

GAHC010192622017



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

Case No. : WP(C)/533/2017

SADOU BAC SCHOOL SIKHA MATRE AND KENDRIYA COMMITTEE and
ANR.

REP. BY ITS PRESIDENT, SMT. RAMILA BASUMATARY, W/O SRI
LAMENDRA BASUMATARY, VILL. SOUTH TANGAPARA, P.O. and P.S.
KOKRAJHAR, DIST- KOKRAJHAR, ASSAM

2: ANITA BASUMATARY
SECRETARY
SADOU B.A.C. SCHOOL SIKHA MATRE AND KENDRIYA SAMITTEE
R/O GERUAPARA
SEWRIPAM
P.O. GERUAPARA
P.S. MUSHALPUR
DIST- BAKSA
ASSA

VERSUS

THE STATE OF ASSAM and 12 ORS.
REP. BY THE CHIEF SECY., GOVT. OF ASSAM, DISPUR, GHY-6

2: THE COMMISSIONER and SECY. GOVT. OF ASSAM
EDUCATION ELE DEPTT.
DISPUR
GHY-6
ASSAM
PIN-781006

3: THE COMMISSIONER and SECY. GOVT. OF ASSAM
FINANCE DEPTT.
DISPUR
GHY-6

4: THE COMMISSIONER and SECY. GOVT. OF ASSAM

WPT and B.C. DEPTT.
DISPUR
GHY-6

5:THE COMMISSIONER and SECY.
GOVT. OF ASSAM
PLANNING and DEV. DEPTT.
DISPUR
GHY-6

6:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GHY-19

7:THE BODOLAND TERRITORIAL COUNCIL
REP. BY THE PRINCIPAL SECY.
P.O. and DIST- KOKRAJHAR
PIN-783370

8:THE SECRETARY
BTC
KOKRAJHAR
PIN-783370

9:THE DIRECTOR OF EDUCATION
BTC
KOKRAJHAR
P.O.
P.S. and DIST- KOKRAJHAR
PIN-783370

10:THE DISTRICT ELEMENTARY EDUCATION OFFICER
KOKRAJHAR
BTC
ASSAM

11:THE DISTRICT ELEMENTARY EDUCATION OFFICER
CHIRANG
KAJALGAON
BTC
ASSAM
PIN-783385

12:THE DISTRICT ELEMENTARY EDUCATION OFFICER
BAKSA
MUSHALPUR
BTC

ASSAM
PIN-781372

13:THE DISTRICT ELEMENTARY EDUCATION OFFICERS
UDALGURI
UDALGURI
BTC
ASSAM
PIN-78450

Advocate for the Petitioner : MR.C TALUKDAR

Advocate for the Respondent : SC, ELEMENTARY EDUCATION

Linked Case : WP(C)/557/2017

ALL B.T.C. L.P. SCHOOL ENGLISH TEACHERS' ASSOCIATION and ANR.
REP. BY ITS PRESIDENT
SRI ANIL NARZARY
S/O LT. KAISA NARZARY
VILL. DALBARI
P.O. and P.S. BARMA
DIST- BAKSA
BTC
ASSAM

2: JWNBLAUSA BORO
SECRETARY
ALL B.T.C. L.P. SCHOOL ENGLISH TEACHERS ASSOCIATION
R/O VILL. NO.2 FASIA
P.O. HARISINGHA
P.S. HARISINGHA
DIST- UDALGURI
BTC
ASSAM
VERSUS

THE STATE OF ASSAM and 12 ORS.
REP. BY CHIEF SECY.
GOVT. OF ASSAM
DISPUR
GHY-6

2:THE COMMISSIONER and SECY. GOVT. OF ASSAM
EDUCATION ELE DEPTT.

DISPUR

GHY-6

ASSAM

PIN-781006

3:THE COMMISSIONER and SECY. GOVT. OF ASSAM
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DISPUR

GHY-6

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DISPUR

GHY-6

5:THE COMMISSIONER and SECY.
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PLANNING and DEV. DEPTT.

