

GAHC010059122023



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

Case No. : WP(C)/1548/2023

PURNIMA DEKA
ASSTT. TEACHER, MUGDI MILAN H.S. SCHOOL, R/O- VILL- GHORATHAL,
P.O. MUGDI, DISTRICT- NALBARI, ASSAM, PIN- 781312

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, SECONDARY
EDUCATION DEPTT., DISPUR, GHY-06

2:THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
FINANCE DEPTT.
DISPUR
GHY-06

3:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI- 781019

4:THE INSPECTOR OF SCHOOLS
NALBARI DISTRICT CIRCLE
NALBARI
ASSAM
PIN- 781335

5:THE TREASURY OFFICER
BELSOR
DISTRICT- NALBARI
ASSAM
PIN- 78130

Advocate for the Petitioner : MD R ISLAM

**Advocate for the Respondent : MR. N. J. KHATANIAR
: MR. B. GOGOI**

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Date : 20-03-2023

Heard Mr. R. Islam, the learned counsel appearing on behalf of the petitioner and Mr. N. J. Khataniar, the learned Standing counsel appearing on behalf of respondent Nos. 1, 3 and 4. I have also heard Mr. B. Gogoi, the learned Standing counsel appearing on behalf of the respondent Nos. 2 and 5.

2. Taking into account the facts involved, the instant writ petition has been taken up for final disposal at the motion stage itself.

3. The case of the petitioner herein is that vide an order dated 21.05.2012, she was terminated from her service by the Inspector of Schools, NDC. Subsequent thereto, the petitioner filed a writ petition challenging the said termination order dated 21.05.2012 which was registered and numbered as WP(C) No.3113/2012.

4. This Court vide a judgment and order dated 01.08.2013 in WP(C) No.3113/2012 along with various other writ petitions set aside and quashed the termination order dated 21.05.2012. In doing so, this Court made the following observations in paragraph Nos. 15 and 16 which are extracted hereinunder:

15. From the averments in the counter affidavit filed by the DSE, Assam,

it is clear that the show-cause-notices issued earlier on 18.5.2010 was cancelled and was not taken to their logical conclusion. Thereafter the impugned termination order was abruptly issued against the petitioners by the Inspector of Schools, Nalbari on 21.5.2012. Therefore it is apparent that the affected persons did not have any opportunity to defend their cause and therefore their termination was not through a legally permitted process.

16. *In the above circumstances, the State authorities are given the liberty to proceed against the persons appointed from the 2 controversial select list(s) of the Barkhetri Constituency. The process should start with show-cause-notice(s) and appropriate action is permitted to be taken by the appointing authority only after replies are considered. The noticee(s) should be the petitioners, the private respondents and the 3 persons who claim to be from the Nalbari Constituency but whose names figure in the controversial select list(s) of Barkhetri Constituency. After considering the replies from the noticee, speaking order be pass ed. The earlier termination order dated 21.5.2012 issued by the Inspector of Schools, Nalbari will abide by the final decision to be taken, in the de novo proceeding.*

5. Thereupon, vide an order dated 18.01.2014, the Inspector of Schools, NDC directed the Principal/Headmaster/Superintendent of the respective schools to make necessary arrangements to allow the petitioner in the school so as to enable to complete the process of the de novo proceeding till final decision is taken thereon in compliance with the directions passed by this Court in the judgment and order dated 01.08.2013. Subsequent thereto, vide another communication dated 20.03.2014, the Inspector of Schools, Nalbari asked the petitioner to Show Cause as to why the petitioner's appointment shall not be declared illegal and void and accordingly her service shall not be terminated.

The petitioner upon receipt of the said Show Cause notice filed the Show Cause reply.

6. It further appears from the records that an order was passed on 24.03.2015 whereby the petitioner was allowed to draw current salaries from the date of resuming duty in the respective school in line with the similarly situated teachers till final decision is taken by the Higher Authorities. As the period during which the petitioner was terminated has been treated to be on duty vide the order dated 18.01.2014, similarly situated persons like the petitioner have filed writ petitions before this Court. Amongst them, one is WP(C) No.1030/2016 by Fakharuddin Ali Ahmed along with another person.

7. This Court vide an order dated 04.01.2019 in WP(C) No.1030/2016 taking into account the similar facts as have arisen herein directed the Director of Secondary Education, Assam to take necessary steps for release of the arrear salaries of the petitioners therein in compliance with the earlier directions of this Court, the process which also appears to have been started vide the communication dated 15.09.2014 and 16.09.2014 for payment of arrear salaries. The arrear salaries of the petitioners therein were also directed to be released within a period of 3 (three) months from the date of the said order.

8. It further appears that the petitioner had also submitted representation seeking release of the arrear salary for the period from 21.05.2012 to 18.01.2014 i.e. the period when the petitioner's service stood terminated vide the order dated 21.05.2012 which order was set aside by this Court vide the judgment and order dated 01.08.2013 in WP(C) No.3113/2012. However, the said representation have not been addressed to by the concerned respondent authorities for which the petitioner has approached this Court.

9. The learned counsel appearing on behalf of the petitioner has further drawn the attention of this Court to the judgment and order dated 23.09.2022 in Writ Appeal No.211 of 2019 which is an appeal filed by a similarly situated person like the petitioner wherein the Division Bench of this Court after taking into consideration the facts which are similar to the present one, at paragraph No.17 directed the Director of Secondary Education, Assam to take necessary steps to release the arrear salary of the appellant therein and process the same for the period from 21.05.2012 to 18.01.2014 and after quantifying the same, make such payment of the arrear salary to the appellant therein within a period of 3 (three) months from the date of receipt of the certified copy of the judgment and order.

10. The learned Standing counsel appearing on behalf of the Secondary Education Department, Assam submitted that from the materials on record, it appears that the facts appears to be similar but however, there is a requirement to make necessary verification as to whether the petitioner is similarly situated with the appellant in Writ Appeal No.211 of 2019. He therefore submits that instead of passing a direction upon the Director of Secondary Education, Assam to make payment to release the arrear salary, a direction may be given to make verification and thereupon if found entitled, then to pay the arrear salary.

11. Taking into account the above submissions made by the learned counsels for the parties as well as also upon perusal of the materials on record, this Court in the interest of justice directs the Director of Secondary Education, Assam to verify as to whether the petitioner is similarly situated with the appellant in Writ Appeal No.211 of 2019 and upon verification, if it is found that the petitioner is similarly situated, the Director of Secondary Education, Assam is directed to

take necessary steps to release the arrear salary of the petitioner for the period from 21.05.2012 to 18.01.2014 and to make payment of the arrear salary to the petitioner.

12. The entire exercise be carried out within a period of 3 (three) months from the date a certified copy of the instant order is served upon the Director of Secondary Education, Assam.

13. With above observations and directions, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant