

GAHC010159882023



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

Case No. : WP(C)/4253/2023

MADHAB CH. ROY
S/O- RAM PRASAD RAY,
VILL- BHELAKHAMAR,
P.O- KRISHNAI, GOALPARA,
DIST- GOALPARA, ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM, EDUCATION
(SECONDARY) DEPARTMENT
DISPUR, GUWAHATI-6.

2:THE DIRECTOR OF SECONDARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI- 781019.

3:THE INSPECTOR OF SCHOOLS

GOALPARA DISTRICT CIRCLE

GOALPARA
ASSAM

Advocate for the Petitioner : MR. I CHOUDHURY

Advocate for the Respondent : SC, SEC. EDU.

**BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK**

ORDER

13.09.2023

Heard Mr. I Choudhury, learned counsel appearing for the petitioner and Mr. P N Sharma, learned Standing counsel, Department of School Education, Assam for all the official respondent Nos. 1 to 3.

2. Matter pertains to non-payment of arrear salaries to the petitioner for the period from August, 1998 to September, 2007.

3. Petitioner is a Grade-IV employee serving under the Inspector of Schools, Goalpara District Circle, Goalpara.

4. With regard to his claim for arrear salaries, the petitioner along with two others earlier approached this Court by preferring writ petitions being WP(C) No. 6532/1999 (disposed of on 03.05.2000) and WP(C) No. 6480/2002 (disposed of on 21.04.2004).

5. Perused the records of WP(C) No. 6532/1999 as well as that of WP(C) No. 6480/2002.

6. From the records, it is seen that in spite of issuance of Notice and Rule, respectively, by the Court in those two writ petitions, the respondents in the Secondary Education Department of the State did not file their affidavits either in WP(C) No. 6532/1999 or in WP(C) No. 6480/2002.

7. Brief facts of the case is that on 03.09.1991 the authorities in the Secondary Education Department issued an advertisement inviting applications for filling up of 400 numbers of posts of Grade-IV employees for secondary schools and 45 numbers of Laboratory Bearer in Assam; out of which 13 (thirteen) numbers of Grade-IV posts were for the district of Goalpara.

8. Pursuant to the said advertisement dated 03.09.1991, on the basis of their applications submitted before the Inspector of Schools, Goalpara District Circle, Goalpara, the District Level Selection Board, Goalpara on 16.02.1995 selected 13 (thirteen) persons. But, the then

Inspector of Schools, Goalpara District Circle, Goalpara appointed 9 (nine) persons outside the Select List, namely, (i) Shri Nil Charan Kalita, (ii) Karendra Ch. Das, (iii) Hitesh Kalita, (iv) Upendra Nath, (v) Akbor Ali, (vi) Manuwar Hussain, (vii) Phuleswar Rava, (viii) Jyotishmoi Chowdhury and (ix) Dhananjoy Kalita, instead of appointing those 13 (thirteen) selected candidates, namely, — (i) Naron Chandra Nath, (ii) Ananta Kumar Nath, (iii) Jagadish Nath, (iv) Jefferson Sangma, (v) Kumud Rava, (vi) Mohanlal Rajbhor, (vii) Badala Prasad Rajbhor, (viii) Dinabandhu Nath, (ix) Kandarpa Das, (x) Madhab Das, (xi) Madhav Rai, (xii) Ranjit Ghosh and (xiii) Kailash Sharma.

9. In spite of their selection, as those selected candidates were not appointed and on finding that the Inspector of Schools, Goalpara District Circle, Goalpara appointed those 9 (nine) persons in those Grade-IV posts, who are outside the Select List, the selected candidates approached this Court by preferring Civil Rule No. 2712/1995.

10. The Court by order dated 19.07.1996 disposed of said Civil Rule No. 2712/1995 directing the State Government in the Secondary Education Department to consider the case of the selected candidates for their appointment in terms of the said advertisement dated 03.09.1991 and selection dated 16.02.1995 after verification of all the relevant documents.

11. The State Government by an order under Memo No. 2712/95/-A dated 02.06.1998 found that the selected candidates, as noted above, have been left out from appointment, whereas 9 (nine) persons outside the Select List were appointed by the Inspector of Schools, Goalpara District Circle, Goalpara.

12. As such, by the said order under Memo No. 2712/95/-A dated 02.06.1998, noted above, the authorities in the Secondary Education Department of the State observed that those 13 (thirteen) selected candidates are required to be appointed after cancelling the appointments of those 9 (nine) non-selected candidates.

13. Pursuant to the same and in compliance of the order dated 09.07.1996 passed in Civil Rule No. 2712/1995 as well as the order of the State Government in the Secondary Education Department issued under Memo No. 2712/95/-A dated 02.06.1998, noted above, the Inspector of Schools, Goalpara District Circle, Goalpara by his order under Memo No. 5981-

6009 dated 22.06.1998 appointed the petitioner as Grade-IV Staff in Balbala Higher Secondary School, Goalpara terminating the service of the illegally appointed candidate, Dhananjay Kalita.

