

GAHC010115622016



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

Case No. : WP(C)/4393/2016

SIBLI HASSAN
S/O LUTFUR RAHMAN, R/O VILL, P.O. and PS. MUKALMUA, DIST-
NALBARI, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMMISSIONER and SECY. TO THE GOVT. OF ASSAM,
EDUCATION ELE DEPTT., DISPUR, GHY-6

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GHY-19

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER
NALBARI-781335

4:THE DY. COMMISSIONER
NALBARI DISTRICT
NALBARI
PIN-78133

Advocate for the Petitioner : MR.SK MUKTAR

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

03.02.2023

1. Heard Mr. S.K. Muktar, learned counsel for the petitioner. Also heard Mr. N.J. Khataniar, learned counsel for the Elementary Education Department i.e. respondent nos.1, 2 & 3 and Mr. P. Saikia, learned counsel for the respondent no.4.

2. The petitioner's case is that he is serving as a Head Teacher in Narayanpur Moktab L.P. School. However, vide order dated 24.06.2016 passed by the respondent no.3, the service of the petitioner has been allowed to be utilized as a teacher against a single teacher's school, i.e. Bargacha Bharaltola L.P. School.

3. The petitioner's grievance is that the impugned order dated 24.06.2016, utilising the service of the petitioner in Bargacha Bharaltola L.P. School as a single teacher in the school is nothing but a punitive transfer, inasmuch as, the same is in violation of the Schedule made under Section 19 & 25 of the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as "2009 Act").

4. The petitioner's counsel submits that in terms of the Schedule to the 2009 Act, there has to be two numbers of teachers in respect of schools having upto 60 students. In respect of schools having above 150 children, there needs to be five teachers plus one Head Teacher.

5. The petitioner's counsel submits that the petitioner who is the Head Teacher in Narayanpur Moktab L.P. School is having 158 students, which requires running of the school by five teachers plus one Head Teacher. On the other hand, Bargacha Bharaltola L.P. School has only 19 students and there are two teachers already employed in the said school. He submits that if the petitioner is also sent to Bargacha Bharaltola L.P. School as a teacher, there would be three teachers for teaching 19 students, which would not be in consonance with the Schedule to the 2009 Act. He submits that despite more than 6 years having been passed from the date of filing of the writ petition, the State respondents have not filed any affidavit in this case and as such, this writ petition should be allowed.

6. Mr. N.J. Khataniar, learned counsel for the Elementary Education Department submits that as he has not received any instructions till date and as no affidavit-in-opposition has been filed by the respondents, he has got no comments to make at this juncture.

7. I have heard the learned counsels for the parties.

8. The averments made by the petitioner's counsel and the contents of the writ petition have not been disputed till date. In the case of *Smt. Naseem Bano vs. State of U.P. & Others*, reported in 1993 suppl(4) SCC 46, the Apex Court has held that averments are deemed to be admitted, if not controverted. The writ petition was filed on 25.07.2016 and even till today, no affidavit has been filed by the State respondents, controverting the averments made by the

petitioner. In view of the fact that there is nothing to controvert the averments made by the petitioner, the same are deemed to be admitted. Accordingly, this Court on considering the above facts is of the view that the impugned order dated 24.06.2016 utilising the services of the petitioner against Bargacha Bharaltola L.P. School is arbitrary and unsustainable, as it is in violation of the Schedule to the 2009 Act. The same is accordingly set aside.

9. The writ petition is accordingly allowed.

JUDGE

Comparing Assistant