

GAHC010116282022



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

Case No. : WA/355/2022

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE COMMISSIONER and SECY., GOVT. OF ASSAM, EDUCATION
ELEMENTARY DEPTT., DISPUR, GHY- 6.

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

3: THE DIST. ELEMENTARY EDUCATION OFFICER
MORIGAON
PIN- 782105.

4: THE BLOCK ELEMENTARY EDUCATION OFFICER
LAHARIGHAT BLOCK
PIN- 782127.

5: THE BLOCK ELEMENTARY EDUCATION OFFICER
BHURBANDHA BLOCK
PIN- 782104

VERSUS

RABBUL HUDA AND 30 ORS.
S/O- MD. AMSAR ALI, VILL.- SAGUNBARI, P.S.- MOIRABARI, DIST.-
MORIGAON, ASSAM.

2: GIASUDDIN AHMED
S/O- AZIMUDDIN
VILL.- SHAPKATI
P.S.- LAHORIGHAT
DIST.- MORIGAON
ASSAM.

3:FARIDA AHMED
D/O- ABDUL JALIL
VILL.- BOWALGURI
P.S.- LAHARIGHAT
DIST.- MORIGAON
ASSAM.

4:ABDUL SADIK CHOUDHURY
S/O- HUSSAIN ALI
VILL.- SHAPKATI
P.S.- LAHARIGHAT
DIST.- MORIGAON
ASSAM.

5:MD. REAZUDDIN
S/O- BASIRUDDIN
VILL.- UDAKATI
P.O.- DEWAGURI
P.S.- LAHORIGHAT
DIST.- MORIGAON
ASSAM.

6:MAINUL HAQUE
S/O- MD. JUNAB ALI
VILL.- SHAPKATI
P.S.- LAHARIGHAT
DIST.- MORIGAON
ASSAM.

7:FIRDHOUS AHMED
S/O- ABDUL LATIF
VILL.- HATIMURIA
P.S.- MOIRABARI
DIST.- MORIGAON
ASSAM.

8:KAJALUDDIN AHMED
S/O- HUSSAIN ALI
VILL.- LENGRIBORI
P.S.- MOIRABARI
DIST.- MORIGAON
ASSAM.

9:MAHARUDDIN AHMED
S/O- MD. HUSSAIN ALI
VILL.- SANIMARI
P.S.- LAHORIGHAT
DIST.- MORIGAON

ASSAM.

10:MAINUL HAQUE CHOUDHURY
S/O- MD. ELIUS UDDIN
VILL.- BOWALGURI
P.O.- GOROIMARI
P.S.- LAHARIGHAT
DIST.- MORIGAON
ASSAM.

11:BIKASH BARUAH
S/O- DANI RAM BARUAH
VILL.- KUZISATRA
P.O.- SILPUKHURI
P.S.- MIKIRBHETA
DIST.- MORIGAON
ASSAM.

12:BORNALI BARUA
W/O- RUDRA KT. BORA
LAHORIGHAT
DIST.- MORIGAON
ASSAM
DOLOICHUBA
P.S.- MOIRABARI
DIST.- MORIGAON
ASSAM.

13:SAYEDA HUSSNEAA JAHAN
D/O- HABIBUR RAHMAN
VILL.- HATIMURIA
P.O. and P.S.- MOIRABARI
DIST.- MORIGAON
ASSAM.

14:WAHID AAKTARA KHANAM
W/O- LUTFUR RAHMAN KHAN
VILL. and P.O.- GOROIMARI
P.S.- LAHARIGHAT
DIST.- MORIGAON
ASSAM.

15:SYEDA AKTARA
W/O- SAMSUL HAQUE
VILL.- BELOBORI
DIST.- MORIGAON
ASSAM.

16:ABDUL AZIZ MULLAH
S/O- LT. ABDUL GAFFAR MULLAH
VILL. and P.O.- LAHORIGHAT
DIST.- MORIGAON
ASSAM.

17:SANTANA KAKATI
D/O- PAMESWAR KAKATI
VILL.- MORIGAON
WARD NO. 4
P.S. and DIST.- MORIGAON
ASSAM.

18:SAFIQUL ISLAM
S/O- LT. RAJAB ALI
VILL.- SHAPKATI
P.S.- LAHORIGHAT
DIST.- MORIGAON
ASSAM.

19:PRATIVA DEURI
W/O- SUNTI DEKA
WARD NO. 4
P.O.
P.S. and DIST.- MORIGAON
ASSAM.

20:KHALED AHMED
S/O- SAMSUL HAQUE
VILL.- AUTOLA BORI
P.S.- LAHORIGHAT
DIST.- MORIGAON
ASSAM.

21:RAJENDRA KR. DEKA
S/O- LT. DHANURAM DEKA
VILL.- MOHMORA
P.S.- LAHORIGHAT
DIST.- MORIGAON
ASSAM.

