

GAHC010171732022



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

Case No. : WA/321/2022

NIJARA DEKA
D/O- SRI SUNASWAR DEKA, VILL.- KHATA DHAMDHAMA, P.O.- BARBARI
KALANG, DIST.- NALBARI, ASSAM, PIN- 781351

VERSUS

THE STATE OF ASSAM AND 6 ORS. B
REP. BY THE COMMISSIONER and SECY. TO THE GOVT. OF ASSAM,
SECONDARY EDUCATION DEPTT., DISPUR, GHY- 6.

2:DIRECTOR
SECONDARY EDUCATION DEPTT.
ASSAM
KAHILIPARA
GHY- 19.

3:JOINT DIRECTOR
SECONDARY EDUCATION DEPTT.
ASSAM
KAHILIPARA
GHY- 19.

4:INSPECTOR OF SCHOOLS
NALBARI DIST. CIRCLE
NALBARI
ASSAM.

5:PRINCIPAL
P.B. DHIRUDUTTA H.S. SCHOOL
P.O.- KP BARKHALA
DIST.- NALBARI
PIN- 781350.

6:JOYMATI KALITA
SUBJECT TEACHER ASSAMESE
P.B. DHIRUDUTTA H.S. SCHOOL
P.O.- KP BARKHALA
DIST.- NALBARI
PIN- 781350.

7:KANAK CHANDRA TALUKDAR
RTD. PRINCIPAL
P.B. DHIRUDUTTA H.S. SCHOOL
R/O VILL.- UTTAR GANAKGARI
P.O. and P.S.- SORBHOG
DIST.- BARPETA
ASSAM
PIN- 781317

Advocate for the Petitioner : MR. U K GOSWAMI

Advocate for the Respondent : SC, SEC. EDU.

Linked Case : I.A.(Civil)/2669/2022

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Advocate for : MR. L GOGOI
Advocate for : SC
SEC. EDU. appearing for THE STATE OF ASSAM AND 6 ORS.

BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE SUMAN SHYAM

ORDER

Date : 20-02-2023

Heard the learned counsel for the parties.

This appeal is directed against the judgment and order dated 30.06.2022, passed

by the learned Single Judge in WP(C) 5928/2016 dismissing the writ petition filed by the appellant as the petitioner.

The appellant had initially joined the P.B. Dhirudutta Higher Secondary School on 04.04.2004 as a Computer Teacher. Subsequently, she had resigned from that post and later on was appointed as a Subject Teacher in Assamese in that school vide appointment letter dated 05.04.2010. According to the appellant/petitioner, she had joined the post of Subject Teacher in Assamese on 06.04.2010 though she was actually serving in the school with effect from 02.04.2010. However, on the instructions of the respondent no. 5, i.e. Principal of the school, she had submitted one joining letter on 10.04.2010. The respondent No. 6 had also joined the said school as a Subject Teacher on 10.04.2010. Since the date of joining in service of the appellant and the respondent No. 6 was the same day, i.e. 10.04.2010, hence, dispute arose as to their seniority. By taking into account their dates of birth, the respondent No. 6 was found to be senior to the appellant. Aggrieved thereby, the appellant had instituted the writ petition, being WP(C) 3231/2013, alleging anomaly in determination of *inter se* seniority between the appellant and the respondent No. 6. The writ petition was dismissed by the learned Single Judge by the impugned order dated 30.06.2022.

Earlier, by an order dated 13.06.2013 passed by the learned Single Judge in WP(C) 3231/2013 instituted by the present appellant, the Director of Secondary Education, Assam, was directed to determine the *inter se* seniority of the appellant and the respondent No. 6 upon examination of the documents including the school Attendance Register. Accordingly, upon examination of the relevant documents and after affording opportunity of hearing to both the parties, the Director of Secondary Education, Assam, had held that since the date of joining of both the candidates was 10.04.2010, respondent No. 6 was senior to the appellant as per her date of birth.

Mr. Goswami, learned counsel for the appellant has advanced arguments to convince this Court that the finding of the Director of Secondary Education was not

correct. However, there is no material available on record to substantiate the said argument.

Mr. Mazumdar, learned Standing counsel, Education Department has submitted that the relevant contemporaneous records, including the Attendance Register, are missing.

Be that as it may, in order to reverse the finding of the learned Single Judge, we would have to arrive at a conclusion that the finding recorded in the impugned order dated 30.06.2022 is perverse, which cannot be done unless there are cogent and convincing materials available on record to support such a conclusion. Moreover, accepting the submission of Mr. Goswami that his client was serving in the school prior to 10.04.2010 without there being any documentary evidence to establish the same, in our view, would amount to going into disputed questions of facts, which cannot be adjudicated in a writ proceeding. If the appellant is inclined to adduce oral evidence in support of her above claim, then this is not the appropriate forum to do so.

In view of the reasons discussed above, we do not find any justifiable ground to interfere with the judgment and order passed by the learned Single Judge. Accordingly the appeal is dismissed.

The appellant is, however, given the liberty to pursue appropriate legal remedy, as may be available to her under the law, if so advised.

JUDGE

CHIEF JUSTICE

Comparing Assistant