

GAHC010226822021



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

Case No. : WP(C)/90/2022

ANIL CH GAYAN
S/O- ADHAN CH. GAYAN,
VILLAGE- HILLOIPARA, P.O- KACHARI PATHAR, P.S- DHEMAJI, DIST-
DHEMAJI,
ASSAM, PIN-787058

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT . OF
ASSAM, EDUCATION DEPARTMENT (SECONDARY), DISPUR , GUWAHATI-
06

2:THE SPECIAL COMMISSIONER
EDUCATION DEPARTMENT (SECONDARY)
DISPUR
GUWAHATI-06

3:THE DIRECTOR
OF SECONDARY
EDUCATION ASSAM
KAHILIPARA
GUWAHATI-19

4:THE COMMISSIONER AND SECRETARY
TO THE GOVT . OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI-06

5:THE INSPECTOR OF SCHOOLS
DHEMAJI DISTRICT CIRCLE

DISTRICT-DHEMAJI
ASSAM
PIN-787057

6:THE PRINCIPAL
BATGHARIA HIGHER SECONDARY SCHOOL

DISTRICT-DHEMAJI
ASSAM
PIN-78705

Advocate for the Petitioner : MRS. R DEVI

Advocate for the Respondent : SC, FINANCE

BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR

ORDER

Date : 14.06.2023

Heard Ms. R.Devi, learned counsel for the petitioner. Also heard Ms. D.Mochahari, learned standing counsel, Secondary Education Department for the respondent Nos. 1, 2, 3 and 5 and Mr. D.Doley, learned counsel for the respondent No.6.

2. The petitioner was appointed as a Grade-IV employee in the Batgharia Higher Secondary School, Dhemaji by an order dated 1st of February, 1994 on temporary basis for a period of 3(three) months on the basis of Government sanctioning order No.EPG.567/91/113 dated 16.11.1991. The Service of the petitioner has been extended from time to time and he is continuing to work in the said school till date. By order dated 24.09.2001, the Director of Secondary Education, Assam directed the Inspector of Schools, Dhemaji to release the

petitioner from the school in question on the ground that he was found working against non-existing post. The said order dated 24.09.2001 was challenged by the petitioner in WP(C)/7729/2001 which was disposed of by judgment dated 19.01.2004 on the basis of a letter dated 25.10.2002 written by the Director of Secondary Education, Assam to the Principal, Secretary to the Govt. of Assam, Education (Secondary) Department directing the respondents more particularly the Principal Secretary to the Govt. of Assam, Education (Secondary) Department to deal with the case of the petitioner for necessary adjustment as requested by the letter dated 25.10.2002.

3. Thereafter, communications were made within the Department and the Inspector of Schools, Dhemaji District Circle wrote to the Commissioner and Secretary to the Govt. of Assam, Secondary Education Department by letter dated 22nd November, 2013 submitting the necessary related documents of Grade-IV staff of two schools amongst which one is the Batgharia Higher Secondary School, where the petitioner is serving for regularization of his service. In the Annexure-A appended to the said letter dated 22nd of November, 2013, the name of the petitioner appears at Sl. No.1 and he is shown to have been appointed on the basis of Government sanction order No.EPG.567/91/113 dated 16.11.1991. It is further certified at Sl. No. (ii) of the said Annexure-A that the petitioner is engaged against sanctioned vacant post.

4. Thereafter, the Director of Secondary Education, Assam by letter dated 18th of May, 2018 addressed to the Commissioner & Secretary to the Govt. of Assam, Education (Secondary) Department stated that the petitioner was

appointed as Grade-IV in the Batgharia Higher Secondary School, Dhemaji by Government sanction order dated 16.11.1991 on ad-hoc basis and he has been working in the said School continuously till the date of writing of the letter. It also states that the petitioner has been paid his salary up to February, 2004 from the date of his joining in the service and subsequently his service was extended until further orders w.e.f 08.11.1994 or till the post is filled up by regular appointment whichever is earlier. It is further stated that as per the report submitted by the Inspector of Schools, Dhemaji, there is one Grade-IV post lying vacant due to the retirement of one Debeswar Hazarika and in view of the available vacancy, the Director of Secondary Education, Assam requested the Commissioner & Secretary to the Govt. of Assam Education (Secondary) Department to take a decision on the matter.

