

GAHC010065282022



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

Case No. : WP(C)/6881/2022

FORZAR ALI AHMED
S/O- ROHIM UDDIN
VILL.- PART-I
P.S. JOGIGHOPA
DIST. BONGAIGAON, ASSAM

VERSUS

1. THE STATE OF ASSAM AND 4 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, EDUCATION (ELEMENTARY) DEPARTMENT
DISPUR, GUWAHATI-781006.

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

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER (DEEO)
BONGAIGAON, DIST.- BONGAIGAON, PIN- 783380.

4:THE BLOCK ELEMENTARY EDUCATION OFFICER
SRIJANGRAM, BONGAIGAON, DIST. BONGAIGAON
PIN- 783384.

5:MOKBUL HUSSAIN
S/O- LATE SORAF UDDIN
VILLAGE- BARJANA PART-I
P.O. BARJANA, P.S. JOGIGHOPA
DIST. BONGAIGAON, ASSAM, PIN- 783382.

Advocate for : MR H R A CHOUDHURY
Advocate for : SC
ELEM. EDU appearing for THE STATE OF ASSAM AND 4 ORS.

- B E F O R E -

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

06.12.2023

Heard Mr. F.U. Barbhuiya, learned counsel for the petitioner. Also heard Mr. B. Talukdar, learned Standing Counsel, Elementary Education Department and Mr. A. Deka, learned counsel for the respondent No.5.

By way of instituting this writ petition, the petitioner has challenged the communication dated 26.09.2022 issued by the in-charge Block Elementary Education Officer, Srijangram Education Block, by which the monthly salary of petitioner from September, 2022 was withheld.

Vide order dated 05.02.2021, the services of the petitioner was provincialised as Tutor and in terms of the said order, he joined his services at Pub-Barjana L.P. School i.e. the Base School. However, vide order dated 18.02.2021 issued by the Commissioner and Secretary to the Government of Assam, Education Department, the petitioner and other teachers who had joined at Base School were returned back to Barjana N. Sardar Memorial Girls' M.E. Madrassa and as such the petitioner is discharging his duties in Barjana N. Sardar Memorial Girls' M.E. Madrassa till date.

The respondent No.5 (Mokbul Hussain) had presented a challenge to the said order of provisialisation dated 05.02.2021 before this Court by filing writ petition, WP(C) No.2499/2022.

This Court, vide order dated 18.04.2022 passed in WP(C) No.2499/2022

had observed as follows,

“Heard Mr. A. Deka, the learned counsel for the petitioner and Mr. A. Phukan, the learned counsel appearing on behalf of the respondent Nos. 1 to 5. Also heard Ms. D. Das Barman, the learned Additional Senior Government Advocate, Assam for the respondent No. 6.

Issue notice, returnable by 4 (four) weeks. Steps for service of notice upon the respondent Nos. 7 & 8 by registered post with A/D as well as through usual process within 3 (three) days.

Extra copies of the writ petition be served upon the learned counsel for the aforesaid respondents within 3 (three) days.

The grant of benefit of provincialisation to the respondent No. 7 shall be subject to the outcome of the writ petition.”

The respondent authorities, on the basis of the observations of this Court contained in the order dated 18.04.2022 passed in WP(C) No.2499/2022, proceeded to withhold the monthly salary of the petitioner with effect from the month of September, 2022. The said fact of withholding of the salary of the petitioner is available in the communication dated 26.09.2022.

Vide order dated 31.10.2022, this Court while issuing notice in present proceeding [WP(C) No.6881/2022] had stayed the impugned communication dated 26.09.2022.

It is submitted at the bar that the petitioner, in pursuance to the said interim order dated 31.10.2022, is in receipt of his salary.

The facts as available on record and also noticed above, lead to only conclusion that the action on the part of the respondent authorities in withholding the salary of the petitioner only on the basis of an observation made by this Court in WP(C) No.2499/2022 vide order dated 18.04.2022 to the effect that benefit of provincialisation of respondent No.7 shall be subject to outcome of the petition, is clearly misplaced. There being no restrain order

passed by this Court, the respondent authorities could not have read into the order dated 18.04.2022 passed in WP(C) No.2499/2022 something which was never intended.

Be that as it may, having concluded that the withholding of the salary of the petitioner was clearly without jurisdiction, the impugned communication dated 26.09.2022 is interfered with.

It is further directed that the respondent authorities shall continue to pay the monthly salary of the petitioner as have would have been paid in the normal course.

The validity of the order of provincialisation of the petitioner would be decided in the proceedings pending in WP(C) No.2499/2022.

With the above directions, the present writ petition stands disposed of.

JUDGE

Comparing Assistant