

GAHC010150832020



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

Case No. : WP(C)/4589/2020

GANESH SAIKIA AND 7 ORS
S/O- SARBESWAR SAIKIA, R/O VILL.- KESERUGURI, P.O.- PUBNAHARONI
VIA DHALPUR, DIST.- LAKHIMPUR, ASSAM.

2: RANJAN HAZARIKA
S/O- SRI UMARAM HAZARIKA
R/O VILL.- SINGIA
P.O.- JARABARI
DIST.- LAKHIMPUR
ASSAM.

3: JITEDRA PRASAD
S/O- ABHIMANYU PRASAD
R/O VILL. AND P.O. - RANGATI
DIST.- LAKHIMPUR
ASSAM.

4: NIZARA NAZIR
D/O- LT. BHUDHAR NAZIR
W/O- SRI PRABIN BARA
R/O VILL. AND P.O.- PANBARI
DIST.- LAKHIMPUR
ASSAM.

5: JUNMONI BORUAH
D/O- SRI PRADIP KUMAR BORUAH
R/O VILL.- RONGPUR BETONI
P.O.- MERAMUKH
DIST.- LAKHIMPUR
ASSAM.

6: DHRUBAJYOTI CHEKANIDHARA
S/O- RAJENDRA CHEKANIDHARA
R/O VILL.- MADHUPUR

P.O.- MADHUPUR
P.S.- NARAYANPUR
DIST.- LAKHIMPUR
ASSAM
PIN- 787033.

7: MOMI GOGOI
D/O- LT. ARUN GOGOI
R/O VILL. AND P.O.- PULINAHARANI
DIST.- LAKHIMPUR
ASSAM.

8: JADUMONI SAIKIA
S/O- LT. MOHENDRA NATH SAIKIA
R/O VILL.- SARJAN
P.O.- PANBARI
P.S.- NARAYANPUR
DIST.- LAKHIMPUR
ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM,
EDUCATION (ELEMENTARY) DEPTT., DISPUR, GHY- 6.

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GHY- 19
DIST.- KAMRUP (M)
ASSAM.

3:THE DIST. ELEMENTARY EDUCATION OFFICER
NORTH LAKHIMPUR
DIST.- LAKHIMPUR
ASSAM
PIN- 787001.

4:THE BLOCK ELEMENTARY EDUCATION OFFICER
NARAYANPUR BLOCK
DIST.- LAKHIMPUR
ASSAM
PIN- 784164.

5:THE DY. INSPECTOR OF SCHOOLS
LAKHIMPUR
DIST.- LAKHIMPUR

ASSAM
PIN- 787001.

6:THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM
FINANCE DEPTT.
DISPUR
GHY- 6

Advocate for the Petitioner : MR. N BORAH

Advocate for the Respondent : SC, ELEM. EDU

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

15-02-2023

Heard Mr. N. Borah, learned counsel for the petitioners and Mr. A. Phukan, learned Standing counsel, Department of School (Elementary) Education, Assam for the respondent Nos. 1 to 5. Also heard Mr. A. Chaliha, learned Standing counsel, Finance Department of the State for the respondent No. 6.

2. The eight petitioners serving as honorary Hindi Teachers in different provincialised Upper Primary Schools in the Narayanpur Education Block of Lakhimpur District, have filed this writ petition on 16.10.2020 praying amongst others for direction to the respondent authorities (i) to regularize their services as Hindi Teachers in the existing vacant posts of their respective schools under the District Elementary Education Officer (DEEO), Lakhimpur or (ii) to provide special preference to them in the event of direct recruitment process to fill up the post in which they are working as Hindi Teachers considering their long service record as Hindi Teachers.

3. Notice in this case was issued on 06.11.2020. But the respondent authorities in the Elementary Education Department did not file any affidavit in the matter till date.

4. However, on being enquired, Ms. N. Phukan, learned Standing counsel, Department of School (Elementary) Education, Assam on 08.02.2023 placed a copy of the communication No. DEED/L/W.P.

(C) No. 4589/2020/4708 dated 08.02.2023 of the DEEO, Lakhimpur, North Lakhimpur providing the specific date of provincialisation of the Upper Primary Schools in the Narayanpur Education Block, District-Lakhimpur wherein the petitioners claimed to have been appointed as Honorary Hindi Teachers by the concerned School Managing Committees (SMC) of their respective schools.

5. It is contended by the petitioners that the petitioner No. 1, Ganesh Saikia, son of Sarbeswar Saikia on 01.02.2015 being appointed by the SMC of Letekujan M.E. School as an honorary Hindi Teacher is serving in said School since then.

6. The petitioner No.2, Ranjan Hazarika, son of Umaram Hazarika was similarly appointed by the SMC of Kathajan Deuri M.E. School as an honorary Hindi Teacher on 30.10.2009 and since then he is serving in it.

7. The petitioner No.3, Jitendra Prasad, son of Abhimanyu Prasad was appointed by the SMC of Balipathar Anchalik M.E. School as an honorary Hindi Teacher on 14.10.2013.

8. The petitioner No. 4, Nizara Nazir, daughter of late Bhudhar Nazir was appointed as an honorary Hindi Teacher at Janakalyan M.E. School by its SMC on 14.10.2011.

9. The petitioner No. 5, Junmoni Boruah daughter of Pradip Kumar Boruah was appointed by the SMC of Gohain Pukhuri M.E. School as an honorary Hindi Teacher on 20.01.2014.

10. The petitioner No.6, Dhrubajyoti Chekanidhara, son of Rajendra Chekanidhara was appointed by the SMC of Bishnudev M.E. School as an honorary Hindi Teacher on 15.05.2012.

11. The petitioner No.7, Momi Gogoi, daughter of late Arun Gogoi was appointed by the SMC of Pulinaharani M.E. School as an honorary Hindi Teacher on 03.02.2015 and the petitioner No. 8, Jadumoni Saikia, son of late Mohendra Nath Saikia was appointed by the SMC of Milonjyoti M.E.School as an honorary Hindi Teacher on 09.03.2014.

12. The petitioners submitted that as they were eligible having the requisite qualifications to be appointed as honorary Hindi Teachers and as they have passed the required examinations i.e., "Pravin", "Kobid", "Ratna" etc. from the recognized educational institutions obtaining such degrees, the concerned SMCs appointed them as honorary Hindi Teachers in their said provincialised upper primary schools.

13. The petitioners also submitted that since their date of joining in those upper primary schools,

they continuously served in those schools and that on 07.09.2017, the District Elementary Education Officer, North Lakhimpur, Lakhimpur deputed all of them along with 150 teachers of Upper Primary/Lower Primary Schools for their Diploma in Elementary Education (D.El.Ed) Training for a period of two years for the period from 2017 to 2019 at the Basic Training Centre, Azad, District-Lakhimpur under the State Council of Educational Research and Training, Assam and that all of them completed their said training.

14. The petitioners stated that the State Government in the Elementary Education Department in the year, 2016 took some steps to regularize the services of the honorary Hindi Teachers appointed by the concerned SMCs on the basis of letters submitted by the Director of Elementary Education, Assam during the months of February and April 2016. In that regard, they have annexed a copy of the letter No. PMA.76/2016/182 dated 04.11.2016 of the State Government in the Elementary Education Department as Annexure-F to this petition. On the basis of the said letter dated 04.11.2016, the Director of Elementary Education, Assam on 06.01.2017 wrote to all the District Elementary Education Officers (DEEO) of the State to furnish comprehensive reports of their respective jurisdictions in respect of honorary Hindi Teachers for onward submissions to the Government.

15. Accordingly, the DEEO, North Lakhimpur, Lakhimpur, by his communication No. DEEO/Honorary/H.T./2017/3146 dated 03.04.2017 submitted a list of 75 Nos. of honorary Hindi Teachers serving in different Education Blocks of the district-Lakhimpur including numbers of honorary Hindi Teachers serving in upper primary school in the Narayanpur Education Block that contains the names of the petitioners (Annexure-H to this petition).The petitioners are expecting that their services will be regularized as the State Government in the Elementary Education Department have taken certain steps for regularization of such honorary Hindi Teachers serving in such upper primary schools of the State.