DISPUR

GHY-6

6:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM

KAHILIPARA

GHY-19

7:THE BODOLAND TERRITORIAL COUNCIL
REP. BY THE PRINCIPAL SECY.

P.O. and DIST- KOKRAJHAR

PIN-783370

8:THE SECRETARY

BTC

KOKRAJHAR

PIN-783370

9:THE DIRECTOR OF EDUCATION

BTC

KOKRAJHAR

P.O.

P.S. and DIST- KOKRAJHAR

PIN-783370

10:THE DISTRICT ELEMENTARY EDUCATION OFFICER
KOKRAJHAR

BTC

ASSAM

11:THE DISTRICT ELEMENTARY EDUCATION OFFICER
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BTC
ASSAM
PIN-781372
13:THE DISTRICT ELEMENTARY EDUCATION OFFICERS
UDALGURI
UDALGURI
BTC
ASSAM
PIN-784509

Advocate for : MR.B RAMCHIARY
Advocate for : SC
BTC appearing for THE STATE OF ASSAM and 12 ORS.

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

27.04.2023

Heard Mr. B. Ramchiary, learned counsel for the petitioners as well as Mr. S. Bora, learned standing counsel for the BTC.

2. The petitioner no.1 in W.P.(C) No. 533/2017 is Sadou Bodoland Autonomous Council School Sikha Matre and Kendriya Committee and the petitioner no. 2 is the Secretary of the said Association. The petitioner no. 1 in W.P.(C) No. 557/2017 is All Bodoland Territorial Council L.P. School English Teacher's Association and the petitioner no. 2 is the Secretary of the said Association. The petitioners in both the writ petitions claim that pursuant to cabinet decision of Bodoland Autonomous Council, applications were invited for appointment to the post of "mother teachers". It is claimed that the members of

the said two associations had participated in the selection process and were appointed as "mother teachers" in or about the year 1997. It is claimed that since the date of their respective appointment and till the month of December, 2004 such "mother teachers" were being paid their monthly remuneration of Rs.500/- per month which from time to time was enhanced to Rs.900/- per month. The learned counsel for the petitioners has submitted that as the disbursement of payment of the fixed remuneration to the members of the petitioner no. 1 associations in these two writ petition was stopped in or about the month of December, 2004, several aggrieved persons including the Association of the petitioners in WP(C) 533/2017 had approached this Court for a direction upon the respondent authorities to release their remuneration. It is submitted that this Court had disposed of W.P.(C) No. 1855/2012 with a direction to the respondent authorities to release the outstanding salaries/remuneration till the date of termination of their service.

3. It is submitted by the learned counsel for the petitioners that later on the members of the petitioner no. 1 association in both these writ petition had come to know that their service had been terminated vide order dated 12.11.2004, which was not served on the affected members of the petitioner no. 1 association in both these cases and therefore, they had continued to render their service without knowledge of the purported termination of their service. Hence, these two writ petitions has been filed under Article 226 of the Constitution of India whereby the petitioners have prayed for setting aside the impugned termination order dated 12.11.2004 and directing the respondent authorities to pay the outstanding arrear salaries of the remuneration to the members of the petitioners' Association for rendering service till date.

4. As per the order dated 15.03.2017, passed in W.P.(C) 533/2017, the learned standing counsel for BTC had raised the question of maintainability of the writ petition by the petitioner no.1 Association. In the said regard, the learned counsel for the petitioners has submitted that the petitioner no.1 association in both the cases was a registered association and has been espousing the cause of their members. Accordingly, it is submitted that this writ petition at the instance of the petitioner no.1 association would be maintainable.

