

GAHC010106692016



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

Case No. : WP(C)/679/2016

ROMEZ UDDIN AHMED and 2 ORS
S/O LT. FAYEZ UDDIN R/O MOIRAKUHCI PT.II, P.O. AIRKATA P.S.
FOKIRGANJ DIST. DHUBRI, ASSAM-783330.

2: SHRI EAQUB HUSSAIN
S/O LT. ROMZAN ALI R/O PIPULBARI P.O. DHANUAH
P.S. MANKACHAR
DIST. DHUBRI
ASSAM- 783334

3: SHRI ANOWAR HUSSAIN
S/O LT. GOLAM ALI BEPARI R/O JALIPARA P.O. PURANADIARA
P.S. MANKACHAR DIST. DHUBRI
ASSAM
78333

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
ELEMENTARY EDUCATION DEPARTMENT, ASSAM SECRETARIAT, DISPUR,
GUWAHATI-781006.

2:THE DIRECTOR OF ELEMENTARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI - 781019

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER

DHUBRI
P.O.
P.S. and DIST. DHUBRI

ASSAM. - 78333

Advocate for the Petitioner : MS. S E AHMED

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 24.03.2023

Heard Mr. R. Phukan, learned counsel for the petitioner and Mr. R. Mazumdar, learned standing counsel for the Elementary Education Department.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioners project that they are working as Assistant Teachers in various schools of Dhubri district. The grievance of the petitioners is that their services had not regularized from the date when their respective schools were provincialised and the petitioners were also not provided their arrear salaries for the past services rendered and accordingly, as their representations has not been responded to, the petitioners have approached this Court.

3. The learned standing counsel for the Elementary Education Department submits that an affidavit-in-opposition has been filed on 09.11.2022. It is submitted that the service of the petitioner could not be provincialised earlier in point of time due to non-receipt of allotment against their post, the service of the petitioners were regularized and therefore, the claim for rendering any past service does not arise. It is also submitted that the service of the petitioners were regularized in the year 1993 and after delay of 13 years they have

approached this Court in the year 2016.

4. On consideration of the matter and its entirety, the Court finds that the stand of the respondent authorities is that although the services of the teaching and non-teaching staff of the respective schools were provincialised from a particular date, but the post which were held by the petitioners were not allotted at the time of provincialisation of their respective schools. Accordingly, the Court finds that there is a merit in the stand of the respondent authorities that as post were not allotted against the petitioners, the question of regularization of the service of the petitioners from the date of provincialisation of their respective schools could not have been granted in the absence of any posts to which the petitioners could have been accommodated.

5. It is also noted that it is not in dispute that the service of the petitioners were regularized in the year 1993 and therefore, the petitioners have set up their claim after 13 years and they have approached this Court on 01.02.2016 by filing this writ petition. Under such circumstances, the Court is of the considered opinion that the principles of *delay defeats equity* as well as maxim of *vigilantibus non Dormientibus Jura Subveniunt*, which means that the Court protect those who are vigilant about their rights and not those who sleep over their rights, would be applicable in this case.

6. Accordingly, on both the counts i.e. post to which the petitioners were appointed were allotted to subsequent date and secondly the petitioners have approached this Court after a delay of 13 years, the Court is of the considered opinion that the petitioners are not entitled to the relief as prayed for.

7. Accordingly, this writ petition stands dismissed, leaving the parties to bear

their own cost.

JUDGE

Comparing Assistant