

GAHC010194232016



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

Case No. : WP(C)/4143/2016

SMTI KALPANA NOMOSUDRA
W/O SRI MONOROJON NAMASUDRA, VILL. SOUTH LAFASHAIL, P.O.
LAXMIBAZAR, P.S. and DIST- KARIMGANJ, ASSAM, PIN-788709

VERSUS

THE STATE OF ASSAM AND 7 ORS
REP. BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM,
EDUCATION ELE DEPTT., ASSAM, DISPUR, GHY-6

2:THE DIRECTOR
ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GHY-19

3:THE DY. COMMISSIONER OF KARIMGANJ
P.S. and DIST- KARIMGANJ
PIN-788710

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER
KARIMGANJ
P.S. and DIST- KARIMGANJ
ASSAM
PIN-788710

5:THE DY. INSPECTOR OF SCHOOLS
KARIMGANJ DISTRICT
P.S. and DIST- KARIMGANJ
ASSAM
PIN-788710

6:THE BLOCK ELEMENTARY EDUCATION OFFICER
NORTH KARIMGANJ BLOCK
P.S. and DIST- KARIMGANJ
ASSAM
PIN-788710

7:THE SCHOOL MANAGING COMMITTEE
DAKHIN LAFASHAIL LP SCHOOL
REP. BY ITS PRESIDENT BIJOY NAMASUDRA
VILL. SOUTH LAFASHAIL
P.O. LAKSMI BAZAR
P.S. and DIST- KARIMGANJ
ASSAM
PIN-788709

8:PALITA NOMOSUDRA
W/O SRI SUSHIL NOMOSUDRA
VILL. SOUTH LAFASHAIL
P.O. LAKSMIBAZAR
P.S. and DIST- KARIMGANJ
ASSAM
PIN-788709

9:MISSION DIRECTOR
ASSAM
SARBA SIKSHA ABHIYAN MISSION
KAHILIPARA
GUWAHATI-19

Advocate for the Petitioner : MR. J M SULAIMAN

Advocate for the Respondent : MR. S SHARMA

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

07.06.2023

Heard Shri HR Choudhury, learned counsel for the petitioner. Also heard Shri A. Phookan, learned Standing Counsel, Elementary Education Department as well as Shri P. Saikia, learned State Counsel. Ms. P. Das, learned Standing Counsel, SSA is also present. The private respondent no. 7 which is the School Management Committee of

the School in question is represented by Shri SC Biswas whereas Shri S. Biswas, learned counsel has represented the respondent no. 8.

2. Considering that this matter is pending since the year 2016, the same is taken up for disposal at the admission stage.

3. The issue involves termination of the service of the petitioner as 2nd Assistant Cook in the 381 No. Dakhin Lafashil LP School in the district of Karimganj.

4. It is the case of the petitioner that vide an appointment order dated 13.03.2012, she was appointed as the 2nd Assistant Cook in the School in question by a resolution by the School Management Committee. Pursuant to the said order, the petitioner had joined the post on 17.03.2012. Shri Choudhury, learned counsel for the petitioner has drawn the attention of this Court to the staff pattern which reflects the name of the petitioner as an Assistant Cook and also to the documents from which it appears that remuneration / honorarium were also paid to the petitioner.

5. Shri Choudhury, learned counsel for the petitioner submits that the problem arose when a new School Management Committee was constituted. After such constitution, the impugned resolution was adopted on 11.07.2015 whereby the respondent no. 8 was appointed by removing the petitioner. The resolution states that the public in general were aggrieved by the appointment of the petitioner.

6. Challenging the aforesaid resolution dated 11.07.2015, this writ petition has been filed. It appears that vide an order dated 26.09.2016, while notice of motion was issued, the impugned order dated 11.07.2015 was stayed primarily on the ground that the same does not contain any reasons.

7. Shri Choudhury, learned counsel for the petitioner submits that apart from the fact that no grounds are discernible for removing the petitioner from her services, she was not afforded any notice or opportunity before such adverse action. He further submits that in terms of the interim order passed by this Court, the petitioner is still

discharging her duties. As regards the salaries, he submits that though the salaries were being paid to the petitioner, for the last few months, the same has been stopped.

8. Shri Saikia, learned State Counsel as well as Shri Phookan, learned Standing Counsel, Elementary Education Department submit that the matter is under the SSA and as such, they do not have much role in this case.

9. Ms. Das, learned Standing Counsel, SSA has submitted written instructions dated 24.05.2023 along with a copy of the guidelines dated 14.08.2006 that the matter pertaining to appointment of Cooks etc. are within the domain of the School Management Committee which is to be done as per the guidelines.

10. Shri SC Biswas, learned counsel for School Management Committee (respondent no. 7) submits that taking into consideration the increased numbers of students, there was a need for appointment of a 2nd Assistant Cook and therefore, a resolution was taken and the proposal was sent to the Block Elementary Education Officer (BEEO), North Karimganj Block.

11. Defending the impugned action, the learned counsel has submitted that the respondent no. 8 belongs to a family of 50% land donor and comes from the category of BPL. Shri Biswas, learned counsel has however fairly submitted that from a reading of the impugned resolution / order, it does not appear that notice or opportunity was given to the petitioner.

12. Appearing for the respondent no. 8, Shri S. Biswas, learned counsel submits that refuting the allegation made by the petitioner that the said respondent no. 8 has filed an affidavit-in-opposition dated 15.09.2017. He has referred to the documents annexed to the said affidavit-in-opposition including a letter dated 24.06.2016 which is a report of One Man Committee, as per which, he submits that the report makes it clear that the appointment of the petitioner was full of anomalies and was clouded to the extent that the element of forgery could not be fully ruled out. He submits that the

respondent no. 8 is fully eligible for such appointment and her eligibility has not been questioned in the writ petition. He has also referred to the communication dated 23.04.2016 by which the aforesaid One Man Committee was constituted with a retired BEEO, North Karimganj as the Chairman.

13. The rival submissions made by the learned counsel for the parties have been duly considered and the materials placed before this Court have been carefully examined.

14. The controversy arises with the resolution / order dated 11.07.2015. A bare look at the relevant resolution being resolution no. 3 would show that while the respondent no. 8 was appointed in place of the petitioner as the 2nd Assistant Cook, no notice / opportunity was granted to the petitioner before such resolution was adopted. Though an argument has been made on the eligibility of the respondent no. 8 that she belongs to the family of a land donor and comes from the BPL category, the resolution by which the petitioner was appointed, the order dated 13.03.2012 also takes into consideration that the petitioner came from a family of land donor. Shri Choudhury, learned counsel for the petitioner also clarifies that the petitioner also belongs to the category of BPL.

15. The respondent no. 8 in her affidavit-in-opposition has tried to defend the impugned action by annexing certain documents from which it appears that an enquiry was held on the appointment / working of the petitioner. However, a bare perusal of the documents would indicate that the One Man Committee by which such enquiry was held was constituted vide a communication dated 24.04.2016 and the report of the Committee is dated 24.06.2016. It clearly appears that the enquiry has been done after the impugned action has already been taken in the year 2015. Therefore, the aforesaid facts are wholly irrelevant to the issue to be decided in the instant case.

16. Even in a case where an enquiry is conducted prior to an adverse action, the

minimum requirement of law is to give adequate opportunity to the affected person to defend his / her case which apparently has not been done in the present case.

17. This Court has further noticed that an interim order was passed on 26.09.2016 and till date there is no application for modification / vacation / alteration of the said interim order. Shri Choudhury, learned counsel for the petitioner has clarified on the strength of such interim order, the petitioner is still discharging her duties as the 2nd Assistant Cook.

18. In view of the aforesaid facts and circumstances, this Court is of the unhesitant opinion that the impugned resolution / order dated 11.07.2015 is not sustainable in law as the same has not been passed by following due process of law and accordingly the same is set aside. Since, it is submitted that the petitioner has not been paid her salaries for the last few months, the authorities, more particularly, the School Management Committee is to ensure that the salaries are paid regularly.

19. It is however made clear that the interference of the impugned resolution is taken only on the facts and circumstances of the case and it would be open for the authorities to take any action, if any gross anomaly is found in the appointment of the petitioner but such action is required to be taken by strictly following the procedure prescribed by law.

20. The writ petition accordingly stands disposed of.

21. The interim order passed on 26.09.2016 is made absolute.

JUDGE

Comparing Assistant