

GAHC010218152011



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

Case No. : WP(C)/5494/2011

M/S SWADESHI ACADEMY
TARUN NAGAR, ABC, GUWAHATI-5, P.S. BHANGAGARH, DIST. KAMRUP,
REP. BY ITS PRINCIPAL.

VERSUS

THE UNION OF INDIA and ORS
REP. BY THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF LABOUR, NEW
DELHI.

2:THE STATE OF ASSAM

REP. BY THE SECY. TO THE GOVT. OF ASSAM
LABOUR and EMPLOYMENT DEPTT
DISPUR
GHY-6

3:THE EMPLOYMENT STATE INSURANCE CORPN

NORTH EASTERN REGION
BAMUNIMAIDAM
GUWAHATI-21
REP. BY ITS REGIONAL DIRECTOR

4:THE ASSTT. DIRECTOR INS

EMPLOYEES STATE INSURANCE CORPN
O/O THE EMPLOYMENT STATE INSURANCE CORPN
NORTH EASTERN REGION
BAMUNIMAIDAM
GHY-21

5:KAILASH NATH

6:SAMARJIT SINGH

7:RAJIB BARUAH

RESPONDENT NOS. 5 TO 7 ARE EMPLOYEES OF THE PETITIONER
INSTITUTION
ARUN NAGAR
ABC
GUWAHATI-5
P.S. BHANGAGARH
DIST. KAMRU

Advocate for the Petitioner : MR.L P SHARMA

Advocate for the Respondent : ASSTT.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : **21.06.2023**

Heard Mr. S. Chakraborty, the learned counsel appearing on behalf of the Petitioner and Mrs. A. Gayan, the learned Assistant S.G.I. appearing on behalf of the Respondent No.1. I have also heard Ms. U. Das, the learned counsel appearing on behalf of the Respondent No.2 and Mr. G. Bordoloi, the learned counsel appearing on behalf of the Respondent Nos. 3 and 4. None appears on behalf of the respondent Nos. 5, 6 and 7.

2. The instant writ petition has been filed by the Petitioner which is a Trust incorporated under Indian Trusts Act, 1882 and registered on 15.06.1994. The Petitioner runs a school in the name and style of Swadeshi Academy. The petitioner herein is aggrieved by the notifications dated 03.12.2007 and

06.01.2009 whereby the Petitioner school which is an educational institution has been brought within the purview of the Employees' State Insurance Act, 1948.

3. A pari materia challenge was also made by various schools including an association in the name and style of All Assam English Medium Schools Association and another in various writ petitions before this Court against the inclusion of the educational institutions within the purview of Employees' State Insurance Act, 1948 vide the notification dated 06.01.2009. The judgment of the Coordinate Bench of this Court in the case of ***All Assam English Medium Schools Association and Another Vs. State of Assam and Others reported in 2016 (3) GLR 421*** clearly shows that the Coordinate Bench of this Court was of the opinion that the extension of the Employees' State Insurance Act, 1948 to cover the educational institutions through the notification dated 06.01.2009 was found to be in order and accordingly, the contentions of the Petitioners in those proceedings was rejected. It is however observed that since the operation of the impugned notification i.e. dated 06.01.2009 was stayed by this Court, it should be applied prospectively to the educational institutions and no schools should be forced to subjugate themselves retrospectively under the Employees' State Insurance Act, 1948.

4. It reveals from the records that this Court vide an order dated 02.11.2011 stayed the communication dated 19.08.2011 issued by the Assistant Director of the Regional Office of the Employees' State Insurance Corporation to the Petitioner's school. The said stay order was made until further orders of this Court. Taking into account that the challenge made to the notification dated 06.01.2009 has already been rejected by a Coordinate Bench and this Court upon perusal of the said judgment in the case of ***All Assam English Medium***

Schools Association (supra) has no reason to differ with the same, the instant writ petition so filed challenging the notifications dated 03.12.2007 and 06.01.2009 accordingly stands dismissed.

5. Be that as it may, this Court is of the opinion that as in the instant writ petition, there was an order passed on 02.11.2011 thereby staying the order dated 19.08.2011 until further orders and the said order continued all throughout till today, the impugned notification dated 06.01.2009 should be applied prospectively to the Petitioner's school from the date of the instant judgment.

6. Accordingly, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant