

GAHC010236602017



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

Case No. : WP(C)/3242/2017

RAM KRISHNA SARMA
S/O- LATE PANCHANAN SARMA, VILL- GOMURA, P.O- BHALAGURI,
SARUPETA, DIST- BARPETA, ASSAM

VERSUS

THE STATE OF ASSAM and 5 ORS.
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,
EDUCATION DEPTT., DISPUR, GUWAHATI-6

2:THE COMMISSIONER and SECRETARY
GOVT OF ASSAM
EDUCATION DEPTT.
DISPUR
GUWAHATI-6

3:THE DIRECTOR
ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI- 19

4:DISTRICT ELEMENTARY EDUCATION OFFICER
BARPETA
DIST- BARPETA
ASSAM

5:THE TREASURY OFFICER
BAJALI SUB-TREASURY
P.O- PATHSALA
DIST- BARPETA
ASSAM

6:HEAD MASTER
GOMURA BHABANANDA BAIRAGI
M V SCHOOL
VILL- GOMURA
P.O- BHALAGURI
SARUPET

Advocate for the Petitioner : MR.M SAIKIA

Advocate for the Respondent : MR. B K GOGOI (R6)

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 27.03.2023

Heard Mr. M. Saikia, the learned counsel appearing on behalf of the petitioner and Mr. B. Talukdar, the learned Standing counsel appearing on behalf of the Elementary Education Department.

2. The case of the petitioner herein is that the petitioner has not received his arrear salaries since 23.11.2010 till the date of filing of the writ petition. It is interesting to take note of that this is not the first round of litigation by which the petitioner has been claiming the arrear salary. The petitioner initially filed a writ petition in the year 2003 being WP(C) No.728/2003 whereby this Court vide an order dated 31.01.2003 disposed of the said writ petition with a direction for payment of the arrear salary to the petitioner provided that he had been legally appointed.

3. Pursuant thereto, the petitioner filed another writ petition before this Court which was registered and numbered as WP(C) No.7481/2003. The said writ petition was filed for the purpose of claiming regularization of the services

of the petitioner. However, the said writ petition was dismissed vide an order dated 19.09.2008 which is extracted hereinbelow:

“The petitioner was appointed as an Assistant Teacher in the Gomura Bhabananda Dairagi M.V. School by an order of the District Elementary Education Officer, Barpeta dated 5.4.1999 as would appear from the materials enclosed to the writ petition, the appointment of the petitioner was made against a vacancy caused by the transfer of one Shri Utpal Kumar Patgiri from the School in question. The said Shri Utpal Kumar Patgiri was appointed in the School under the OBB Scheme. The petitioner claims to have rendered continuous service and a regular vacancy having occurred in the School, this writ petition has been filed seeking a direction for appointment of the petitioner against said regular vacancy.

Admittedly, the petitioner was appointed without any selection. The said appointment was against a vacancy caused by the transfer of an OBB teacher from the school in question. It is difficult to comprehend as to how a fresh appointment against a transfer vacancy can be made. Appointment against such a vacancy i.e. caused by transfer without holding any selection cannot be understood to confer any right on the incumbent to seek regular appointment. The prayer made in the writ petition, therefore, is refused.

Writ petition, consequently, is dismissed. No costs.”

4. It further appears that the petitioner thereafter filed an application initiating contempt for non-compliance to the order dated 31.01.2003. The said contempt case i.e Cont.Case(C) No.255/2004 was however dismissed holding inter alia that the petitioner was not legally appointed and as such, there is no question of payment of the arrear salary to the petitioner in terms with the order dated 31.01.2003 passed in WP(C) No.728/2003. The said order dated 22.11.2010 is extracted hereinbelow:

“This contempt petition has been filed alleging violation of the order dated 31.01.03 passed by this Court in W.P.(C) No. 728/2003 by which the respondents were directed to make payment to unpaid dues to the petitioners subject to the condition that the petitioner was working on being legally appointed as Assistant Teacher.

Mr. M.R. Pathak, learned Standing counsel, Education Department has brought my notice to the order dated 19.09.08 passed by this Court in another writ petition being W.P.(C) No. 748/03 filed by the petitioner in the said order, it has been stated that the petitioner was appointed without any selection and the appointment was against the vacancy caused by transfer of an OBB teacher from the school in question. Consequently, it was held that the authority could not have made any appointment against the said transfer vacancy without holding any selection.

In the order in question direction was to pay the salary only if it was found that the petitioner was legally appointed. There being categorical finding that the petitioner was not legally appointed, there is no question of payment of arrear salary to the petitioner in terms of the said order dated 31.01.03 passed in W.P.(C) No.728/03.

Consequently, the contempt petition is dismissed.”

5. Thereupon, the petitioner had filed another writ petition i.e. WP(C) No.4676/2011 claiming arrear salary w.e.f. 05.04.1999 till the date of filing of the writ petition. The said writ petition was however withdrawn with liberty to re-file. Thereupon, the present writ petition has been filed.

6. The orders passed on 19.09.2008 as well as 22.11.2010 as extracted hereinabove makes it clear that the appointment of the petitioner was illegal. The petitioner knew it very well that his appointment was illegal on the basis of the orders dated 19.09.2008 and 22.11.2010. Then also, the petitioner claims to

be entitled to salary from 23.11.2010. The claim of the petitioner is completely misconceived.

7. Considering the above, this Court is constrained to observe that the petitioner is not entitled to any salary as claimed in the instant writ petition on the ground that the appointment of the petitioner being illegal.

8. Consequently, the instant petition stands dismissed.

JUDGE

Comparing Assistant