

GAHC010034522017



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

**Case No. : WP(C)/4842/2017**

KRISHNA KANTA DEKA  
S/O- LATE PHULESWAR DEKA, R/O- VILL- DAKHIN BOKAJAR, P.O-  
TENGABARI, P.S- MANGALDOI, DIST- DARRANG, ASSAM, PIN- 784525

VERSUS

THE STATE OF ASSAM and 4 ORS.  
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM,  
EDUCATIONSECONDARY DEPARTMENT, DISPUR, GHY-6

2:THE DEPUTY SECRETARY  
TO THE GOVT OF ASSAM  
EDUCATION SECONDARY DEPTT.  
DISPUR  
GHY- 6

3:THE DIRECTOR OF SECONDARY EDUCATION  
ASSAM  
KAHILIPARA  
GHY- 19

4:THE COMMISSIONER AND SECRETARY  
TO THE GOVT OF ASSAM  
FINANCE DEPTT.  
DISPUR  
GHY- 6

5:INSPECTOR OF SCHOOLS  
MANGALDOI  
ASSA

**Advocate for the Petitioner : MS.K DAS**

**Advocate for the Respondent : SC, SECONDARY EDUCATION**

**BEFORE  
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

**ORDER**

**Date : 03.05.2023**

Heard Ms. K. Devi, learned counsel for the petitioner and Mr. R. Mazumdar, learned standing counsel for the Secondary Education Department appearing for all the respondents.

2. The case of the petitioner is that he was temporarily appointed as Grade-IV employee in Tengabari Janata Bidyapith Higher Secondary School on 18.01.1994 by the Director of Secondary Education, Assam (respondent no.3). The petitioner received salary up to 1996 and as the payment of salary was stopped, the petitioner had approached this Court by filing writ petition, which was numbered as WP(C) 4689/1999. As per the statement made in the writ petition, the writ petition was disposed of by this Court by directing the respondent authorities to refer the case of the petitioner before Expert Committee. It is projected that the authorities took steps for filling up of 145 Grade-IV posts and accordingly, the petitioner and others were directed to appear before the Selection Board for regularization of their service. As no further steps were taken up for regularization of service of the petitioner, the petitioner has approached this Court for a direction upon the respondent authorities to regularize the service of the petitioner against existing vacant Grade-IV post in the Tengabari Janata Bidyapith Higher Secondary School.

3. The learned counsel for the petitioner has submitted that in respect of the employees who were appointed in vacant sanctioned post, orders have been issued by this Court in various writ petitions to regularize the service of such employees. In this regard, reference is made to the orders passed in WP(C) 7485/2015. However, the Education (Secondary) Department moved a review petition before this Court, which was registered as Rev. Pet. No. 52/2022, seeking leave of this Court to examine if the employees were appointed in a vacant sanctioned post and as to whether such employees were continuing in service without the aid of any interim order of the Court, for which there was a necessity to make an enquiry and arrive at a factual conclusion. Accordingly, this Court by judgment and order dated 09.08.2022 passed in Rev. Pet. No. 52/2022 had issued following directions:

*“18. In the circumstance, we require the individual writ petitioners to make an application before the Secretary to the Government of Assam in the Secondary Education Department stating in detail the dates of appointment, the names of the institutions where they were appointed, the procedure adopted for such 22/23 appointments, the posts to which the appointments were made as well as the post creation number, if available. Upon the individual applications being submitted, the Secretary to the Government of Assam in the Secondary Education Department shall call for the individual records from the respective schools where the writ petitioners were appointed. From the records, the Secretary shall verify as to what was the number of sanctioned posts in respect of the posts where the individual petitioners were appointed and also to find out as to whether on the day when the appointments were made, any of the sanctioned posts, if available, were vacant.*

*19. If the answer is in the affirmative, it has to be understood that irrespective of the manner of appointment of the writ petitioners, they were appointed against sanctioned vacant posts. If the conclusion arrived at would be contrary that no*

*sanctioned vacant posts were available on the day the appointments were made, the conclusion may be arrived at that the persons concerned were not appointed against any sanctioned vacant post. If the conclusion arrived at is that the persons concerned were appointed against the sanctioned vacant posts, the provisions of the two judgments dated 30.09.2015 in WP(C) No. 2921/2015 and other writ petitions and 22.02.2017 in WP(C) No.7485/2015 requiring their regularization as a onetime measure would be applicable and also be complied with.*

*20. In respect of those writ petitioners where the conclusion arrived is that they were not appointed against the sanctioned vacant posts, it would be for the authorities in the Secondary Education Department to take any appropriate decision against them as may be available under the law.*

*21. The review petitions are partly allowed only to the extent indicated above and the conclusion that there was no dispute that the writ petitioners were appointed against sanctioned vacant posts is recalled and substituted by the requirement of this order to make a factual verification in respect of the individual writ petitioners.*

*22. Mr. R Mazumdar, learned counsel for the review petitioners states that the aforesaid exercise can be initiated and completed within a period of three months from the date of receipt of a certified copy of this order."*

4. In light of the decision of this Court in Rev. Pet. 52/2022, the learned counsel for the petitioner submits that the petitioner is also ready and willing to subject himself to an enquiry as to the manner in which the petitioner was appointed. To the said offer, the learned standing counsel for the Secondary Education Department has no objection and has submitted that from the contents of Annexure-16 to the writ petition, which is the information submitted by the Inspector of Schools, Darrang dated 16.09.2011, the petitioner appears to have been appointed in excess of the sanctioned post.

5. Be that as it may, as the learned counsel for the petitioner has submitted that the petitioner has offered to subject himself to scrutiny, the verbal prayer made by the learned counsel for the petitioner stands allowed.

6. Accordingly, this writ petition is disposed of by granting liberty to the petitioner to submit his application giving the details as mentioned in para 18 of the hereinbefore quoted order passed in Rev. Pet. 52/2022 and to submit the same before the Secretary to the Govt. of Assam, Secondary Education Department.

7. It is provided that on receipt of such application, the office of the Secretary to the Govt. of Assam, Secondary Education Department shall give a proof of receipt of such application to the petitioner. The exercise of factual verification shall be done by the Secondary Education Department within an outer period of 3(three) months from the date of receipt of the application accompanying with certified copy of this order.

8. The petitioner shall also furnish his e-mail address and phone number with WhatsApp facility so as to enable the Secretary, Secondary Education Department to communicate his finding to the petitioner.

9. This writ petition stands disposed of to the extent as indicated above.

**JUDGE**

**Comparing Assistant**