

GAHC010222902019



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

Case No. : WP(C)/7215/2019

ANOWARA KHATOON
W/O- AFAZUDDIN, VILL- BOWALGURI, P.O. BOWALGURI, DIST-
MORIGAON, ASSAM, PIN- 781124

VERSUS

THE STATE OF ASSAM AND 4 ORS.
TO BE REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM,
SECONDARY EDUCATION, ASSAM, DISPUR, GHY-6

2:THE DIRECTOR
SECONDARY EDUCATION ASSAM
KAHILIPARA
GHY-19

3:INSPECTOR OF SCHOOL
MORIGAON DISTRICT CIRCLE
DIST- MORIGAON
ASSAM

4:THE TREASURY OFFICER
MORIGAON TREASURY
DIST- MORIGAON

5:WAHIDUR RAHMAN RASHID
VILL- BOWALGURI
P.O. GORAIMARI
DST- MORIGAON
ASSAM
PIN- 78112

Advocate for the Petitioner : MR A R BHUYAN

**Advocate for the Respondent : MR. N. J. KHATANIAR
: MR. R. BORPUJARI**

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Date : 26-04-2023

Heard Mr. A. R. Bhuyan, the learned counsel appearing on behalf of the petitioner and Mr. N. J. Khataniar, the learned Standing counsel appearing on behalf of the Respondent Nos. 1, 2 and 3. I have also heard Mr. R. Borpujari, the learned Standing counsel appearing on behalf of the respondent No. 4.

2. Taking into account the dispute involved herein and the order which this Court proposes to pass, the presence of the respondent No.5 is not essential.

3. The case of the petitioner herein is that the petitioner was working as the Headmistress of the School in the name of Bowalguri Pre. Senior Madrassa at the stage of filing the writ petition. On the basis of an enquiry report dated 02.05.2015, the respondent No.5 was put under suspension and the Block Elementary Education Officer was directed to file an FIR against the respondent No.5. It further reveals from the contents of the writ petition that a Disciplinary Proceedings was initiated against the respondent No.5 and in pursuance thereto, the punishment in terms with Rule 7(ii) of the Assam Services (Discipline and Appeal) Rules, 1964 (for short "the Rules of 1964") was imposed by withholding two increments with cumulative effect. Further to that the respondent No.5 was re-instated and posted as Head Mudaris to Changmazi Pre. Senior Madrassa against the vacant post of Head Mudaris and it was

clarified that the suspension period of the said incumbent shall be treated as on duty for the purpose of counting the pensionary benefit. However, the respondent No.5 as alleged did not join as Head Mudaris of Changmazi Pre. Senior Madrassa and continuously pursued before the Office of the respondent No.2 with a request for modification of the order dated 03.12.2018. Thereupon, the respondent No.2 passed an order dated 12.02.2019 whereby the said respondent No.5 was reposted at Bowalguri Pre. Senior Madrassa with immediate effect.

4. A guardian of a student who was studying in Bowalguri Pre. Senior Madrassa being aggrieved by the order dated 12.02.2019 approached this Court by challenging the same on the ground that the aforesaid order dated 12.02.2019 was in violation to the settled position of law as well as in violation to the Rules of 1964, the Right of Children to Free and Compulsory Education Act, 2009 as well as the other relevant provisions of law. The said writ petition was registered and numbered as WP(C) No.1186/2019. This Court vide an order dated 25.02.2019 stayed the order dated 12.02.2019 whereby the respondent No.5 herein was posted as Head Mudari of Bowalguri Pre. Senior Madrassa until further orders. Under such circumstances, the respondent No.5 could not join the post of Head Mudaris in the school where the petitioner was Headmistress.

5. Thereupon, an order was issued by the Inspector of Schools on 08.07.2019 whereby it was mentioned that the respondent No.5 was entitled to subsistence allowance @75% as per Government Rules and Procedure. The said order however put the petitioner herein in a perplexed situation in as much as how the petitioner who was the drawing and disbursing authority would release the subsistence allowance of 75% to the respondent No.5 inasmuch as his posting

vide order dated 12.02.2019 was stayed by this Court vide the order dated 25.02.2019 in WP(C) No.1186/2019. Subsequent thereto, a Show Cause notice was issued by the Inspector of Schools on the ground that the petitioner has failed to carry out the order of the higher authority of directing the payment 75% of the subsistence allowance to the respondent No.5. The petitioner being aggrieved had therefore filed the present writ petition challenging the order dated 08.07.2019 as well as the Show Cause notice dated 01.08.2019.

6. It is the specific case of the petitioner that the said order dated 08.07.2019 could not have been issued in view of the order of stay dated 25.02.2019 passed in WP(C) No.1186/2019. It was further submitted by the learned counsel appearing on behalf of the petitioner that the issuance of the Show Cause notice was completely perverse inasmuch as it was based upon non-existence facts and also on the basis of an order of higher authority which could not be complied with in view of the order passed by this Court.

7. It appears from the record that upon filing of the instant writ petition, this Court vide the order dated 23.09.2019 issued notice making it returnable by 4 (four) weeks and in the meantime, stayed the impugned notice dated 01.08.2019. Till date, as would appear from the records, the respondents have not filed their affidavits. This Court made a specific query upon the learned Standing counsel for the Secondary Education Department as to what is the status of the Departmental Proceedings so initiated against the petitioner. The learned Standing Counsel for the Secondary Education Department submits that pursuant to the said Show Cause notice, nothing has been done in view of the stay order passed by this Court on 23.09.2019 in the present proceedings. He further submitted that in the meantime, the respondent No.5 has also been

transferred to some other School in the District of Barpeta.

8. I have heard the learned counsels for the parties and have perused the materials on record. A perusal of the order dated 08.07.2019 in the opinion of this Court is an order nonest inasmuch as there was an order of stay passed by this Court whereby the order of posting of the respondent No.5 dated 12.02.2019 was stayed and as such the question of payment of subsistence allowance by the petitioner being the Drawing and Disbursing Officer in respect to the School in question did not arise. As the order dated 08.07.2019 is nonest, the Show Cause notice which has been issued for non-compliance of the said order is also based upon non-existent facts and as such, this Court is of the opinion that the said Show Cause notice dated 01.08.2019 has to be nipped at the bud. Consequently, this Court therefore sets aside the Show Cause notice dated 01.08.2019.

9. Accordingly, the instant writ petition stands allowed in terms with the observations and directions made hereinabove.

JUDGE

Comparing Assistant