

GAHC010067992023



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

Case No. : I.A.(Civil)/862/2023

DINESH KALITA,
S/O- LATE UMARAM KALITA, R/O- VILL. AND P.O. DEODUWAR, DIST.-
KAMRUP, ASSAM.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMMISSIONER AND SECY. EDUCATION (SECONDARY)
DEPARTMENT, DISPUR, GUWAHATI-6.

2:THE DIRECTOR OF SECONDARY EDUCATION

KAHILIPARA
GUWAHATI-19.

3:THE INSPECTOR OF SCHOOLS

KAMRUP DISTRICT CIRCLE
KAHILIPARA
GUWAHATI-19.

4:THE SCHOOL MANAGING COMMITTEE

RAJENDRA KALITA VIDYAPITH HIGH SCHOOL
HENGRABARI
REP. BY PRESIDENT SCHOOL MANAGING COMMITTEE
RAJENDRA KALITA VIDYAPITH HIGH SCHOOL
HENGRABARI
GHY-16.

5:SRI BISWA PRADIP KALITA
SECRETARY SCHOOL MANAGING COMMITTEE

RAJENDRA KALITA VIDYAPITH HIGH SCHOOL
HENGRABARI
GHY-16.

6:SRI DHRUBAJYOTI MEDHI
I/C PRINCIPAL RAJENDRA KALITA VIDYAPITH HIGH SCHOOL
HENGRABARI
GHY-16

Advocate for the Petitioner : MR G GOSWAMI

Advocate for the Respondent : SC, SEC. EDU.

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

Date : 24-11-2023

Heard Ms. B. Devi, learned counsel for the applicant as well as Mr. P. Hazarika, learned counsel for the opposite parties.

This interlocutory application has been filed seeking amendment of the writ petition being WP(C)/6581/2005 by the applicant. It is submitted that these amendments sought for are required for proper adjudication of the writ petition.

The learned counsel for the petitioner submits that in the writ petition being WP(C)/6581/2005, after paragraph-21, paragraph-21A, paragraph-21B, paragraph-21C and paragraph-21D are sought to be inserted along with the prayer portion.

Paragraph-21A, paragraph-21B, paragraph-21C and paragraph-21D are extracted below:

21A. It is state that since the petitioner has filed two FIR against respondent no. 5 and 6 hence the respondents in order to suppress their misdeeds have issued the show cause notice to victimize the petitioner in order to take revenge on him and with an eye to oust the petitioner from the school. Under the above fact situation when the respondent No. 5 is himself an accused in the matter he has no authority to constitute

the enquiry committee to investigate the allegation against the petitioner which is nothing but a retaliation to the allegation made by the petitioner against respondent No 5 and 6. The enquiry committee constituted by the respondent No 5 has made no enquiry nor any evidences were taken from the alleged complainant. They simply submitted the inquiry report against the petitioner on instruction of the respondent No. 5. Hence such inquiry has no validity in the eye law. The enquiry committee is totally biased and has passed the report at the instance of respondent No.5. There is a reasonable apprehension in the mind of the petitioner that the inquiry committee cannot act independently without being influenced by the respondent No. 5 and in case of such biased there are several Judgment passed by the Hon'ble Supreme Court whereby such report of the inquiry committee were set aside. It is further stated that the inquiry committee report was not given to the petitioner, in fact the report was submitted to the respondent no. 5 at her personal residence. The Hon'ble Gauhati High Court has also held that if the respondent authority has decided to hold an inquiry, then it was there bounded duty to follow a fair procedure as well as to the principle of natural justice as these are the essential criteria in holding a fair inquiry and if the inquiry report is not furnished to the person concerned enabling him to dispute the finding, in such circumstances cannot be said to be an order of termination simpliciter. It laced with stigma and being in violation of principle of natural justice, cannot be sustained.

21B. That it is stated that as per rule 3 of Assam aided Educational Institution and Higher Secondary School (Conduct and Discipline of Employees) Rules 1960, the appointing authority with the prior approval of Inspector of School may place an employee under suspension. The petitioner was suspended without following this rule. Hence the suspension itself was bad. Furthermore a farcical inquiry was conducted against the petitioner by the school authority and an inquiry report was submitted on the basis of which the petitioner was removed from his service. But the fact is that while conducting the inquiry the basic principle of disciplinary proceeding was not followed by the disciplinary authority. The counsel for the school managing committee has apprised the Hon'ble Court that the inquiry report referred to in the

resolution dated 13.5.2005 pertains to an inquiry conducted by a three-member committee and the petitioner was given due notice and he was allowed to participate in the inquiry proceeding and the report of the inquiry committee was made after giving due opportunity to the petitioner which is reflected in order dated 4.5.2017 of the Hon'ble Court. The requirement of a proper disciplinary proceeding is to furnish the inquiry report to the delinquent employee and without proof of service of inquiry report dismissal order passed against an employee is totally illegal and amounts to violation of principle of natural justice. In the present case the inquiry report was never served to him which makes All these facts were not apprised to the Hon'ble Court which leads to the passing of the order dated 4.5.2017. Copy of the order dated 4.07.2017 is annexed herewith and marked as ANNEXURE-13.

21C. That it is stated that the Respondent no. 5 was the brother of one of the member of the inquiry committee (namely Pradip Kalita) against whom the petitioner has raised serious allegation and hence inclusion of Pradip Kalita (brother of Respondent No. 5, since dead) in the inquiry committee has made the inquiry proceeding void. Since the Respondent no. 5 was deeply hostile towards the petitioner and his own brother has conducted the inquiry, against the petitioner with a predetermined and committed mind hence the inquiry is vitiated by the reason of bias and hence the order of dismissal passed by Respondent No. 5 against the petitioner dated 15.07.2005 based on the finding of the said inquiry report is required to be set aside and quashed. .

21D. That it is stated that during the pendency of the writ petition the services of the teachers and employees of Rajendra Kalita Vidyapith High School, was provincialized w.e.f. 01.01.2013 and due to the illegal order of dismissal passed by Respondent No. 5 against the petitioner dated 15.07.2005 the petitioner missed the chance to get his service provincialized and in his place the name of Smti Runumi Kalita daughter of Pradip Kalita (brother of Respondent No. 5, since dead) was provincialized as assistant teacher. Therefore, the illegal dismissal order of the petitioner dated 15.07.2005 required to be set aside and quashed and after setting aside of the order dated

15.07.2005 the concerned authority may be directed to provincialize the service of the petitioner by giving him all consequential service benefits.

Similarly, it is submitted that in the prayer portion of the writ petition, the following lines are also sought to be inserted after the words "*and after setting aside the order of dismissal of the petitioner dated 15.07.2005 the concerned authority may be directed to provincialize the services of the petitioner by giving all consequential service benefits*" after the words "*dated 15.07.2005 under the hands of the respondent no.5.*"

The learned counsel for the opposite parties does not object to the prayer made.

Having heard the learned counsel for the parties and upon perusal of the IA, it is seen that this amendment will not change the nature of the writ petition. In that view of the matter, the amendment prayed for is allowed. The applicant is allowed to insert paragraph-21A, paragraph-21B, paragraph-21C and paragraph-21D along with the amendments sought for in the prayer as indicated above, in WP(C) 6581/2005. An amended copy of the writ petition be filed before the Registry within 2(two) weeks from the date of receipt of the certified copy of this order. The opposite parties are also allowed to file their counter-affidavit to the amended writ petition if so advised.

The IA is accordingly, disposed of.

JUDGE

Comparing Assistant