22:GOVINDA DEKA RAJA
S/O- GOHIRAM DEKARAJA
VILL.- BORONGONI
P.S.- LAHORIGHAT
DIST.- MORIGAON
ASSAM.

23:HARUN ALL RASHID AKANDA
S/O- SIRAZUDDIN
VILL.- PANBARI
P.O.- BECHAMARI
DIST.- NAGAON
ASSAM.

24:DIPTI KEOT
W/O- BINOD BORA
VILL.- JAGI BHAKAT GAON
P.S.- LAHORIGHAT
DIST.- MORIGAON
ASSAM.

25:SAMIRAN SAIKIA
D/O- DURGESWAR SAIKIA
VILL.- DHARANGIAL GAON
P.S.- RAHA
DIST.- NAGAON
ASSAM.

26:PRATIVA DAS
W/O- DIPAK BORDOLOI
VILL. and P.O.- MORIGAON
P.S.- MORIGAON DIST.
ASSAM.

27:MANNA DEKA
W/O- TARUN DEKA
VILL.- SAPMARI
P.S. and DIST.- MORIGAON
ASSAM.

28:JUSHNARA KHATUN
W/O- JAMALUDDIN
P.O.- DEWAGURI
LAHORIGHAT
DIST.- MORIGAON
ASSAM.

29:ABDUL AHMED
S/O- MOFOZUDDIN AHMED
LAHORIGHAT
DIST.- MORIGAON
ASSAM.

30:THE COMMISSIONER and SECY.
GOVT. OF ASSAM

FINANCE DEPTT.
DISPUR
GHY- 6.

31:THE TREASURY OFFICER
MORIGAON
PIN- 782105

Advocate for the Petitioner : MR. N J KHATANAR

Advocate for the Respondent : SC, FINANCE

**BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 20-02-2023

This intra-court appeal is directed against the order dated 03.03.2017 passed by the learned Single Bench in WP(C) 268/2013 accepting the writ petition of the respondents, and the order dated 12.05.2022 dismissing the review petition filed by the appellant State. By the impugned order dated 03.03.2017, the learned Single Bench accepted the writ petition filed by the respondents herein and issued a direction upon the appellants to release the payment of arrears of salary to the respondents from the date on which the Writ Petition(C) 2500/2011 was instituted.

2. Mr. R. Mazumdar, learned counsel for the appellant department urged that the respondents were accorded back door entry on the post of teachers. Their services were regularised without following due process of law. As a matter of fact, the respondents procured the orders of regularisation by fraudulent means inasmuch as during the course of enquiry into the matter, the District Elementary Education Officer (DEEO)/s concerned have deposed that the orders of regularisation were not issued under their signatures. It is, thus, urged that the respondents were not entitled to the

relief claimed in the writ petition and, hence, the orders passed by the learned Single Bench deserve to be reversed.

3. Per contra, learned senior counsel Mr. M. K. Choudhury, assisted by Mr. M. Dutta, learned counsel urged that the writ petition was filed by the respondents herein seeking a direction for release of their salary which had been illegally withheld by the appellants. The appellant department did not make any attempt to revoke the regularisation orders of the writ petitioners and hence it does not lie in the mouth of the appellant department to question the validity of the impugned orders passed by the learned Single Bench. Referring to the additional affidavit submitted on behalf of the respondents/writ petitioners in this appeal, learned senior counsel urged that an FIR No. 467/17 was lodged by the Director of Elementary Education, Assam, alleging *inter alia* that the writ petitioners procured the regularisation orders by practising fraud. However, after thorough investigation, the investigating agency submitted a negative final report in the Court of the Chief Judicial Magistrate, Morigaon, which has been accepted by order dated 29.05.2019. It was, thus, contended that there is no material whatsoever on the record of the case to even *prima facie* suggest that the regularisation orders were tainted by irregularity or fraud. Learned senior counsel implored the Court to dismiss the appeal and to affirm the orders passed by the learned Single Bench.

4. We have given thoughtful consideration to the submissions advanced by the learned counsel for the parties and have gone through the materials on record.

5. The foundation of the challenge laid by the appellant department to the orders under appeal is based on an allegation that the respondents/writ petitioners procured the orders of regularisation issued way back in the year 1999 by practising fraud. However, it is an admitted position that till date, no step whatsoever has been taken by the appellant department to rescind/cancel these orders of regularisation. The assertions made by the appellants' counsel questioning the veracity of the

regularisation orders is unfounded when we peruse the contents of the additional affidavit submitted by the respondents along with which, documents pertaining to the FIR No. 467/2017 are annexed. These documents indicate that the FIR lodged by the DEEO resulted into a negative final report which has been accepted by the Court concerned. There being no proceeding to revoke/rescind the orders of regularisation issued way back in the year 1999, the appellant department is not entitled to withhold the salary and/or other service benefits of the respondents.

6. As a consequence, we find no infirmity in the impugned orders warranting interference therein. This intra-court appeal thus fails and is dismissed being devoid of merit.

JUDGE

CHIEF JUSTICE

Comparing Assistant