5. The learned standing counsel for the BTC has submitted that the "mother teachers" were illegally appointed during the year 1997-98 by the then Deputy Inspector of Schools, Udalguri against non-existent and non-sanctioned post in various LP schools on the basis of lump-sum monthly remuneration. However, as the appointments were illegal, the BTC authorities had decided to terminate the services of such illegally appointed English language teachers, mother teachers, LDA and gardeners. Accordingly, it has been submitted that the BTC authorities had released fixed pay to those "mother teachers upto the date of termination order dated 12.11.2004."

Maintainability of these two writ petitions at the instance of the petitioner no. 1 association:

6. In these two writ petitions, the petitioners have not annexed their membership list. From the materials available on record, it appears that on different point of time different associations have approached this Court on behalf of the "mother teachers" working under the BTAD areas. Although a list of "mother teachers" allegedly rendering service in various district/ blocks under the Control of BTC has been annexed to this writ petition (at page 99 to 106), but there is no pleading that all the persons whose names appear in the said list

are the members of the Association of the petitioner no.1 in both the writ petitions. Therefore, there is nothing on record to show the names of persons on whose behalf this writ petition has been filed.

7. In this case, the petitioners have also not annexed any document to show the process followed for selection of "mother teachers" like (i) whether the posts of "mother teachers" existed; (ii) whether such appointments were permanent posts or such posts were created under a scheme; (iii) how the employment advertisement, if any, was published; (iv) whether any call letters were issued or not; (v) notification of result; (vi) tenure and/or period of validity of the select list. Although in the affidavit-in-opposition by the BTC authorities, a specific statement has been made to the effect that "mother teachers" and "English teachers" were appointed against non-existing and non-sanctioned posts, yet the petitioners have not annexed any such document to demonstrate that they were appointed against existing and/or sanctioned posts.

8. Therefore, although some of the members of the petitioner no. 1 associations might have been aggrieved, but in the absence of clarity as to the persons for whom this writ petition has been filed, the Court is inclined to hold that the petitioners in this case have no *locus standi* to maintain these two writ petitions.

On termination order dated 12.11.2004:

9. The learned counsel for the petitioners had submitted that the aggrieved members of the petitioner's Association whose services were terminated were not individually served with any notice before terminating their service. In this case the petitioners have failed to repel the stand of the BTC authorities to the effect that (i) the appointment of "mother teachers" was

illegal; (ii) the appointments were not made against sanctioned posts. Therefore, being illegal appointees, the purported members of the petitioner no.1 associations in both writ petitions did not become the member of any service or holder of any "civil" post. In these two cases, as the appointments were not made by following the due process of law, the Court is of the considered opinion in respect of the persons aggrieved in these two cases, the respondent authorities were not bound to follow the normal disciplinary proceeding as contemplated under the Assam Services (Discipline and Appeal) Rules, 1964 as the persons whose services were terminated has not been able to demonstrate that they were government servant as defined under Clause (e) of Rule 2 of the said 1964 Rules.

10. Moreover, as the petitioners have not been able to show that their concerned members were appointed in sanctioned posts, and that their appointment was in accordance with law, the impugned order no. BTC/Edn. (el)/63/04/42 dated 12.11.2004, issued by the Joint Secretary, Bodoland Territorial Council warrants no interference.

Delay and laches:

11. It is the admitted case of the petitioners that since December, 2004, its members who were the "mother teachers" were not paid their salary. It is not believable that although the petitioners were not receiving their monthly fixed remuneration between the year 2004 and 2017, yet, they were not aware of the impugned order dated 12.11.2004, by which their services were terminated. In this writ petition, the petitioners have not made any statement about the date on which they first became aware of the said impugned order dated 12.11.2004. Therefore, as the challenge to the order of

termination has been made after 13 years, the aggrieved members of the petitioner no. 1 association in both these writ petitions are not found entitled to any reliefs claimed in this writ petition because of delay and laches. This appears to the Court to be a fit and appropriate case to invoke the legal maxim of *vigilantibus non dormientibus jura subveniunt*, meaning that the law will assist only those who are vigilant about their rights and not those who sleep over them.

