

GAHC010195642017



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

Case No. : WP(C)/2492/2017

LANKESWAR BARMAN
S/O LATE GOLOK BARMAN, R/O LOWER KAMAKHYA, NABARUN NAGAR,
GUWAHATI NURSERY, DIST. KAMRUP M, ASSAM, PIN-781010

VERSUS

THE STATE OF ASSAM and 3 ORS.
REP. BY ITS COMMISSIONER and SECY. TO THE GOVT. OF ASSAM,
EDUCATION DEPTT. DISPUR, GUWAHATI-6, ASSAM SACHIVALAYA

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

3:DISTRICT ELEMENTARY EDUCATION OFFICER
KAMRUP METRO
GUWAHATI
DIST. KAMRUP
ASSAM
CHATRIBARI
GUWAHATI-8

4:SRI HITESH BARMAN
KALYAN NAGAR
MALIGAON
DIST. KAMRUP METRO
ASSAM
PIN-78101

Advocate for the Petitioner : MR.S NATH
Advocate for the Respondent :

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

ORDER

12-06-2023

Heard Shri S. Nath, learned counsel for the petitioner. Also heard Shri P. K. Borah, learned Standing Counsel, Elementary Education Department.

Considering the subject matter and the issue involved, this writ petition is taken up for disposal at the admission stage.

The case projected by the petitioner is that he was working as a Gr-IV (Chowkidar) on a temporary basis from 04.06.1999 in the Tarun Ram Phukan (Hindi) ME School, Maligaon. Pursuant to an advertisement dated 20.04.2010 for the post of Chowkidar, the petitioner along with certain other candidates had applied which had culminated in the publication of a select list dated 29.07.2010. The said select list was however the subject matter of challenge in a writ petition instituted by the petitioner registered as WP(C) No. 316/2012. This Court vide order dated 09.09.2015 had disposed of the writ petition holding that the impugned select list had already lapsed and accordingly a direction was given to the respondents to fill up the said post as per provision of the law and by a due process involving advertisement and selection. For ready reference, the relevant part of the order dated 09.09.2015 is extracted herein below:-

“The petitioner approached this Court on 18.01.2012 for direction to set aside the said selection process and the select list dated 29.07.2010 for the post of Grade IV (chowkidar) published by the DEEO, Kamrup, Guwahati. Though there was no stay order in the proceeding the Official respondents did not fill up the said post in terms of the aforesaid selection and the said select list now lapsed as the life of a such select list is for one year only.

In view of the above no direction can be issued in this proceeding and the prayer of the petitioner stands rejected.

Official respondent shall now take appropriate action for filling up of the said Grade IV (Chowkider) post in the Tarun Ram Phukan M.E.School as per the provision of Assam Elementary Education (Provincialisation) Rules 1977 and by due process of law i.e. advertisement and selection and shall fill up the said post within 31.12.2015.”

Shri Nath, the learned counsel submits that without following the directions of this Court, the impugned order has been passed on 31.03.2017 for appointment of five incumbents in various schools including the respondent No. 4 in the school in question. He submits that the said order has been passed pursuant to an order dated 22.12.2015 passed by this Court in WP(C) No. 7588/2015 (Tilok Kalita & Ors. Vs State of Assam & Ors). He submits that neither the petitioner nor the school in question is connected with the said writ petition [Tilok Kalita (supra)] and, therefore, it is apparent that the impugned order *qua* the school in question has been passed without any application of mind.

Shri Nath has also referred to an order dated 28.04.2017 passed by this Court in the present proceeding whereby the appointment of the respondent No. 4 vide the impugned order dated 31.05.2017 has been stayed and the said order is still holding the field.

Shri P. K. Borah, the learned Standing Counsel for the Department however submits that the impugned order dated 31.03.2017 makes it clear that the same has been passed after the selection by the State Level Selection Committee (SLSC) held on 30.09.2016 and, therefore, the directions of this Court passed in the earlier writ petition appears to have been complied with.

After hearing the rival contentions, this Court is of the opinion that the impugned order dated 31.03.2017 refers to an order dated 22.12.2015 passed in WP(C) No. 7588/2015 with which neither the petitioner nor the school in question, namely, the Tarun Ram Phukan (Hindi) ME School, Maligaon are connected.

It further appears that the directions contained in the order dated 09.09.2015 passed by this Court in the earlier writ petition filed by the petitioner, namely, WP(C) No. 316/2012 by which a recruitment process was directed to be initiated do not appear to have been followed from a reading of the impugned order. A selection done by the State Level Selection Committee would definitely require a process to be initiated at the School Level itself which has not been placed on record till date.

This Court has further noted that though there is a stay order passed in this proceeding in the year 2017 itself, till date neither any application for modification of the interim order nor affidavit-in-oppositions have been filed by any of the parties including the Department. In fact, the private respondent has not even entered appearance in this case to contest the same.

In view of the above facts and circumstances, this Court is of the opinion that interest of justice would be served if the impugned order dated 31.03.2017 is set aside so far as it relates to the appointment of the respondent No. 4 to the post of Gr-IV (Chowkidar) in the Tarun Ram Phukan (Hindi) ME School, Maligaon is concerned.

Consequently, it is also directed that the post can be filled up on regular basis by adhering to the directions already passed by this Court on 09.09.2015 in WP(C) No. 316/2012 which has already been quoted above.

Writ petition accordingly stands allowed.

The interim order dated 28.04.2017 is made absolute.

JUDGE

Comparing Assistant