

GAHC010130852017



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

Case No. : WP(C)/3329/2017

HIRA GOSWAMI and 10 ORS.
W/O. SRI BHABA PRASAD GOSWAMI, R/O. RAJGARH ROAD, CHANDMARI,
GUWAHATI-03, KAMRUPM.

2: SMT. CHAMPA DAS

W/O. TIKEN TALUKDAR
VILL. JITKA
P.O. PATHSALA
DIST. BARPETA
PIN-781325
ASSAM.

3: SOFIOR RAHMAN

S/O. MOHIRUDDIN RAHMAN
VILL. PAL
P.O. BORPALLI
DIST. BARPETA
PIN-781314
ASSAM.

4: MAHIBUR RAHMAN

S/O. ABDUL MASJID
VILL. P.O. SENG
DIST. BARPETA
PIN-781305
ASSAM.

5: ISMAIL HUSSAIN KHAN

S/O. ABDUL GAFFUR KHAN
VILL P.O. BHOGDIA

PIN-781303
ASSAM.

6: SMT. PRANITA BEGUM

W/O. ANOWAR HUSSAIN
VILL. KUNDERGAON
P.O. DAKSHIN GAON
DIST. NALBARI
PIN-781335
ASSAM.

7: MAHAMMAD ALI

S/O. HUSSAIN ALI
R/O. VILL. MAJGAON
P.O. MAJGAON
PIN-781313
BARPETA
ASSAM.

8: MANSUR RAHMAN

S/O. LT. HABIBAR RAHMAN
R/O. WARD NO. 3
HOWLY TOWN
P.O. HOWLY
DIST. BARPETA
PIN-781316
ASSAM.

9: MRINAL CHAKRABORTY

S/O. TANKESHWER CHAKRABORTY
VILL. BHERUA
P.O. DUNI
DIST. SIPAJHAR
PIN-784145.

10: RAJENDRA PRASAD SINGH

S/O. SHIVA NATH SINGH
VILL. DHUNA GURI KUTUM
P.O. MEDHISUTI
DIST. LAKHIMPUR
PIN-787055.

11: JANIUDDIN ALI AHMED

S/O. FARMAN ALI
VILL. BILLESWAR
P.O. BELSOR
DIST. NALBARI
PIN-781304

VERSUS

THE STATE OF ASSAM and 2 ORS.
REP. BY THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM,
DEPTT. OF SECONDARY EDUCATION, DISPUR-06, ASSAM.

2:THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM

DEPTT. OF SECONDARY EDUCATION
DISPUR
GUWAHATI-06.

3:THE DIRECTOR OF SECONDARY EDUCATION

KAHILIPARA
GUWAHATI-2

Advocate for the Petitioner : MR.A CHOUDHURY

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 13-03-2023

Heard Mr. D. Deka, learned counsel for the petitioners as well as Mr. U. Sarma, learned standing counsel for the Secondary Education Department for all the respondents.

2. In brief, the case of the petitioners is that they have been working as subject teachers in different junior colleges since the year 1995. The Govt. of

Assam through its Education (Secondary) Department had regularized the service of 822 numbers of subject teachers in different junior colleges of Assam. It is projected that though similarly situated, the names of the petitioners were left out and accordingly, the petitioner nos.5 and 8 had approached this Court by filing WP(C) 6909/2005 along with other similarly situated persons and this Court by an order dated 21.12.2005 took note of the fact that the records reveal that the persons junior to the petitioners were regularized by ignoring the case of the petitioners and accordingly direction was issued to the respondent authorities to take necessary steps for regularizing the services of the petitioners from the date of receiving deficit grant-in-aid by the colleges and as per instructions/govt. circulars/notifications etc., and also service rule in vogue, without further delay by further directing that the entire exercise be carried out within a period of 4(four) months from the date of furnishing certified copy of the order.

