

GAHC010148192023



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

Case No. : WP(C)/4359/2023

GITANJALI SAIKIA
W/O- SRI NAYAN JYOTI BORA, R/O- NEAR HANUMAN MANDIR, TORAJAN
ROAD, P.O. CHOLADHARA, P.S. AND DIST. JORHAT, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED HEREIN BY THE COMMISSIONER AND SECRETARY TO
THE GOVT. OF ASSAM, SECONDARY EDUCATION DEPARTMENT, JANATA
BHAWAN, DISPUR, GUWAHATI-781006.

2:THE DIRECTOR OF SECONDARY EDUCATION
KAHILIPARA GUWAHATI DIST. KAMRUP(M)
ASSAM

3:THE INSPECTOR OF SCHOOLS
GOLAGHAT DISTRICT CIRCLE
DIST. GOLAGHAT ASSAM

4:THE INSPECTOR OF SCHOOLS
JORHAT DISTRICT CIRCLE
DIST. JORHAT ASSA

Advocate for the Petitioner : MR S BORTHAKUR

Advocate for the Respondent : SC, SEC. EDU.

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

04-08-2023

Heard Mr. S. Borthakur, learned counsel for the petitioner and Ms. D.Muchahary, learned

Standing counsel, Department of School (Secondary) Education, Assam for all the respondent Nos. 1 to 4.

2. After following the due procedure, on being approved by the District Level Approval Committee as well as the State Government in the Secondary Education Department vide No. ASE.767/2016/152 dated 23.11.2016 and communicated by the Directorate of Secondary Education, Assam vide letter No. GB-EST/Special(TET)/1/2015/180 dated 05.12.2017, the Inspector of Schools, Golaghat District Circle (GDC), Golaghat by order under No. GDC/EST/348/07/ pt.III/40 dated 02.05.2017 appointed the petitioner as a Graduate Teacher (Sanskrit) in Gonakpukhuri High School, Golaghat, a provincialised High School of the State in which after her joining, she continued to serve as a Graduate Teacher (Sanskrit) upto 13th May, 2022.

3. The appointment of the petitioner as Graduate Teacher (Sanskrit) at Gonakpukhuri High School issued by the Inspector of Schools, GDC, Golaghat on 02.05.2017 was in terms of the provisions of the Assam Secondary Education (Provincialised Service) Rules, 2003 as amended.

4. As per the provisions of Rules 2 (b)(ii) of said 2003 Rules, the Inspector of Schools of the concerned District is the appointing authority in respect of the cadres of Graduate Teachers and Under-Graduate Teachers (Inter-mediate) as well as Non-Teaching Staff of provincialised schools of the State.

5. The petitioner hails from Kumargaon, Panichukuah, District-Jorhat. While in service as Graduate Teacher (Sanskrit) at Gonakpukhuri High School in the District of Golaghat, she applied for Maternity Leave for her second child for a period of 180 days w.e.f. 06.04.2022 to 02.10.2022 in terms of the Notification No. FEG.11/2013/53 dated 07.01.2015 of the State Government in the Finance (ESTT-A) Department which was accordingly granted by the Inspector of Schools, GDC, Golaghat vide order under Memo No. GDC/EST/219/07/1365 dated 10.05.2022.

6. During her service as Graduate Teacher at Gonakpukhuri High School, the petitioner applied for the post of Graduate Teacher (Sanskrit) under OBC/MOBC category in the Government Secondary School of Jorhat District. Pursuant to her selection by the State Selection Committee and approved by the State Government in the Secondary Education Department vide letter No. ASE. 84/2019/256 dated 11.05.2022 as well as the Government's approval vide letter Nos. ASE.84/2019/105 dated 26.05.2020, ASE.84/2019/126 dated 12.11.2021 and ASE. 84/2019/142 dated 28.12.2021, the Director of Secondary Education, Assam vide No. AAP/Appointment(G.T)/2/2022/13 dated 14.05.2022 appointed

the petitioner as a Graduate Teacher, Sanskrit in the Government Secondary School under Jorhat District in the Pay Band-2 with Scale of Pay of Rs. 14,000/- to Rs. 60,500/- plus Grade Pay of Rs. 8,700/- and other allowances as admissible as per Rules with effect from the date of her joining and accordingly, she submitted her resignation on 14.05.2022 before the Inspector of Schools, Golaghat seeking resignation from the post of Graduate Teacher (Sanskrit) of Gonakpukhuri High School with due permission from the Headmaster of said High School.

7. Pursuant to the said order dated 14.05.2022, noted above, the petitioner joined her service as a Graduate Teacher, Sanskrit on 18.05.2022 before the Directorate of Secondary Education, Assam and thereafter, by order under No. AAP/Appointment(G.T.)/2/2022/87 dated 23.05.2022, the Director of Secondary Education, Assam posted her as Graduate Teacher, Sanskrit in the Government Boys' Higher Secondary and Multi-purpose School, Jorhat under OBC/MOBC category, pursuant to which, she joined her service as Graduate Teacher, Sanskrit in said Government Boys' H.S. and M.P. School on 24.05.2022 by submitting her joining report before the Principal of said Government Boys' H.S. and M.P. School which was accordingly informed by the said authority to the Director of Secondary Education, Assam on 25.05.2022.