14. As the respondent authorities did not pay his salary, the petitioner along with two others, duly selected Grade-IV employees who were also appointed as Grade-IV employees by the Inspector of Schools, Goalpara District Circle, Goalpara on 22.06.1998, namely, Kandarpa Kr. Das and Kumud Ch. Rava jointly preferred a writ petition on 21.12.1999 being WP(C) No. 6532/1999, praying amongst others, for a direction to the respondent authorities to release their arrear salaries from June, 1998 as well as their current salaries.

15. In said WP(C) No. 6532/1999, the present petitioner, Madhab Ch. Roy categorically stated that pursuant to the said order of the Inspector of Schools, Goalpara District Circle, Goalpara dated 22.06.1998 he on 10th October, 1998 joined his service as a Grade-IV Peon at Balbala Higher Secondary School, District-Goalpara.

16. Though Notice in said WP(C) No. 6532/1999 was issued on 24.12.1999, but the respondent authorities in the Education Department of the State did not file its affidavit in the matter.

17. As the respondent authorities neither placed any written instruction before the Court nor filed any affidavit-in-opposition, the Court observing the same and after hearing the parties, allowed the said WP(C) No. 6532/1999 holding that the respondent authorities though utilized the services of the petitioners, but did not pay their salaries. Accordingly, by Judgment and Order dated 03.05.2000 passed in said WP(C) No. 6532/1999, the Court directed the respondent authorities in the Secondary Education Department of the State to pay the salaries to the petitioners, including the present petitioner from the dates from which their salary was not paid, directing the respondents in the Secondary Education Department of the State further that the same shall be paid within a period of 3 (three) months from the date of receipt of the said order and to place it before the authority concerned to do the needful in terms of the said order dated 03.05.2000.

18. In spite of the said order of the Court dated 03.05.2000 passed in WP(C) No.

6532/1999, the petitioners of said writ petition including the present petitioner were not paid their salaries and as such, they once again approached this Court by filing a writ petition being WP(C) No. 6480/2002, praying amongst others, for issuance of proper writ and for a direction to the respondent Secondary Education Department of the State for compliance of the said order dated 03.05.2000 passed in WP(C) No. 6532/1999 and to direct the Director of Secondary Education, Assam as well as the Inspector of Schools, Goalpara District Circle, Goalpara to pay their salaries from June, 1998 onwards.

19. In said WP(C) No. 6480/2002, the Court on 08.04.2003 issued Rule. However, the respondents in the Secondary Education Department of the State did not file any affidavit in the matter.

20. Observing that the respondent authorities did not file any affidavit in the matter and after hearing the parties, the Court by order dated 21.04.2004 disposed of said WP(C) No. 6480/2002, directing the respondent authorities in the Secondary Education Department of the State to comply with the directions issued vide Judgment and Order dated 03.05.2000 passed earlier in WP(C) No. 6532/1999 within a period of three months from the date of receipt of the said order.

21. It is seen from the records of WP(C) No. 6480/2002 that after obtaining the certified copy of the said Judgment and Order dated 03.05.2000 passed in WP(C) No. 6532/1999, the petitioners therein submitted the same before the Director of Secondary Education, Assam on 31.05.2000.

22. In said WP(C) No. 6480/2002, the present petitioner also annexed a certificate dated 31.08.2002 issued by the Principal of Balbala Higher Secondary School, Goalpara specifying that he, i.e., Madhab Ch. Roy joined the said school on 10.10.1998 against the post created vide Govt. Memo No. EPG.567/91/113 dated 16.11.1991.

23. As per the order of the Inspector of Schools, Goalpara issued under Memo No. 5981/6009 dated 22.06.1998, the said post of Grade-IV was allotted to said Balbala Higher Secondary School, Goalpara as per the order of the Director of Secondary Education, Assam issued under No. PC/Sec/107/93/56 dated 30.03.1995 and the petitioner is continuously

serving in said post since 10.10.1998 and did not receive his salaries from the date of his joining due to non receipt of retention of the post.