3. It is projected that several similarly situated persons approached this Court by filing WP(C) 5522/2007 as well as WP(C) 6020/2007 and this Court by order dated 26.08.2009 in the said cases extended the benefit of regularization already given to similarly situated persons.

4. It is projected that subsequently by a speaking order dated 15.02.2007, the competent authority in the Education (Secondary) Department held that the prayer of the petitioners cannot be considered at this stage and therefore was liable to be rejected and accordingly the prayer made by 72 persons who are parties in WP(C) 6909/2005 and WP(C) 8008/2005 were rejected.

5. The learned counsel for the petitioners has submitted that at one point of time, a decision was taken for regularizing the services of dropped teachers which was never acted upon and that by the impugned OM dated 02.03.2016 which was issued to regularize the services of subject teachers by prescribing certain provisions exclude the petitioners from the zone of consideration.

6. Accordingly, by filing this writ petition under Article 226 of the Constitution of India, the petitioners have challenged the impugned order dated 02.03.2016. The petitioners have also assailed the impugned notification dated 27.05.2017 regarding proposal for regularization of dropped teachers who were working in provincialised Junior colleges (now Senior Secondary Schools).

7. In the said context, the learned counsel for the petitioners has submitted that the names of the petitioners were not included in this list and therefore the petitioners have approached this Court by filing this writ petition.

8. The submission made by the learned counsel for the respondents is noted.

9. On a perusal of the materials available in the writ petition, it appears that the names of the petitioner nos.5 and 8 were included in the list of dropped posts for 96 nos. of lecturers and 48 nos. Junior Colleges under deficit system of grant-in-aid w.e.f. 01.02.2001.

10. Therefore, it is not in dispute that as the names of the said petitioners appeared in the list of dropped posts, that they were then working as lecturers/ teachers in Junior colleges, now Senior Secondary schools having the benefit of grant-in-aid. There is no material on record to show that mandamus can be granted against the State respondents to continue providing the grant-in-aid. As the petitioners were not appointed in the govt. service, the question of regularization of service of the petitioners in govt. service as teachers of respective senior secondary schools, does not appear to be a possibility under the relevant provisions of Assam Education (Provincialisation of Services of Teachers and Re-organization of Educational Institutions) Act, 2017.

11. It is further seen that the petitioners were admittedly not appointed in the govt. service. Therefore as the petitioners have approached the Court in the previous round of litigation referred to hereinbefore and this Court had considered their grievance and issued an order directing regularization of services. For non-compliance of the said order, apparently no contempt petition was filed. Under such circumstances, as the petitioners have already been granted a similar relief, there cannot be a repetitive writ issued for the same relief which has already been granted earlier.

12. Even assuming that the petitioners have made out a case for issuance of a writ as was already granted earlier in the previous round of litigation being WP(C) 6909/2005 and WP(C) 8008/2005, but at that point of time these concerned schools were not provincialized schools. It has not been shown that for the purpose of funding of teachers whose service were not provincialized,

recourse can be taken to have the salary and other emoluments of the petitioners, being funded by grant-in-aid. Hence, the Court is unable to accept the prayer made by the petitioners on the ground that appointment can only be made to the provincialized vacant posts as notified in respect of any govt. institutions. In light of decision of the Supreme Court of India in the case of *Secretary, State of Karnataka and Ors. Vs. Umadevi, (2006) 4 SCC 1*, the petitioners will have to demonstrate that they were engaged by following due process of selection in a manner recognized by law. In the present writ petition, the petitioners have not provided their initial appointment orders and they have not disclosed manner in which their appointments were made. Therefore, the Court is bound to follow the principle which have been laid down in the case of *Uma Devi (supra)* in respect of the prayer for regularization of service.

13. Accordingly, on both the grounds as discussed above, the Court does not find the petitioners to be entitled to the relief as prayed for. Hence, the Court finds no merit to interfere with the office memorandum dated 02.03.2016 and notification dated 27.05.2017. Accordingly, this writ petition stands dismissed.

14. No order as to cost.

JUDGE

Comparing Assistant