

GAHC010042282018



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

Case No. : WP(C)/1335/2018

DIPTIMAN BATHARI AND 4 ORS.
S/O. SRI DAITYALAL BATHARI, VILL. DOLIADISA, P.O. AND P.S. MAIBANG,
DIST. DIMA HASAO, ASSAM.

2: LALKUMTHLUNGA LALSIM

S/O. SRI ROIPUIA NGIRISM
VILL. MUAIDAM B
P.O. KHARTHONG
P.S. UMRANGSO
DIST. DIMA HASAO
ASSAM.

3: DULUMONI LONGMAILAI

D/O. SRI AUROJIT LANGTHASA
VILL. MEGHANARAYANPUR
P.O. AND P.S. MAIBANG
DIST. DIMA HASAO
ASSAM

4: AMAL LANGTHASA

S/O. LABCHAND LANGTHASA
VILL. DAMADI HAWAR
P.O. AND P.S. MAIBANG
DIST. DIMA HASAO
ASSAM

5: JOHNSON DARNEI

S/O. SRI ROIPUIA DARNEI
VILL. THURUK B
P.O. KHARTHONG

P.S. UMRANGSO
DIST. DIMA HASAO
ASSAM

VERSUS

THE N.C. HILLS AUTONOMOUS COUCIL AND 7 ORS.
HAFLONG REP. BY THE PRINCIPAL SECRETARY, N.C. HILLS
AUTONOMOUS COUNCIL, HAFLONG

2:THE ADDL. DIRECTOR OF EDUCATION (H)

ASSAM
HAFLONG

3:THE INSPECTOR OF SCHOOLS

DIMA HASAO DISTRICT CIRCLE
HAFLONG
ASSAM

4:THE HEADMASTER OF PUBLIC ENGLISH HIGH SCHOOL

HARANGAJAO
DIMA HASAO
ASSAM

5:THE HEAD MASTER OF KHARTHONG M.E. SCHOOL

KHARTHONG DIMA HASAO
ASSAM

6:THE HEADMASTER OF TLANGSANG M.E. SCHOOL

HATIKHALI
DIMA HASAO
ASSAM

7:THE HEAD MASTER OF TUOLPUI HIGH SCHOOL

DIMA HASAO
ASSAM

8:THE HEAD MASTER OF THURUK M.E. SCHOOL

DIMA HASAO
ASSAM

9:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM
ELEMENTARY EDUCATION DEPARTMENT
DISPUR
GUWAHATI-06.

10:THE SECRETARY TO THE
GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR
GHY-

Advocate for the Petitioner : MR. R ALI

Advocate for the Respondent : SC, N C HILLS

**BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK**

ORDER

02.08.2023

Heard Mr. R Ali, learned counsel for the petitioners and Mr. A Khanikar, learned Standing counsel, N.C. Hills Autonomous Council for the respondent Nos. 1 to 3. Also heard Ms. D Mushahary, learned Standing counsel, Department of School Education, Assam for the respondent No. 9 as well as Mr. A Chaliha, learned Standing counsel, Finance Department, Assam for the respondent No. 10.

2. The Inspector of Schools, Dima Hasao, Haflong vide order dated 28.08.2013 appointed the petitioner Nos. 1 and 4 temporarily as Graduate Assistant Teachers from the date of their joining in the Scale of Pay of Rs. 5,200/- — Rs. 20,200/- under Pay Band-2 with Grade Pay of Rs. 3,300/- per month with other allowances as admissible under the Rules and posted them at Public English High School, Harangajao and Tuolpui High School, respectively, on regular basis against the vacant posts on the basis of the minutes of the discussion held on 09.05.2007 in the Office Chamber of the Chief Executive Member of the then N.C. Hills Autonomous Council, Haflong, now known as Dima Hasao.

3. Similarly, petitioner Nos. 2 & 3 were appointed by the Inspector of Schools, Dima Hasao, Haflong on 28.08.2013 temporarily as Assistant Teachers in the Intermediate Scale of Pay of Rs. 5,200/- — Rs. 20,200/- under Pay Band-2 with Grade Pay of Rs. 2,500/- per month with other allowances as admissible under the Rules and posted them at Kharthong M.E. School, Harangajao and Tlangsang M.E. School, Harangajao, respectively, against the vacant sanctioned posts on the basis of the minutes of the discussion held on 09.05.2007 in the Office Chamber of the Chief Executive Member of the then N.C. Hills Autonomous Council, Haflong, now known as Dima Hasao.

4. Further, by order dated 28.08.2013 the respondent No. 5 was appointed temporarily as a Grade-IV staff at Thakur M.E. School on regular basis from the date of his joining in the Scale of Pay of Rs. 1,660/- — Rs. 15,000/- under Pay Band-1 with Grade Pay of Rs. 1,500/- per month against the vacant sanctioned post on the basis of the minutes of the discussion held on 09.05.2007 in the Office Chamber of the Chief Executive Member of the then N.C. Hills Autonomous Council, Haflong now known as Dima Hasao.

5. The petitioners stated that in spite of their appointments and joining, they did not receive any salary.

6. Being aggrieved, they have filed this writ petition on 05.03.2018, praying amongst others, for a direction to the respondents herein to release their salaries from the date of their respective joining with 12% interest and to regularize their services granting all such service benefits and further, to direct the Headmasters of the schools concerned not to disturb their services in discharging their duties.

7. In support of their contentions, the petitioners have placed their representation dated 08.12.2016 submitted before the Chief Executive Member, N.C. Hills Autonomous Council, Haflong, Dima Hasao (Annexure-12 to this petition) and the letter of the Principal Secretary, N.C. Hills Autonomous Council, Haflong dated 06.01.2017 (Annexure-13 to this petition) written to the Inspector of Schools, Dima Hasao, Haflong and the Resolution No. 15 of the Executive Committee meeting of the N.C. Hills Autonomous Council held on 08.03.2017 pertaining to non-payment of the salaries of the petitioners, where the Executive Committee of the N.C. Hills Autonomous Council, Haflong resolved that the Principal Secretary shall take

necessary action in consultation with the Additional Director of Education (Hills) and the Inspector of Schools by removing the difficulties and obstacles for payment of their salaries.

8. It is stated by the authorities in the N.C. Hills Autonomous Council, Haflong that the matter has been processed even with the Finance Department of the State, but is yet to be finally resolved.

9. From the representation of the petitioners dated 08.12.2016 (Annexure-12 to this petition), it can be seen that the petitioners submitted their representation before the Chief Executive Member, N.C. Hills Autonomous Council, Haflong that they were appointed on the basis of the recommendation and anticipation of receiving approval from the N.C. Hills Autonomous Council and since there was an urgent requirement of the Teachers in the schools where SIU (Staff Inspection Unit) approval had already been granted by the Government letter No. ASE.16/2008/163 dated 21.05.2013.

10. In the said representation dated 08.12.2016, noted above, the petitioners have also submitted that they have received the approval from the N.C. Hills Autonomous Council for appointment of 6 (six) selected candidates vide letter No. AC/SIU/6/App/Edn/2011-12/58 dated 31.10.2014, though they were appointed and serving since 2013 in the different schools as per their respective appointment orders received from the Inspector of Schools, Dima Hasao District Circle, Haflong and that they are doing their duties, but they have not been paid their salaries and also prayed for regularization of their salaries.

11. From the communication of the Inspector of Schools, Dima Hasao, Haflong issued vide No. E-65/B/PT-I/2013/3178 dated 20.08.2013 written to the Principal Secretary, Dima Hasao Autonomous Council, Haflong, it can be seen that the State Government in the Education Department vide No. ASE.16/2008/163 dated 21.05.2013 accorded approval for issuance of appointment orders in respect of 63 number of posts of selected candidates and out of those 63 selected candidates 7 number of posts remained un-filled, 6 posts due to resignation and expiry and one post was kept pending due to a case that was pending before the High Court and since those 7 posts remained vacant for so long, the schools suffered immensely.

12. As such, the Inspector of Schools, Dima Hasao, Haflong proposed that the

remaining 6 number of posts should be filled up immediately, so that the schools do not suffer any longer and in view of the validity of the Finance (SIU) clearance that was nearing to be expired.

13. Along with the said communication dated 20.08.2013, noted above, the Inspector of Schools, Dima Hasao, Haflong forwarded the names of those applicants including the petitioners herein and recommended their names to the Principal Secretary, Dima Hasao Autonomous Council, Haflong with the request to accord the necessary approval for their appointments as all those applicants have been found eligible and qualified for the posts as prayed by each of them.

14. From the appointment order of the petitioner No. 1 dated 28.08.2013 issued by the Inspector of Schools, Dima Hasao, Haflong (Annexure-2 to this petition), it can be seen that the petitioner No. 1 was appointed against the vacant post of one Smti. Dipanjali Bathari, who resigned after her appointment as Assistant Teacher (Graduate).

15. The petitioner No. 2 was appointed by the Inspector of Schools, Dima Hasao, Haflong vide his order dated 28.08.2013 (Annexure-3 to this petition) against the vacant post of one Ratna Bahadur Chetri, who had expired.

16. The Inspector of Schools, Dima Hasao, Haflong vide his order dated 28.08.2013 (Annexure-4 to this petition) appointed the petitioner No. 3 against the vacant post of one Smti. Dipka Langthasa, who had resigned from the said post.

17. The petitioner No. 4 was appointed by the Inspector of Schools, Dima Hasao, Haflong vide his order dated 29.10.2013 (Annexure-5 to this petition) against the vacant post of one Smti. Debory Lalhnungsang, who had resigned from her post.

18. Similarly, the petitioner No. 5 was appointed by the Inspector of Schools, Dima Hasao, Haflong by his order dated 28.08.2013 (Annexure-6 to this petition) against the vacant post of one Yareiming Jeme, who had expired during service.

19. All the appointment orders of the petitioner Nos. 1 to 5 also reflect that they were appointed in terms of the discussion held on 09.05.2007 on the basis of the minutes of the discussion held on 09.05.2007 in the Office Chamber of the Chief Executive Member of the then N.C. Hills Autonomous Council, Haflong now known as Dima Hasao.

20. From the Annexure-1 to this petition, the communication of the Inspector of Schools, Dima Hasao, Haflong dated 20.08.2013, it is clear that against the 63 number of posts, 63 candidates were selected and out of those 63 number of posts 7 posts remained un-filled as some of the Teachers resigned from their respective posts and expired after their appointments and another post was kept pending due to a High Court case.

21. It is not the case of the petitioners that they have been selected and appointed by the Inspector of Schools, Dima Hasao, Haflong vide orders dated 28.08.2013 and 29.10.2013 after due advertisement and selection following the Statutory Rules in force at the time of their appointments.

22. It is a settled law that vacancies cannot be filled up over and above the number of vacancies advertised. Once the advertised/notified post, following the due procedure of advertisement and selection, is filled up by offering necessary appointment and such offer of appointment is accepted by the candidate concerned, the post advertised gets exhausted. If any such post becomes vacant due to resignation/expiry of the said candidate, then such vacant post has to be filled up afresh by following the due process of advertisement and selection following the provisions of Article 14 and 16 of the Constitution, otherwise appointment of anyone by the appointing authority from the waiting list and/or by picking and choosing a candidate from outside will amount to arbitrariness and illegality for extraneous reasons. With the appointment of the candidate for the post, the list gets exhausted and subsequent vacancy caused due to resignation etc. or for any other reason becomes future vacancy.

23. In the case of *Gujarat State Dy. Executive Engineers' Assn. -Vs.- State of Gujarat*, reported in 1994 Supp (2) SCC 591, the Hon'ble Supreme Court have held that — *Once the selected candidates join the post, no vacancy arises due to resignation etc. or for any other reason within the period the list is to operate under the rules or within reasonable period where no specific period is provided, then candidate from the waiting list has no right to claim appointment to any future vacancy which may arise unless the selection was held for it.*

24. The Hon'ble Supreme Court in the case of *State of Punjab -Vs.- Raghbir Chand Sharma*, reported in (2002) 1 SCC 113 have held that — *With the appointment of the first candidate for the only post in respect of which the consideration came to be made and select panel prepared,*

the panel ceased to exist and has outlived its utility and, at any rate, no one else in the panel can legitimately contend that he should have been offered appointment either in the vacancy arising on account of the subsequent resignation of the person appointed from the panel or any other vacancies arising subsequently.

25. The Hon'ble Apex Court in a catena of decisions have also held that — *every appointment to public posts or office should be made by open advertisement and selection so as to enable all eligible persons to compete for selection on merit. Valid and legal appointment means appointment made by following the provisions of Articles 14 and 16 of the Constitution of India by due process of advertisement and selection and as per the procedure of Recruitment Rules with regard to the relevant posts in force, if any, during the time of recruitment. Adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court (Supreme Court of India) while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee.*

26. In the case of *R. Vishwanatha Pillai -Vs.- State of Kerala* reported in (2004) 2 SCC 105, a three Judges Bench of the Hon'ble Supreme Court have held that— *the right to salary and/or pension after retirement from service flows from a valid and legal appointment.*

27. In the case in hand, the petitioners as well as the authorities in the N.C. Hills Autonomous Council/Dima Hasao district have failed to place anything before the Court to show that the petitioners were appointed by the Inspector of Schools, Dima Hasao, Haflong on 28.08.2013 and 29.10.2013 after following the due process of advertisement and selection and in terms of the relevant Recruitment Rules in force at the time of their appointments.

28. Even though the petitioners have served on the basis of their appointment orders issued by the Inspector of Schools, Dima Hasao, Haflong on 28.08.2013 and 29.10.2013, but there cannot be any directions from the Court in exercise of its powers conferred under Article 226 of the Constitution of India for payment of salaries to the petitioners from the

public exchequer, since their appointments were not made by following the due process of law following the provisions of Articles 14 and 16 of the Constitution and since the Hon'ble Apex Court in the case of *R. Vishwanatha Pillai* (supra) have laid down the law that salary shall flow only from a valid and legal appointment.

29. Accordingly, as the petitioners have failed to establish before the Court that their appointments were legal and valid, they are not entitled for any such relief(s) as claimed in this writ petition.

30. For the reasons above, this writ petition being devoid of merits, stands dismissed.

JUDGE

Comparing Assistant