

GAHC010188982019



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

Case No. : WP(C)/5883/2019

SANGEETA BARUAH SAIKIA
W/O- SRI DIGANTA SAIKIA, R/O- LIC ROAD (NEAR HARI MANDIR), P.O-
DIGBOI, DIST- TINSUKIA, ASSAM, PIN- 786171

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM,
EDUCATION (HIGHER) DEPTT, DISPUR, GUWAHATI- 781006

2:THE DIRECTOR OF HIGHER EDUCATION
ASSAM
KAHILIPARA
GUWAHATI- 781019

3:THE GOVERNING BODY
DIGBOI COLLEGE
REP. BY ITS PRESIDENT
DIGBOI
DIST- TINSUKIA
ASSAM
PIN- 786171

4:THE PRINCIPAL CUM SECRETARY
GOVERNING BODY OF DIGBOI COLLEGE
DIST- TINSUKIA
ASSAM
PIN- 78617

Advocate for the Petitioner : MR P K DAS

Advocate for the Respondent : SC, HIGHER EDU

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 29.03.2023

Heard Mr. S.N. Adhyapak, learned counsel for the petitioner and Mr. K. Gogoi, learned standing counsel for the Higher Education Department, appearing for respondent nos. 1 and 2. None appears on call for the respondent nos. 3 and 4.

2. In this writ petition, it is projected that pursuant to an advertisement issued by the Principal-cum-Secretary of Digboi College, the petitioner had offered her candidature and accordingly, she was selected and appointed in the post of Lecturer in Geography on ad-hoc basis at a consolidated pay of Rs.1500/- per month w.e.f. 01.01.2000. The Governing Body of the said College, by a resolution dated 13.02.2001, proposed to convert one post of Lecturer from Bengali Department to Department of Geography. Therefore, as nothing happened, the petitioner had approached this Court by filing a writ petition and this Court, by order dated 06.04.2004, in WP(C) 2536/2004, directed the Director of Higher Education to take a decision in the matter. Thereafter, the conversion was approved by the Director of Higher Education by a letter dated 10.01.2005.

3. Thereafter, the Governing Body took another resolution no.8, taken on 12.09.2006, for conversion of the sanctioned post of Lecturer in Bengali to Computer Department, and it was also resolved to offer the petitioner one

vacant post in the Department of Philosophy during session 2007-2008. Thus, the aggrieved petitioner had approached this Court by filing WP(C) 6444/2006 and this Court by a judgment and order dated 11.11.2008 interfered with the approval order dated 10.01.2005 and therefore, remanded the matter back to the Director of Higher Education Department, Assam for a decision as to whether the approval dated 10.01.2005 needs to be reviewed or endorsed. Consequently, the Director of Higher Education Department, Assam by order dated 21.04.2009 withdrew the order of approval dated 10.01.2005. The said order dated 21.04.2009 was assailed by the petitioner by filing WP(C) 2042/2009 and this Court by order dated 26.05.2010 held that the impugned order dated 21.04.2009 passed by the Director of Higher Education Department was without authorization by the rules and therefore, the same was quashed. However, in relation to the prayer for regularization of the service of the petitioner, the petitioner was given liberty to file representation before the appropriate authority.

4. Thereafter, by an order dated 24.09.2010, Director of Higher Education Department, Assam had regularized the service of the petitioner in the Department of Geography against the converted post from the Department of Bengali giving the date of effect from 09.09.2010.

5. The petitioner has now approached the Court again by filing this writ petition, praying for a direction to the respondent authority to give effect of regularization of the service of the petitioner to the post of Lecturer in Geography in Digboi College w.e.f. 10.01.2005.

6. The learned standing counsel for the Higher Education Department, by referring to the stand taken in the affidavit-in-opposition, has submitted that the

relevant orders were passed by the Director of Higher Education Department in view of the orders passed by this Court in WP(C) 2536/2004, WP(C) 6444/2006 and WP(C) 2042/2009 and it is submitted that as the approval of regularization of service of the petitioner was w.e.f. 09.09.2010, the authorities in the Higher Education Department would not be able to give ex post facto sanction w.e.f. 10.01.2005 as claimed by the petitioner. It is submitted that one cannot be allowed to draw UGC scale of pay for the period he/ she is serving against non-sanctioned post.

7. The Court finds that the stand taken by the Director of Higher Education Department is not contrary to the law because the regularization of the service of the petitioner was w.e.f. 09.09.2010. The previous approval order dated 10.01.2005 was already interfered with by this Court by order dated 11.11.2008 passed in WP(C) 6444/2006. Therefore, the order of regularization dated 24.09.2010 could not have been given effect from 10.01.2005 when the judgment of this Court dated 11.11.2008 passed in WP(C) 6444/2006 had attained finality because the Director of Higher Education, Assam had not endorsed approval to his order dated 10.01.2005. Therefore, decision taken by the said authority to regularize the service of the petitioner by order dated 24.09.2010 cannot be linked to previous order dated 10.01.2005.

8. In view of above, the Court does not find any merit in the claim of the petitioner for giving effect to regularization of her service from 10.01.2005.

9. Accordingly, this writ petition stands dismissed, leaving the parties to bear their own cost.

JUDGE

Comparing Assistant