5. Thereafter, the petitioner again approached this Court by filing WP(C)/1468/2018 being aggrieved for non-payment of his salary w.e.f from March, 2004 till date and also with a prayer to observe/adjust the petitioner against the regular Grade-IV post which is lying vacant in Batgharia Higher Secondary School, Dhemaji, the said writ petition was disposed of by order dated 20.09.2018 and the operative portion read as under:

“6. Considering the Communication dated 18.05.2018 written by the respondent No. 2, this Court is of the considered opinion that instead of keeping the matter pending it would be in the interest of justice to dispose of this writ petition with a direction to the respondent No. 1 to consider the proposal made by the respondent No. 2 in the Communication dated 18.05.2018 in terms of existing Rules and Procedures as well as the Judgment and Order dated 19.01.2004 passed by this Court in WP(C) No. 7729/2001 at the earliest but not later than 2 (Two) months from the date of receipt of a copy of the Order of this Court by the respondent No. 1

7. *The respondent No. 1 and 2 shall also consider the case of the petitioner that he has not been paid his salary w.e.f. March 2004 till date despite extracting his services. Accordingly, the respondents are also directed to consider payment of the arrear salary of the petitioner from the month of March 2004 after proper verification with the records. Let such consideration be also completed within a period of 3 (Three) months.*

8. *With the above observations and directions, this writ petition is disposed of”.*

6. Consequent to the order dated 20.09.2018, passed by this Court in WP(C)/1468/2018, the Special Commissioner, Secondary Education Department passed an order dated 10th of September, 2021 and the operative portion reads as under:

“Having taking into consideration the legal views of Judicial Department, Finance Department and taking into account the relevant Govt. Rules/Orders in force we are convinced that any appointment to the post of Grade-IV or any other post whatsoever cannot be made in excess of the sanctioned strength and moreover the post should be a sanctioned vacant post. Hence, considering the fact that the appointment of Sri Anil Ch. Gayan was a case of excess appointment without any vacant sanctioned post and therefore, the said appointment of Sri Anil Ch. Gayan is illegal and in consequence, his service cannot be regularized on the ground of continuation of his service and therefore his case for regularization is hereby rejected. Moreover, as the Govt. in Secondary Education Department has rejected the claim of Anil Ch. Gayan for regularization of his services through this speaking order and he is also not eligible for payment of arrear salary from the month of March, 2004 onwards.

This fresh Speaking Order supersedes the earlier order passed by the Commissioner & Secretary, Secondary Education Department vide order No.ASE.381/2018/Pt./101, dated 23/3/2021 and this order has been issued in compliance of the Hon’ble Gauhati High Court’s order dated 20/9/2018 passed in WP(C)

1468/2018 (filed by Anil Ch. Gayan) and this has a reference to letter No. dated 28/8/2021 received from Sankar Prasad Bhattachariya, Advocate Gauhati High Court, Ex. Standing Counsel, Gauhati High Court."

7. A perusal of the order dated 10th of September, 2021 would clearly indicate that the Special Commissioner, Secondary Education Department while considering the case of the petitioner as directed by this Court in the order dated 20.09.2018 passed in WP(C)/1468/2018 has failed to take into consideration the appointment order of the petitioner dated 1st of February, 1994 by which he was appointed temporarily as Grade-IV pursuant to the Government sanction order dated 16.11.1991. Further, the Special Commissioner, Secondary Education Department has also failed to take into consideration the letter of the Inspector of Schools dated 22nd of November, 2013, by which it is indicated that the petitioner is appointed against sanctioned vacant post as well as the letter dated 18th of May, 2018 written by the Director of School Education, Assam, wherein it is indicated that there is one Grade-IV post lying vacant in the said School due to the retirement of one Debeswar Hazarika.

8. Accordingly, the order dated 10th of September, 2021, issued by the Special Commissioner, Secondary Education Department is set aside and quashed.

At this stage it is stated at the bar that there is no Special Commissioner, Secondary Education Department as on today and presently the post is held by

the Secretary, School Education Department.

Accordingly, the Secretary School Education Department is directed to reconsider the case of the petitioner in terms of the earlier order dated 20.09.2018 passed by this Court in WP(C)/1468/2018 by taking into consideration the appointment order of the petitioner dated 1st of February, 1994, the letter of Inspector of Schools addressed to the Commissioner & Secretary to the Govt. of Assam, Secondary Education Department dated 22nd of November, 2013 as well as the letter dated 18th of May, 2018, issued by the Director of Secondary Education, Assam and addressed to the Commissioner & Secretary to the Govt. of Assam, Education Secondary Department and thereafter pass a speaking order in accordance with law within a period of 2(two) months from the date of receipt of a copy of the order of this Court.

9. With the above observations and directions this writ petition stands disposed of.

JUDGE

Comparing Assistant