16. The petitioners have also annexed the certificates issued by the respective Headmasters of the concerned upper primary schools and the concerned High Schools wherein the upper primary schools have been amalgamated with High Schools.

17. From the prayer of the petitioners as noted above, it can be seen that they are seeking regularization of their services as Hindi Teachers in existing vacant posts and claimed that they are also serving in such upper primary schools.

18. It is well settled that any post in such provincialised upper primary schools of the state is a

public post and such public post can be filled up only by the following constitutional provisions under Articles 14 & 16 of the constitution of India. Apparently, the concerned SMCs of those provincialised upper primary schools appointed the petitioners as honorary Hindi Teachers.

19. The communication of the DEEO, North Lakhimpur, Lakhimpur dated 08.02.2023 reflects that (i) Letekujan M.E. School of Narayanpur Education Block wherein the petitioner No. 1 was alleged to have been appointed as an honorary Hindi teacher was provincialised by the State Government w.e.f. 01.02.1987; (ii) Kathajan Deuri M.E. School, wherein the petitioner No. 2 was allegedly appointed by the SMC was also provincialised w.e.f. 01.02.1987; (iii) similarly, Balipathar Anchalik M.E. School wherein the petitioner No. 3 was allegedly appointed by its SMC was provincialised w.e.f. 01.02.1987; (iv) Janakalyan M.E. School wherein the petitioner No. 4 was allegedly appointed by the SMC was provincialised w.e.f. 01.01.1986; (v) Gohain Pukhuri M.E. School wherein the petitioner No. 5 was appointed by its SMC was provincialised w.e.f. 01.09.1977; (vi) Bishnudev M.E. School, wherein the petitioner No. 6 was allegedly appointed by its SMC was provincialised w.e.f. 01.02.1988, (vii) Pulinaharani M.E. School wherein the petitioner No. 7 was allegedly appointed by its SMC was provincialised w.e.f. 19.11.1991 and (viii) Milanjyoti M.E. School wherein the petitioner No. 8 was allegedly appointed by its SMC was provincialised w.e.f. 01.01.1986.

20. From the Annexure-H annexed to this petition by the petitioners containing the list of honorary Hindi Teachers serving in such M.E. Schools under Narayanpur Education Block of Lakhimpur District communicated by the DEEO North Lakhimpur, Lakhimpur, it is seen that the name of the petitioner No. 7 reflects in two schools, one is Pulinaharani M.E. School as stated by her and the other is Sankar Madhav M.E. School.

21. The DEEO, North Lakhimpur, Lakhimpur by its communication dated 08.02.2023 clarified that said Sankar Madhav M.E. School is also a provincialised school which was provincialised w.e.f. 01.06.1986.

22. As noted above, the schools in which the petitioners were appointed by the respective SMCs were provincialised under the provisions of the Assam Elementary Education (Provincialisation) Act, 1974 that came into force w.e.f. 18.09.1975, much prior to their appointments as honorary Hindi Teachers.

23. It is well settled in law that if one such school is provincialised under the provisions of said 1974 Act, the posts of teaching and non-teaching staff sanctioned in such provincialised school by the

Government have become the public post.

24. The Assam Elementary Education (Provincialisation) Rules, 1977, a statutory Rules framed under Article 309 of the constitution of India that came into force w.e.f.19.03.1979 which regulated the recruitment and the conditions of service of teachers of Elementary Schools that were provincialised under the provisions of said 1974 Act.

25. In the case of *National Fertilizers Limited and others Vs. Somvir Singh* reported in (2006) 5 SCC 493, the Hon'ble Apex Court have held that "*the regularization is not a mode of appointment and if appointment is made without following the Rules, the same be a nullity and the question of confirmation of an employee upon the expiry of the purported period of probation would not arise*".

26. In the case of *A. Umarani Vs. Registrar Co-operative Societies* reported in (2004) 7 SCC, the Hon'ble Apex Court have held that "*the regularization is not and cannot be a mode of recruitment by any 'State' within the meaning of Article 12 of the Constitution of India or anybody or authority governed by a Statutory Act or the Rules framed thereunder*".

27. The Hon'ble Apex Court in the said case of *A.Umarani* (supra) have also held that "*an appointment made in violation of the mandatory provisions of the Statute and in particular ignoring the minimum educational qualification and other essential qualification would be wholly illegal and such illegality cannot be cured by taking the recourse to regularization*".

28. In the case of *Jahangir Alam and others Vs. State of Assam* and others decided on 29.09.2003 reported in 2003 (3) GLT 544, the Hon'ble Court have held that the Rules of 1977 does not contemplate any role of the Managing Committee in the matter of appointment of teachers since the said 1977 Rules provides for appointment in a particular manner by a specified authority upon due selection by a duly constituted Selection Board and therefore, the appointment of the petitioners made by the Managing Committee is clearly contrary to the provisions of the statutory enactment in force. Therefore, the service rendered by the petitioners as honorary Hindi Teachers appointed by the SMCs of provincialised Elementary Schools must be held to have been rendered in fortuitous circumstances as distinguished from regular service rendered under the State. As such, appointments made in departure to the Rules in force and the services rendered on the basis of such appointments cannot be understood to caste any obligation on the part of the State to regularize such appointments and in fact, no power to regularize such appointments is discernible under the Rules.

29. The Court in the case of *Jahangir Alam* (Supra) further observed that at no point of time, the

State had permitted any of the petitioners as in the present case, to continue to work as honorary teachers nor was any assurance given by the State on continuing them to work as honorary teachers, so as to get the benefit of teachers or entitlement of any such regularization. No act on the part of the authority of the State creating any impression that the petitioners would be entitled to regularization and can be attributed so as to hold that the petitioners could have entertained a reasonable impression that if they continue to render services on honorary basis, such service would be regularized at some point of time invoking the doctrine of legitimate expectation.

30. The Court have held that that the representation or the action on which the expectation is born, must be by an authority competent and further such representation or impression cannot be contrary to law.

31. The Court have also held that the doctrine of legitimate expectation cannot come to the aid and assistance of the petitioners since the doctrine of legitimate expectation being an equitable principle, must follow the law and cannot be applied to achieve what is not contemplated by the law in force.

32. In the case of *Jahangir Alam* (supra) following a decision of a Division Bench of this Court passed in the case of *Abdul Bari Vs. State of Assam and others* reported in (1999) 3 GLT 31, the Court have held that such appointment made by the School Managing Committee in a provincialised school on honorary basis, is de-horsed the Rules and any such appointee appointed by the School Managing Committee in such provincialised schools will not have legal or such equitable rights for regularization.

33. Considering the above, the Court is of the view that though the authorities concerned submitted the list of honorary Hindi Teachers serving in the District of Lakhimpur before the Government through the DEE, Assam, without having any such power of the respondent authorities specified in an Act or statutory Rules of service, such appointee being appointed by the SMC in a provincialised school, service of such appointee cannot be regularized and on the basis of steps taken by the respondent authorities, there cannot be any such legitimate expectation of the petitioners that their services can be regularized against the vacant post of Hindi Teachers.

34. With regard to the second prayer of the petitioners for direction to the respondent authorities to provide special preference to them vis-a-vis the direct recruitment to fill up the existing vacant posts of Hindi Teacher as noted above, that after coming to the force of the Right of Children to Free and Compulsory Education (RTE) Act, 2009 and the Assam Right of Children to Free and Compulsory Education Rules, 2011, a candidate is eligible for selection, only when such incumbent has the

requisite eligibility as prescribed by the National Council for Teachers Education for appointment to the post of Assistant Teachers in Elementary Schools as provided in Sections 19, 23 & 25 of the said 2009 Act and the 2011 Rules, noted above.

35. For the reasons above, the Court in exercise of the power conferred under Article 226 of the Constitution of India, is not inclined to direct the State respondent to consider the past service of the petitioners as they were appointed by the School Managing Committees in provincialised schools, de hors the Rules, noted above.

36. However, if the petitioners fulfill the requisite eligibility criteria as prescribed and if they want to participate in selection process, they can apply for the post of Hindi Teachers/Assistant Teachers in such upper primary schools of the State.

37. Accordingly, this writ petition being devoid of merit, stands dismissed.

JUDGE

Comparing Assistant