

GAHC010153822017



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

Case No. : WP(C)/7878/2017

NAREN CH. BORO
S/O LT. KALA RAM BORO R/O VILL- BARKHARUA P.O.KHARUA, DIST.
BAKSA BTAD ASSAM, PIN - 781346.

VERSUS

THE STATE OF ASSAM and 6 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
EDUCATION SECONDARY DEPARTMENT, DISPUR, GUWAHATI, KAMRUP
M, ASSAM, PIN - 781006.

2:THE SECRETARY

FINANCE SIU DEPARTMENT
DISPUR
GUWAHATI
KAMRUP M
ASSAM
PIN - 781006.

3:THE BODOLAND TERRITORIAL COUNCIL

REP. BY THE PRINCIPAL SECRETARY
BODOLAND TERRITORIAL COUNCIL
KOKRAJHAR
ASSAM
PIN - 783370.

4:THE COMMISSIONER AND SECRETARY
TO THE WPT and BC DEPARTMENT
GOVT. OF ASSAM
DISPUR

GUWAHATI
ASSAM
PIN - 781006.

5:THE DIRECTOR OF EDUCATION

BODOLAND TERRITORIAL COUNCIL
KOKRAJHAR
ASSAM
PIN - 783370.

6:THE INSPECTOR OF SCHOOLS

B.D.C. MUSHALPUR
BAKSA
DIST. BAKSA
BTAD
ASSAM
PIN - 781333

7:THE PRINCIPAL
BARAMA HIGHER SECONDARY SCHOOL
P.O. BARAMA
DIST. BAKSA
BTAD
ASSAM
PIN - 781346

Advocate for the Petitioner : MRS A BUJARBARUAH

Advocate for the Respondent : SC, SECONDARY EDUCATION

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

31.05.2023

Heard Ms. A Bujarbaruah, learned counsel for the petitioner. Also heard Ms. RB Bora, learned Standing Counsel, BTC.

2. Considering the subject matter and also the fact that pleadings have been exchanged and this writ petition is pending since the year 2017, the same is taken up

for disposal at the admission stage.

3. This petition has been filed for a direction to regularize the service of the petitioner as Lower Division Assistant (hereinafter referred to as the LDA) in Barama Higher Secondary School (hereinafter referred to as the School) which, he claims to have been working for almost 20 years and also for release of the arrear salaries since April, 2006.

4. The petitioner claims to have been appointed as an LDA on 15.12.1997 by the Inspector of Schools, Nalbari pursuant to a letter dated 09.12.1996 by the Joint Secretary, BTC, Kokrajhar and he was posted at the School on a fixed pay of Rs. 1200/- per month.

5. Thereafter on 30.12.2002, the Inspector of Schools, Nalbari had passed an order allowing the petitioner to draw regular scale of pay against a vacant post caused due to the retirement of one Shri Mani Ram Das, Upper Division Assistant (UDA). Subsequently on 06.03.2023, another order was issued by the Inspector of Schools, Nalbari whereby the petitioner was allowed to work as LDA which he continued till March, 2016. However, it is the case of the petitioner that from April, 2006, his salaries were stopped without any reason. The petitioner claims to have approached the respondent authorities on a number of occasions but nothing has been done. The petitioner further claims that resolutions were adopted by the School Managing Committee (SMC) on 16.08.2017 and 20.10.2017 for appointment of the petitioner in the vacant post of UDA which was existing and the proposal was also forwarded to the Director of Education, BTC, however, nothing has been done and therefore, the present petition has been filed.

6. Ms. Bujarbaruah, learned counsel for the petitioner has submitted that the

petitioner is continuing in his service and therefore, the prayer for regularization of his service is justified, more so, when the School Managing Committee had taken resolutions to that effect. By referring to the pleadings and the documents annexed, more particularly, the letter dated 26.03.2018, it is submitted by Ms. Baruah that by the said letter, the Inspector of Schools, BDS, Mushalpur had forwarded the case of the petitioner to the Director of Education, BTC, Kokrajhar for adjustment.

7. On the other hand, Ms. Bora, learned Standing Counsel by referring to the affidavit-in-opposition filed by the BTC on 10.09.2019 has submitted that a vital aspect of the matter has not been highlighted in the petition or the additional pleadings. By referring to a communication dated 12.11.2004 which has been annexed to the additional-affidavit filed by the respondent no. 5 on 09.05.2023, the learned Standing Counsel submits that a decision was taken to terminate the services of all Mother Teachers, LP English Teachers, LDAs in ME Schools and Malis (Gardener) in High Schools and Councils Teachers for which no posts have been sanctioned by the Government of Assam. The learned Standing Counsel, accordingly submits that since the services of the petitioner was terminated, the authorities cannot be saddled with the responsibility to pay the salaries after the said date.

8. Ms. Bujarbaruah, learned counsel for the petitioner has, however, replied that the said order dated 12.11.2004 was never served upon the petitioner and therefore, he was not aware of such termination. She further adds that on the other hand, the petitioner was allowed to continue his service which he claims to be continuing even today.

9. The rival Contentions made by the learned counsel for the parties have been duly considered and the materials placed before this Court have been examined.

10. The prayer made in the writ petition reads as follows:

“It is therefore prayed that your Lordship would be pleased to admit this petition, call for the record of the case, issue Rule calling upon the respondents as to why a writ in the nature of Mandamus / Certiorari / and /or any other appropriate writ, order of direction shall not be issued to regularize the service of the petitioner as Lower Division Assistant (LDA) in Barama Higher Secondary School and release of his arrear salaries since April / 2006 till date as well as current monthly salary and upon hearing the parties and perusal of records be pleased to make the Rule absolute and / or be pleased to pass such further order /orders as your Lordship’s deem fit and proper considering the facts and circumstances of the case.

-AND-

Pending disposal of the writ petition, your Lordships would be pleased to pass an interim order/direction to the respondent authorities not to appoint any person in the said sanctioned post of Lower Division Assistant (LDA) in Barama Higher Secondary School, Barama.”

11. The relief pertains to regularizing the service of the petitioner as LDA in the School in question and release of arrear salaries since April, 2006.

12. The BTC authorities has put on record an order dated 12.11.2004 whereby a decision was taken to terminate all appointments, including that of the petitioner which were made in posts not sanctioned by the Government of Assam. Even assuming for the argument sake that the contention of the petitioner that copy of the aforesaid order was not communicated to him, what intrigues this Court is the long delay of more than a decade in approaching this Court. The said issue can also be

examined by the communication dated 26.03.2018 issued by the Inspector of Schools, BTC wherein, it has been stated that the petitioner has been discharging his service in the School on honourary basis. It is a settled law that in a provincialised school, School Managing Committee does not have any jurisdiction to make any substantial appointment and in the instant case, the petitioner claims to have been appointed in the said School on 15.12.1997 as per an order by the Inspector of Schools, Nalbari. However, as would transpire from the communication dated 12.11.2004 which is supported by the pleadings that such posts were not sanctioned by the Government of Assam.

13. Under those facts and circumstances, this Court is not inclined to accede to the prayer made in the writ petition which is accordingly rejected.

14. However, regarding the payment of salaries, if he is actually serving, as permitted by the School Managing Committee, it is up-to the said Committee to arrange for the funds to make payment to the petitioner after verifying as to whether he had actually been rendering his services.

15. The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant