

GAHC010193032023



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

Case No. : WP(C)/5128/2023

NIHAR RANJAN ROY AND 11 ORS
SON OF SRI BHUPEN RAY,
VILL. CHOITAKI, P.O.DEOHATI,
P.S. ABHAYAPURI,
DIST. BONGAIGAON, ASSAM,
PIN - 783384

2: MAINUL HOQUE
SON OF LT. MOHIJUDDIN SHEIKH

VILLAGE - RAGHUNANDANPUR

P.O. BOITAMARI
P.S. ABHAYAPURI

DIST. BONGAIGAON
ASSAM
PIN-783389

3: BHADRESWAR ADHIKARY
SON OF LT. JADAV CH. ADHIKARY

VILL. BECHIMARI
P.O. BOITAMARI

P.S. ABHAYAPURI

DIST. BONGAIGAON
ASSAM
PIN-783389

4: ABU BAKKER SIDDIQUE MONDOL
SON OF EAKUB ALI MONDOL

VILL. DHONTOLA
P.O. DHONTOLA BAZAR

DIST. BONGAIGAON
ASSAM
PIN-783372

5: RAZIA KHATUN
D/O ABU NASIR AHMED
VILL. NANKARGAON
P.O. DHANTOLA BAZAR
DIST. BONGAIGAON
ASSAM
PIN-783372

6: HIMMAT SING ADHIKARY
SON OF LT. KAMESWAR ADHIKARY

VILL. PANCHAGAON
P.O. DHONTOLA BAZAR
DIST. BONGAIGAON
ASSAM
PIN-783372

7: ABDUL KHALEQUE
SON OF LT. NAYEB ALI

VILLAGE - CHATPARA (CHAR)

P.O. AND P.S. JOGIGHOPA

DIST. BONGAIGAON
ASSAM
PIN-783372

8: DHIREN CH. RAY
SON OF LT. BAHADUR CH. RAY

VILL. AMTOLA
P.O.NORTH SALMARA

DIST. BONGAIGAON
ASSAM
PIN-783383

9: NARUDDIN AHMED
SON OF LT. UMOTULLAH SK

VILL. OUDUBI
P.O. KHELUAPARA

P.S. JOGIGHOPA

DIST. BONGAIGAON
ASSAM
PIN-783371

10: JAHAR ALI
SON OF LT. JURAN ALI

VILL. OUDUBI
P.O. KHELUAPARA

P.S. JOGIGHOPA

DIST. BONGAIGAON
ASSAM
PIN-783371

11: NUR MEHERUN NESSA
W/O. ABED ALI

VILL. ISWARJHARI P.O. MAJERALGA

DIST. BONGAIGAON
ASSAM
PIN-783388

12: TULASHI DEVI
D/O. NIRENDRA NARAYAN DEV

VILL. JOLAKHATA
P.O. DHONTOLA BAZAR

DIST. BONGAIGAON
ASSAM
PIN-78337

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,
DEPARTMENT OF SCHOOL EDUCATION, DISPUR, GUWAHATI - 781006

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

3:THE DEPUTY INSPECTOR OF SCHOOLS
BONGAIGAON
DIST. BONGAIGAON
ASSAM
PIN-783380

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER (DEEO)
BONGAIGAON
DIST. BONGAIGAON
ASSAM
PIN-783380

5:THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF ASSAM
FINANCE DEPARTMENT
DISPUR

GUWAHATI - 78100

Advocate for the Petitioner : MR J ABEDIN

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

08.09.2023

Heard Mr. J Abedin, learned counsel for the petitioners and Mr. P N Sharma, learned Standing counsel, Department of School Education, Assam for the respondent Nos. 1 to 4.

Also heard Mr. P Nayak, learned Standing counsel, Finance Department, Assam for the respondent No. 5.

2. As contended by the petitioners, they were appointed in the first quarter of 1994 as Assistant Teachers in various provincialised upper primary schools on the approval of the concerned Advisory Board in the district of Bongaigaon.

3. Initially for a certain period of time they received their monthly salaries, which later stopped.

4. It is also contended by the petitioners that out of 505 Teachers in the district of Bongaigaon approved by the concerned Advisory Board in the year 1993-94, only 125 Teachers were given regular appointment, leaving out the petitioners and other such Teachers as they were found to be in excess/appointed against non-existent posts.

5. Petitioners herein are silent as to when the relevant advertisement was issued, in which they participated and got selected.

6. However, they have annexed their appointment orders issued in the month of February, 1994, which itself indicate that they were appointed against newly created posts.

7. Pursuant to an order issued by a Division Bench of this Court, the State Government in the Education Department constituted 5 Zonal Committees, invited applications from such Teachers serving in various Provincialised/Government Upper Primary/Lower Primary Schools of the State partly receiving salary/without receiving salary since 1991-2001.

8. Pursuant to such advertisement, petitioners herein applied before the Directorate of Elementary Education, Assam.

9. The committee concerned accordingly verified those applications of the petitioners and placed those before the appropriate Zonal Committee.

10. The concerned Zonal Committee after due verification recommended the names as per the process of verification.

11. The State Government in the Elementary Education Department categorized 3 types of Teachers, (i) Teachers having the requisite educational training like Normal/ D.El.Ed./B.Ed. etc. serving in non-existent posts or appointed in excess, (ii) Teachers without having the

requisite educational training of Normal/D.El.Ed./B.Ed. etc. and (iii) Teachers might/might not having the requisite educational training of Normal/ D.El.Ed./B.Ed. etc., but serving in non-existent posts in excess without there being any selection.

12. The matter was placed before the Cabinet and the Cabinet accordingly considered the cases of such three types of Teachers recommended by the concerned Zonal Committees.

13. For the first type of Teachers, the Cabinet took a decision to appoint them as regular Teachers against vacant sanctioned posts in the respective districts under the concerned zones.

14. The second type of Teachers without having the requisite educational training were appointed as Tutors in a fixed salary till acquiring of such training of D.El.Ed. and the third category of Teachers found to be illegal were not considered for appointments.

15. The petitioners herein belong to the second category of Teachers and pursuant to the Cabinet decision of the State Government and the State Government in the Education Department vide No. B(3) S427/2001/3 dated 04.01.2002 and pursuant to the approval of the State Government vide communications No. EDN(LC)27/2016/150/Pt-II/511 dated 21.01.2021 and No. EDN (LC)27/2016/150/Pt-III/518 dated 27.01.2021; the Director of Elementary Education, Assam by an order issued under No. EMA.B.17/2021/276 dated 30.01.2021 accommodated the petitioners as Tutors in a post personal in nature that will cease to exist as and when the petitioners retires from service/resigns from the said posts during service/expires during service, with due approval of the Finance Department of the State in a fixed pay and accommodated them against a provincialised Upper Primary School in the district of Bongaigaon with certain conditions w.e.f. 01.11.2020.

16. Though the petitioners accepted their terms of accommodation as Tutors and were posted in different provincialised and upper primary schools in terms of their consideration as Tutors issued by the Director of Elementary Education, Assam on 30.01.2021, but the petitioners have filed this writ petition on 30.08.2023 after accepting their terms and conditions of accommodation as Tutors, praying amongst others, for a direction the respondent authorities to (i) modify the orders of accommodation dated 30.01.2021, so far it relates to fixed salary provided to them as per the Act of 2017 as well as the conditions

imposed upon them not to claim for any benefits in respect of past services rendered prior to 01.11.2020, (ii) make necessary arrangements to grant Scale of Pay to them with other service benefits as admissible to the Government employees of the State of Assam and (iii) exclude them from the purview of the Act of 2017 being not applicable for them and to re-fix their salary in appropriate Scale of Pay as admissible under the relevant laws.

17. It is to be noted herein that the petitioners have been considered for accommodation after the directions issued by the Division Bench of this Court and in pursuance of the Cabinet decision of the State Government.

18. However, those orders of the Division Bench of this Court passed long back have attained finality, not being challenged by any of such incumbents, accepting their appointments as Tutors.

19. Further, in the case in hand, the petitioners have not challenged the Cabinet decision of the State Government, by which though being appointed in excess against non-existent posts, being benevolent considered to accommodate them against fixed pay salary, not having the requisite educational qualification.

20. It is to be noted herein that the petitioners' only contention is that since they were considered under the Assam Elementary Education (Provincialisation) Rules, 1977 earlier; they should have been considered not under the Assam Education (Provincialisation of Services of Teachers and Re-organization of Educational Institutions) Act, 2017 but under the earlier Rules.

21. However, while the Cabinet took that decision to consider the cases of the petitioners and others, said 1977 Rules was not in force, as the said 2017 Rules came into force w.e.f. 05.05.2017.

22. It is well settled that any appointment made in excess without advertisement against any non-existent posts cannot be termed as valid appointment as provided under Articles 14 & 16 of the Constitution of India and the case of the petitioners are under the category of excess appointment and/or appointment against non-existent posts.

23. As the Cabinet decision to consider the case of the petitioners to accommodate them as Tutors under the provisions of the said 2017 Act is not under challenge, the Court is not

inclined to consider the prayers of the petitioners made herein and accordingly, this writ petition stands dismissed.

24. However, the petitioners are at liberty to approach the appropriate forum, if they are aggrieved with the said Cabinet decision of the Government, if so advised, accommodating them as Tutors in a fixed pay of salary.

JUDGE

Comparing Assistant