8. As such, the petitioner submitted a representation on 01.07.2022 before the Principal of said Government Boys' H.S. & M.P. School, Jorhat to grant her Maternity Leave that has already been granted by the Inspector of School, GDC, Golaghat.

9. Pursuant to her earlier Maternity Leave granted to her by the Inspector of Schools, GDC, Golaghat on 10.05.2022, noted above, after completion of 180 days of such Maternity Leave, she joined her service on 01.11.2022 by submitting her re-joining report before the Principal of Government Boys' H.S. & M.P. School, Jorhat.

10. However, the petitioner was not paid her salary from the date of her joining in the said Government Boys' H.S. & M.P. School, Jorhat i.e., 24.05.2022 till 30.10.2022 and as such, she submitted a representation before the Directorate of Secondary Education, Assam on 12.12.2022.

11. The Deputy Director of Secondary Education, Assam vide communication No. AAP/Leave/13/2022/20 dated 24.03.2023 informed the Inspector of Schools, Jorhat District Circle (JDC), Jorhat that as the Maternity Leave can be taken only in one spell and not in segments, in terms of the said Notification dated 07.01.2015 issued by the State Government in the Finance (ESTT-A) Department, the petitioner perhaps is not entitled for her Maternity Leave w.e.f. 25.05.2022 to

30.10.2022.

12. Being aggrieved with such observation made by the Deputy Director of Secondary Education, Assam vide said communication dated 24.03.2023, noted above, the petitioner has preferred this writ petition praying amongst others for direction to the respondent authorities to regularize her Maternity Leave period and to release her arrear salary w.e.f. 24.05.2022 to 30.10.2022.

13. Though the petitioner earlier served as Graduate Teacher (Sanskrit) in Gonakpukhuri High School under the Inspector of Schools, GDC, Golaghat and after her fresh appointment as Graduate Teacher, Sanskrit in the Government Boys' H.S. & M.P. School, Jorhat in terms of the order of the Director of Secondary Education, Assam dated 14.05.2022, noted above, she joined the said Government Boys' H.S. & M.P. School, Jorhat on 24.05.2022 but she had her Maternity Leave w.e.f. 06.04.2022 to 02.10.2022 for a period of 180 days that has been granted by the Inspector of Schools, GDC, Golaghat. Both Gonakpukhuri High School, Golaghat and Government Boys' H.S. & M.P. School, Jorhat, are under the jurisdiction of the Directorate of Secondary Education, Assam. Further from the appointment orders of the petitioner at Gonakpukhuri High School, Golaghat as well as at Government Boy's H.S.& M.P.School, Jorhat, it can be seen that on both occasions, the final approval of her appointments were given by the State Government in the Secondary Education Department, which means that the petitioner continued to remain as a Government Employee under the Secondary Education Department of the State but her place of service was changed.

14. During the period when the petitioner joined her service as Graduate Teacher, Sanskrit in Government Boys' H.S. & M.P. School, Jorhat on 24.05.2022 in terms of her appointment order dated 14.05.2022 issued by the Director of Secondary Education, Assam, noted above, she was in Maternity Leave after giving birth to her second child on 28.04.2022.

15. As per the said Notification dated 07.01.2015 of the State Government in the Finance (ESTT-A) Department after the joining of the petitioner in new place of posting in Government Boys' H.S. & M.P.School, Jorhat as Graduate Teacher Sanskrit, her Maternity Leave though appears to be in segment but her service continued to remain under the Directorate of Secondary Education, Assam. Moreover, the said Notification dated 07.01.2015 is a beneficial scheme granted to a mother to look after her newly born child.

16. Since her service continued to remain under the Directorate of Secondary Education, Assam from the time she served as Graduate Teacher (Sanskrit) at Gonakpukhuri High School, Golaghat and

thereafter, being appointed and posted as Graduate Teacher, Sanskrit at Government Boys' H.S. & M.P. School, Jorhat under the same authority, the Court is of the view that the petitioner is entitled for her Maternity Leave for the period w.e.f. 06.04.2022 to 02.10.2022 at least in terms of the Maternity Leave granted to her by the Inspector of Schools, GDC, Golaghat vide order dated 10.05.2022, noted above, and considering the same, the petitioner is directed to submit a fresh representation on or before 08.09.2023 before the Secretary to the Government of Assam in the Secondary Education Department as well as the Director of Secondary Education, Assam along with a certified copy of this order and the copy of the order dated 10.05.2022 of the Inspector of Schools, GDC, Golaghat by which she was granted her Maternity Leave w.e.f. 06.04.2022 to 02.10.2022, obtaining necessary acknowledgment from those two authorities.

17. In the event of filing such representation by the petitioner along with all other relevant documents within the time as specified above, both the Secretary to the Government of Assam in the Secondary Education Department as well as the Director of Secondary Education, Assam shall consider her Maternity Leave in terms of the order under Memo No. GDC/EST/219/07/1365 dated 10.05.2022 of the Inspector of Schools, GDC, Golaghat as well as the Notification No. FEG.11/2013/53 dated 07.01.2015 of the State Government in the Finance (ESTT-A) Department pertaining to the Maternity Leave. Such representation of the petitioner with regard to her Maternity Leave shall be disposed of by the authorities concerned within a period of 60 (sixty) days from the date of receipt of the same intimating her about the outcome of her said representation.

18. With the above observation and direction, this writ petition stands disposed of.

JUDGE

Comparing Assistant