

GAHC010202302022



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

Case No. : WA/330/2022

NAZIM UDDIN BARBHUIYA AND ANR.
S/O- LATE ABDUL JABBAR BARBHUIYA, RESIDENT OF VILLAGE-
NARAINPUR PART-IV, P.O.- NARAINPUR, P.S.- ALGAPUR, DIST.-
HAILAKANDI, ASSAM, PIN- 788101

2: ANAM UDDIN MAZUMDER

S/O- LATE ABDUL JABBAR MAZUMDER
VILLAGE- BASHDAHAR Pt.I
P.O.- MATIJURY
P.S.- ALGAPUR
DIST.- HAILAKANDI
ASSAM
PIN- 78815

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE COMMISSIONER and SECY. TO THE GOVT. OF ASSAM, SOCIAL
WELFARE DEPTT., DISPUR, ASSAM, GUWAHATI-06

2:THE DIRECTOR
SOCIAL WELFARE

ASSAM
UJANBAZAR
GUWAHATI- 781001

3:DISTRICT SOCIAL WELFARE OFFICER

HAILAKANDI
P.O.- AND P.S.- HAILAKANDI
DIST.- HAILAKANDI
ASSAM

PIN- 788151

4:CHILD DEVELOPMENT PROJECT OFFICER
ALGAPUR ICDS PROJECT
P.O.- KALIBARI BAZAR
DIST.- HAILAKANDI
ASSAM
PIN- 788150

5:CHILD DEVELOPMENT PROJECT OFFICER

LALA ICDS PROJECT
P.O.- LALA
DIST.- HAILAKANDI
ASSAM

Advocate for the Petitioner : MR. A M BARBHUIYA

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 21-09-2023

1. The appellants herein have approached this court by way of this intra-court writ appeal for assailing the order dated 22.07.2022, passed by the learned Single Bench dismissing WP(C) 4573/2014 filed by the appellants herein and one Sri Mantu Baishya. It may be stated here that the said Sri Mantu Baishya has chosen not to challenge the judgment rendered by the learned Single Bench. The aforesaid writ petition came to be instituted by the appellants/writ petitioners with the following prayers:

“Under the circumstances, it is humbly prayed that your lordships would be pleased to admit this petition, call for the records, issue rule, calling upon the respondents to show causes, if any, as to why a writ in the nature of certiorari/Mandamus or any other appropriate writ, order or direction shall not

be issued quashing and setting aside the order No. DSW/(ICDS)E/1/2005/45, dated 11/01/2005 (Annexure-12) read with an order No. DSW(LC)489/2010/107 dated 24/09/2010 (Annexure-11) and also directing the respondent No. 1 and 2 to release the current and arrear salaries of the petitioners against their respective posts and after hearing the parties and on perusal of records make the rule absolute and pass other order or orders as your lordships may deem fit and proper."

2. The appellants have projected a case in this appeal as well as in the writ petition that they were appointed as LDA-cum-typist on *ad hoc* basis in the office of the Child Development Project Officer, Dalgaoon ICDS Project vide order dated 11.11.1998. The appellants claim that their appointments were against sanctioned posts. They further assert that they had filed an appeal dated 12.08.2003 before the Director of Social Welfare, Assam, praying for continuation of their *ad hoc* services and for payment of current as well as arrear salaries. When the appeal was not considered, they preferred WP(C) 7517/2003, wherein an interim order dated 16.09.2003 was passed requiring the Director, Social Welfare Department, Assam, to dispose of the appeal dated 12.08.2003 within a stipulated period of two months. The authorities were also directed to make payment of the appellants' current as well as arrear salaries and also to allow the appellants to continue in their service till disposal of the appeal. The Director of Social Welfare, Assam, disposed of the appeal of the appellants by order dated 14.03.2005 directing release of salaries of the appellants. However, significantly enough, in this order, there was no direction to continue the services of the appellants herein. As there was no pertinent direction to continue the services of the appellants, the Child Development Project Officer, Hailakandi, wrote communications to the Director of Social Welfare, Assam, seeking clarification in this regard, because the employees were claiming release of salary from April, 2008 to February, 2009.

3. The appellants herein, thereafter, approached this court by filing WP(C)

1564/2010 raising the grievance of not having been paid their salaries. The said writ petition was disposed of vide order dated 09.04.2010 requiring the Director, Social Welfare Department, Assam, to examine the grievances of the petitioners and to do the needful in accordance with law. The Director, Social Welfare Department, Assam, thereafter passed an order dated 24.09.2010 observing that the appeal of the appellants/petitioners had been disposed of with the pertinent observation that the appellants were appointed against non-sanctioned posts and as such their services were fit to be declared void and thus they did not have any right to continue in service. It was also clarified that in view of the order dated 11.01.2005, the question of payment of salary, as claimed by them, does not arise.

4. The order dated 11.01.2005, issued by the Director, Social Welfare Department, Assam, has been placed on record wherein it has been mentioned that the petitioners (appellants herein) were appointed on *ad hoc* basis; they were illegally appointed in excess of the number of vacancies and they neither had a right to claim for continuation in service nor could they claim for payment of salary when they had not rendered their services after their release from their place of attached posting. It is clearly indicated in the order dated 11.01.2005 that the petitioners did not have the right to continue in service. WP(C) No.7517/2003 preferred by the petitioners was finally disposed of vide order dated 23.05.2012 with a categorical finding that the petitioners had been appointed *dehors* the recruitment rules and their appointments were purely temporary and *ad hoc* and thus, no direction could be issued to reinstate the petitioners on their posts. The appellants thereafter filed the present writ petition, being WP(C) 4573/2014, challenging the orders dated 11.01.2005 and 24.09.2010 issued by the Director of Social Welfare, Assam.

5. It may be stated herein that in the pleadings of the writ petition [WP(C) 4573/2014] the fact regarding disposal of WP(C) 7517/2003 vide order dated 23.05.2012 was not disclosed. The learned Single Bench, while deciding WP(C) 4573/2014 by the impugned order, has recorded a categorical finding that the

petitioners have not made any averment with respect of the fate of their appeal dated 12.08.2003. We also find that the appellants/writ petitioners have conveniently omitted to disclose in the writ petition [WP(C) 4573/2014] the fact regarding the judgment dated 23.05.2012 rendered in the earlier writ petition [WP(C) 7517/2003]. Likewise, even in the subsequent writ petition [WP(C) 1564/2010], the fact regarding pendency of WP(C) 7517/2003 was not brought to the notice of the Court. It is thus clear that the appellants/petitioners have blatantly misused the writ jurisdiction of this Court by filing repeated writ petitions concealing the factum of the earlier litigation in the subsequent proceedings.

In this background, it is apparent that the petitioners are not entitled to any equitable relief because they have not approached the Court with clean hands.

6. In view of the above, and since the appellants/petitioners were never appointed against sanctioned posts by following the recruitment rules, no relief, as sought for by the appellants/petitioners can be granted to them. Thus, while affirming order dated 22.07.2022 passed by the learned Single Bench that the appellants/writ petitioners tried to mislead the Court by suppression of material facts, we hereby dismiss the writ appeal with Cost of Rs. 20,000/- (Rupees twenty thousand) on each of the appellants.

7. The Cost shall be deposited before the Registry of this Court within thirty days from today. Upon the Cost being deposited, the same shall be appropriated in the funds of the Assam State Legal Services Authority.

JUDGE

CHIEF JUSTICE

Comparing Assistant