

GAHC010164252022



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

Case No. : WP(C)/5361/2022

ATIQUL ISLAM
S/O- LATE SIRAJUL HOQUE,
VILLAGE- BHALUKDUBI PART-IV,
P.O.- BHALUKDUBI,
DISTRICT- GOALPARA, ASSAM.

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, EDUCATION (SECONDARY) DEPARTMENT, DISPUR,
GUWAHATI- 781006.

2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-781019.

3:THE INSPECTOR OF SCHOOLS
GOALPARA DISTRICT CIRCLE
GOALPARA
P.O. AND DISTRICT- GOALPARA
ASSAM
PIN- 783101.

4:THE HEADMASTER
AOLATOLI HIGH SCHOOL
P.O.- AOLATOLI

DISTRICT- GOALPARA
ASSAM

PIN- 783129.

5:THE SCHOOL MANAGEMENT AND DEVELOPMENT COMMITTEE OF
AOLATOLI HIGH SCHOOL

REPRESENTED BY ITS PRESIDENT
P.O.- AOLATOLI

DISTRICT- GOALPARA
ASSAM

PIN- 783129.

6:SOHIDUL ISLAM
S/O- IMRAN ALI

VILLAGE- NIZ KURSHAKATI

P.O.- AOLATOLI

DISTRICT- GOALPARA
ASSAM

PIN- 783129.

7:THE PRINCIPAL
CHUNARI HIGHER SECONDARY SCHOOL

P.O.- CHUNARI

DISTRICT- GOALPARA
ASSAM

PIN- 783129

Advocate for the Petitioner : MR. D A KAIYUM

Advocate for the Respondent : SC, SEC. EDU.

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 06.02.2023

Heard Mr. D. A. Kaiyum, the learned counsel appearing on behalf of the petitioner and Mr. B. Kaushik, the learned Standing counsel appearing on behalf of the Secondary Education Department. I have also heard Mr. A. M. Bhuyan, the learned counsel appearing on behalf of the respondent No. 4 and Mr. S. Abdullah, the learned counsel appearing on behalf of the respondent No.5.

2. The instant writ petition has been filed challenging the order dated 01.08.2022 whereby the Inspector of Schools on the basis of a resolution of the School Management and Development Committee, Aolatoli High School have temporarily placed/utilized at the disposal of Chunari H.S. School with immediate effect.

3. The case of the petitioner herein is that the order so passed is in violation to the principles of natural justice as well as the action of temporarily putting the services of the petitioner at another school disturbs the student teacher ratio as mentioned in the Right of Children to Free and Compulsory Education Act, 2009. He further challenged the impugned order on the ground that the Inspector of Schools, G.D.C., Goalpara did not have the authority inasmuch as the petitioner's appointing authority is the Director of Secondary Education Department and not the Inspector of Schools.

4. On the other hand, Mr. B. Kaushik, the learned Standing counsel appearing on behalf of the Secondary Education Department has submitted that the order dated 01.08.2022 under no circumstances can be said to be a transfer order. It

is only on account of a resolution being adopted by the SMDC of Aolatoli High School, the Inspector of Schools for administrative exigencies have placed the services of the petitioner temporarily to Chunari H.S. School and the services of the petitioner would again be placed back to Aolatoli High School as and when the administrative exigency demands. He submitted that as the order passed by the Inspector of Schools does not affect any rights of the petitioner, the contention of violation of natural justice is totally misconceived. Mr. B. Kaushik, the learned Standing counsel further submitted that in the case of the petitioner, Inspector of Schools is the appointing authority and as such the passing of such order cannot said to be bad on that ground.

5. Taking note of the fact that the services of the petitioner has been only temporarily utilized at the disposal of the Chunari H.S. School which is at a distance of 3.5 Kms from the existing school where the petitioner was working and the same was being done on account of administrative exigency, this Court taking into account the constricted power under Article 226 of the Constitution in respect to such decisions is not inclined to interfere with the same.

6. Accordingly, the instant petition being devoid of any merits stands dismissed.

7. It is however made clear that as it has been submitted on behalf of the Secondary Education Department that the petitioner has not been transferred but only his services have been temporarily utilized on account of administrative exigencies, the authorities shall duly take note of the same as well as the submissions made by the learned counsel for the Secondary Education Department as noted hereinabove.

8. It is also made clear that the respondents shall also keep in mind the student teacher ratio in the school in question where the petitioner was earlier rendering his service as it is the mandate of the Act of 2009.

9. The records so produced are returned herewith.

JUDGE

Comparing Assistant