24. From the records of said WP(C) No. 6480/2002 it is seen that the respondents in the Education Department vide No. WP(C) 6532/99/14 dated 17.07.2000 wrote to the Inspector of Schools, Goalpara District Circle, Goalpara directing him to submit the details for compliance of the order dated 03.05.2000 passed in WP(C) No. 6532/1999 after necessary examinations and accordingly, the Inspector of Schools, Goalpara District Circle, Goalpara by his communication No. Court Case/AS/ GLP/2000/2308-10 dated 03.08.2000 informed the Officer on Special Duty, Government of Assam in the Education Department that as per the order of the State Government in the Education Department under Memo No. Nov.2712/95-A dated 02.06.1998, the Inspector of Schools, Goalpara District Circle, Goalpara terminated the illegally appointed 10 (ten) Grade-IV/Laboratory Bearers in the provincialised higher secondary schools w.e.f. 22.06.1998 and appointed the 10 (ten) persons who were selected for the post of Grade-IV and Laboratory Bearers in the provincialised higher secondary schools vide No. 5981-6009 dated 22.06.1998 including the present petitioner.

25. However, salaries to the three petitioners of WP(C) No. 6532/1999 including the present petitioner could not be paid from the dates of their joining due to non receipt of retention to those three Grade-IV posts by the Inspector of Schools, Goalpara District Circle, Goalpara.

26. Subsequent to that, the Officer on Special Duty, Government of Assam in the Education Department vide communication No. WP(C) 6532/99/24 dated 04.01.2001 sought information from the Inspector of Schools, Goalpara District Circle, Goalpara as to whether the petitioners of said WP(C) No. 6532/1999 were appointed against the existing vacant posts or not.

27. Pursuant to the same, the Inspector of Schools, Goalpara District Circle, Goalpara vide communication No. IS/GLP/Court case/2000/3795 dated 16.02.2001 informed that the post of Grade-IV of Balbala Higher Secondary School, Goalpara was sanctioned by the Government vide No. EPG/91/113 dated 16.11.1991 and was allotted to the said higher secondary school by the Director of Secondary Education, Assam vide letter under Memo. No. PC/Sec/107/93/56 dated 30.03.1995.

28. By the said letter dated 16.02.2001, the Inspector of Schools, Goalpara District Circle, Goalpara also informed the Officer on Special Duty, Government of Assam in the Education Department that though a detailed report was submitted before the Director of Secondary Education, Assam regarding retention of the said post along with copy of the said letter of the Officer on Special Duty, Government of Assam in the Education Department dated 04.01.2001, but the said authority i.e., the Inspector of Schools, Goalpara District Circle, Goalpara did not receive any reply from the Office of the Director of Secondary Education, Assam.

29. It is seen that in the meanwhile, the Director of Secondary Education, Assam vide Order under Memo No. PC/CC/26/2005/69 dated 03.10.2007 in pursuance to the Government letter No. ELC/COP(C)/135/2005/568/pt/90 dated 29.06.2007 with due concurrence of the Finance (SIU) Department of the State vide U/O No. FSI. 216/2007 dated 08.06.2007 appointed the petitioner to act as a Grade-IV Peon at Bakaitary Higher Secondary School, District-Goalpara; pursuant to which the petitioner joined the said school and is receiving his salary since October, 2007.

30. Considering the aforesaid facts, the Judgment and Order dated 03.05.2000 passed in WP(C) No. 6532/1999 as well as the order dated 21.04.2004 passed in WP(C) No. 6480/2002, (i) the Secretary to the Government of Assam in the School Education Department, respondent No. 1, (ii) the Director of Secondary Education, Assam, respondent No. 2 as well as (iii) the Inspector of Schools, Goalpara District Circle, Goalpara, respondent No. 3, respectively, are directed to comply with the directions of the Judgment and Order dated 03.05.2000 passed earlier in WP(C) No. 6532/1999 obtaining necessary approval from the Finance (SIU) Department of the State and to pay the arrear salaries of the petitioner since 10.10.1998 to September, 2007 in his bank account at the earliest on or before 29.02.2024, without fail.

31. It is also noticed that by order dated 03.10.2007, the petitioner has been brought under the New Pension Scheme, though he joined Balbala Higher Secondary School, Goalpara on 10.10.1998 in terms of the order of the State Government as well as the Inspector of Schools, Goalpara District Circle, Goalpara dated 22.06.1998.

32. In view of the above, the petitioner shall be considered under the Old Pension Scheme and not under the New Pension Scheme of 2005, since he joined in the Grade-IV post in the Balbala Higher Secondary School, Goalpara on 10.10.1998.

33. The entire process, as noted above, shall be completed on or before 29.02.2024 by passing necessary order(s) by all the authorities concerned and the Secretary to the Government of Assam in the Department of School Education, respondent No. 1 shall submit the compliance report before the Registrar General of this Court in that regard.

34. Copy of this order be furnished to Mr. P N Sharma, learned Standing counsel, Department of School Education, Assam for his necessary use, obtaining necessary acknowledgment from him in that regard.

35. The petitioner shall also submit a certified copy of this order before the Secretary to the Government of Assam in the School Education Department, respondent No. 1, obtaining necessary acknowledgment.

36. With the above observations and directions, this writ petition stands disposed of.

JUDGE

Comparing Assistant