GAHC010213512023

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

Case No. : WP(C)/5651/2023

NABA KUMAR MALI AND ANR
S/O- LATE SIBACHARAN MALI,
R/O -VILLAGE AND P.O- SATPAKHALI,
DIST-KAMRUP (M), ASSAM, PIN-781132

2: CHANDRAPRABHA NATH
D/O- KAMINI KUMAR NATH

R/O- VILL- JOGIPARA

P.O- LGBI AIRPORT
AZARA
DIST- KAMRUP (M)
ASSAM
PIN-781015

(BOTH THE PETITIONERS ARE HAVING COMMON CAUSE OF ACTION

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM, DEPARTMENT OF SCHOOL EDUCATION
DISPUR, GUWAHATI- 781006.

2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI- 781019.

3:THE INSPECTOR OF SCHOOLS
KAMRUP DISTRICT CIRCLE
PANBAZAR
GUWAHATI-0

Advocate for the Petitioner : MR. I H SAIKIA

Advocate for the Respondent : SC, SEC. EDU.

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

ORDER

Date : 26.09.2023

Heard Mr. IH Saikia, learned counsel for the petitioner. Also heard Mr. B Kaushik, learned counsel for the Secondary Education Department of Government of Assam.

2. The two writ petitioners Naba Kumar Mali and Chandraprabha Nath have instituted this writ petition on the following prayers:

"*Under the aforesaid facts and circumstances, it is therefore, most respectfully prayed that your Lordship may graciously be pleased to admit this petition, issue Rule, Call for records and to show cause as to why-*

I) A writ in the nature of Mandamus shall not be issued by directing the Respondents to count the past services of the Petitioners rendered in M.E. Schools towards Teaching Experience;

II) A writ in the nature of Mandamus shall not be issued by directing the Respondents to consider the cases of the Petitioners for promotion to the post of Headmaster in High Schools in their District along with the other candidates;

III) By holding that the Petitioners are having the required teaching experience of more than 10(ten) years as Graduate Teacher in terms of the Notifications issued by the National Council for Teacher Education and all the consequential order/ Notifications issued by the State of Assam;

IV) By passing any other appropriate Writ, Order or direction as this Hon'ble Court may deem fit and proper;

and on perusal of the records thereof and after hearing the parties this Hon'ble Court may be pleased to make the Rule absolute and/or pass such further or other order/ orders as Your Lordship may deem fit and proper in the facts and circumstances of the case.

-AND-

It is further prayed that pending disposal of the Rule, Your Lordship may be pleased to pass an interim order by directing the Respondents to consider the cases of the petitioners for promotion to the post of Headmaster in High schools in their District along with the other candidates by further by directing the Respondents to count the past services of the Petitioners rendered in M.E. Schools towards Teaching Experience in the interest of Justice.

And for this act of your kindness the Petitioners is in duty bound shall ever pray."

3. By referring to page-43 of the writ petition, the communication from the Director of Secondary Education to the Inspector of Schools of various districts, Mr. IH Saikia, learned counsel for the petitioners states that the gradation list which had been forwarded pursuant to the said communication does not contain the names of the petitioners although under the law and on facts their names ought to have been included and the non inclusion thereof would lead to a non-consideration of the petitioners for promotion to the post of Headmaster in the provincialised High Schools.

4. In paragraph 9 of the writ petition a statement is also made that the Inspector of Schools is not sending the particulars of the petitioners at the instruction of the Director of Secondary Education, Assam.

5. Any instruction from the Director would have to be on the basis of a record but paragraph 9 is sworn to be made on the basis of knowledge and not on record and therefore, there is no occasion for the Court to even call for any records and examine it. No source of the knowledge of the petitioner has also been stated in the writ petition to appreciate such statement. But a reading of the prayer makes it discernable that the petitioners are apprehensive of a future violation of the legal rights that they would not be considered for the post of Headmaster.

6. Article 226 of the Constitution of India clearly provides that the said power can be invoked in the event of there being any violation of a fundamental or a legal right of a litigant and not on any apprehension of a future violation of legal right.

7. From such point of view, we do not find any merit in this writ petition to be entertained in the present form. But, however, we take note of the statement of Mr. IH Saikia, learned counsel for the petitioners that in the gradation list that had been forwarded pursuant to the communication dated 01.06.2023 the names of the petitioners have incorrectly excluded by the Inspector. If it is so, the said gradation list be assailed by the petitioners for appropriate remedy and liberty is also granted to the petitioners to approach the Court again in the event of any violation of legal right takes place. A copy of the gradation list that may have been forwarded pursuant to the communication dated 01.06.2023 be provided to the petitioners within three days from today.

Writ petition stands closed in the above terms.

JUDGE

Comparing Assistant