Claim for payment of remuneration of fixed pay of the concerned members of the petitioner no. 1 association in these two cases from December, 2004 till date of rendering service:-

12. There is no dispute that the service of the aggrieved members of the petitioner no. 1 association were terminated vide order no. BTC/Edn. (el)/63/04/42 dated 12.11.2004, issued by the Joint Secretary, Bodoland Territorial Council. The petitioners have not annexed any document by which their concerned members were permitted by the competent authority to continue to render their respective services in the concerned schools wherever they were appointed and/or posted. Therefore, in the considered opinion of the Court, the right to receive salary/ remuneration or any other consequential right is dependent on the legality of the appointment. The members of the petitioner no. 1 association, who had voluntarily rendered service to their respective schools after 12.11.2004, without any valid appointment and/or re-engagement order from the competent authority, cannot entitle them to claim payment of their alleged dues accrued after 12.11.2004 onwards from the BTC authorities.

13. The learned standing counsel for the respondent nos.5 to 11 has also brought to the notice of this Court that a batch of similar writ petitions,

claiming similar reliefs has been dismissed by this Court, being the case of *Sodou Asom Prathamik Aru Majalia Matri Santha & Ors. Vs. State of Assam & Ors., 2014 (3) GLT 1*. We take note of the same. Accordingly, the said judgment is also a ground why the petitioners are not entitled to any relief in these two cases.

14. Nonetheless, if any school authority had allowed the aggrieved members of the petitioner no. 1 association in both writ petitions to render service even after the termination of their service, such an aggrieved person, if so advised, may approach the appropriate Civil Court having jurisdiction for recovering compensation from such persons, if such claim is otherwise in accordance with law.

15. In view of the discussions above, the Court is inclined to pass the following -

O R D E R

- a. The petitioners in these two writ petitions have no *locus standi* to maintain these two writ petitions as no disclosure has been made about their members whose cause they are espousing.
- b. The respondent authorities were not bound to follow the normal disciplinary proceeding as contemplated under the Assam Services (Discipline and Appeal) Rules, 1964 as the persons whose services were terminated has not been able to demonstrate that they were government servant as defined under Clause (e) of Rule 2 of the said 1964 Rules.
- c. The service of the aggrieved members of the petitioners'

association was terminated by an order no. BTC/ Edn.(el)/63/04/42 dated 12.11.2004 and as the challenge has been made after about 13 years by filing this writ petition on 19.01.2017, the petition is liable to be dismissed on the ground of laches and delay.

d. The members of the petitioner no. 1 association, who had voluntarily rendered service to their respective school after 12.11.2004, without any valid re-appointment and/or re-engagement order from the competent authority under BTC, would not be entitled to claim payment of their alleged dues accrued after 12.11.2004 and onwards from the BTC authorities. Nonetheless, if any particular school authority had allowed the aggrieved members of the petitioner no. 1 association in both writ petitions to render service even after the termination of their service, such an aggrieved person, if so advised, may approach the appropriate Civil Court having jurisdiction for recovering compensation from such persons, if such claim is otherwise in accordance with law.

e. Even on merit, as discussed herein before, the petitioners could not establish the right of its concerned members to claim reinstatement in services by quashing the impugned order dated 12.11.2004 as the petitioners have not been able to demonstrate that they had rendered their services after 12.11.2004 in accordance with law. Nonetheless, the rejection of the claim, as made in this writ petition shall not operate as a bar for the concerned members of the petitioner no. 1 association in both the writ petitions to claim compensation from those particular authorities who have allowed them

to render service despite termination of their services. It is made clear that liability, if any determined, would not burden the State Exchequer in any manner whatsoever.

16. In light of the discussions above, these two petitions stand dismissed, leaving the parties to bear their own cost.

JUDGE

Comparing Assistant