the applicant. Also heard Mr. J Payeng, learned counsel for the writ petitioner Umeswari Doley and Mr. B Kaushik, learned counsel for the Elementary Education Department of Government of Assam.

2. The writ petitioner Umeswari Doley has assailed the provincialisation of Durna Kt Kounch and Bhupen Dihingia on the ground that as per the order of appointment the writ petitioner is senior to both the teachers.

3. Bhupen Dihingia has instituted this interlocutory application for vacating the interim order dated 28.02.2020 by which the provincialisation of Durna Kt Kounch and Bhupen Dihingia were stayed on the ground that Bhupen Dihingia is a Science Teacher in the school and to substantiate, the order of appointment available as Annexure-B page-18 to the interlocutory application is referred.

4. Mr. J Payeng, learned counsel for the writ petitioner Umeswari Doley fairly states that Umeswari Doley is an Arts Teacher in the school having the qualification of Bachelors of Arts and is not a Science Teacher.

5. Section 3(1)(xi) of the Assam Education (Provincialisation of Services of Teachers and Re-Organisation of Educational Institutions) Act, 2017 provides that one teacher each in the subject of Language, Social Studies and Science and Mathematics would be provincialised.

6. As the respective claim for provincialisation of the writ petitioner Umeswari Doley and the applicant Bhupen Dihingia are not interconnected with each other where Bhupen Dihingia has an independent legal right to be provincialised as a Science Teacher whereas Umeswari Doley may claim a legal right to be provincialised as a teacher in subject Language or Social Studies, we are of the view that the interim order dated 28.02.2020 in respect of the applicant Bhupen Dihingia is required to be modified.

7. Accordingly, it stands partially modified and the interim order now be applicable only in respect of the respondent no. 8 Durna Kt Kounch and shall not be applicable in respect of the applicant Bhupen Dihingia. Consequence of the modified interim order be made applicable to Mr. Bhupen Dihingia.

I.A. stands allowed as indicated above.”

The learned counsel for the petitioner submits that in view of the order, dated 04.10.2023, the basis for passing of the order, dated 10.11.2022, stands removed and the order, dated 28.02.2020, has been rendered unsustainable, requiring the same to be interfered by this Court.

I have heard the learned counsels appearing for the parties and also perused the materials placed on record.

The petitioner's provincialization was challenged by one Smti. Umeswari Doley by instituting the writ petition being WP(c)1483/2020, in which case, this Court, vide order, dated 28.02.2020, was pleased while issuing notice, to direct that the services of the petitioner in this proceeding and one another shall not be provincialized in the post of Assistant Teacher in Borbari Koneng M.E. School, Lakhimpur.

The petitioner in the present proceeding was respondent No. 8 in WP(c)1483/2020. The records of WP(c)1483/2020 reveals that an interlocutory application being IA(c)2771/2023 was filed by the petitioner, herein, as applicant, praying for modification/vacation of the interim order, dated 28.02.2020 passed in WP(c)1483/2020. This Court, vide order, dated 04.10.2023, was pleased to modify the said order, dated 28.02.2020, and by directing that the said order would only be applicable in the case of other respondent i.e. respondent No. 7 and will not be applicable in the case of the applicant/present petitioner.

In that view of the matter; the order, dated 10.11.2022, issued by the Director, Elementary Education Department, Government of Assam, having been passed only in view of the directions passed by this Court in the order, dated 28.02.2020(in WP(c)1483/2020); the said direction itself having been modified by this Court vide order, dated 04.10.2023, passed in IA(c)2771/2023, and having held that the said order will not be applicable to the case of the present petitioner; the circumstance under which the order, dated 10.11.2022 was passed, stands altered. The provincialization of services of the petitioner stands and accordingly, he is entitled to receive all benefits flowing therefrom. Accordingly, in view of the conclusions of this Court contained in the order, dated 04.10.2023, passed in IA(c)2771/2023(in WP(c)1483/2020), the impugned order, dated 10.11.2022, stands interfered with.

The order, dated 10.11.2022, having been interfered with, the petitioner is entitled to all the benefits accruing on account of the provincialization of his services vide order, dated 05.02.2021. The petitioner shall be deemed to be in service w.e.f. 05.02.2021, continuously. The petitioner shall be reinstated in service

forthwith.

The petitioner shall also be deemed to be in service w.e.f. 10.11.2022 and the pay of the petitioner in arrears w.e.f. 10.11.2022, be computed and released to him.

The arrears of pay of the petitioner be computed and released to him within a period of 3(three) months from the date of receipt of a certified copy of this order.

With the above directions, the writ petition stands allowed to the extent, as indicated above.

JUDGE

Comparing Assistant