

GAHC010241052019



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

Case No. : WP(C)/7661/2019

BANTI BALANATH
ASSTT TEACHER, HALDHA HIGH SCHOOL, W/O- SRI JAGAT NATH, R/O-
VILL AND P.O- HALDHA, DIST- DARRANG, ASSAM, PIN- 781121

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM,
SECONDARY EDUCATION DEPTT, DISPUR, GUWAHATI- 781006

2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI- 781019

3:THE INSPECTOR OF SCHOOLS
SECONDARY EDUCATION
DARRANG DISTRICT CIRCLE
P.O- MANGALDAI
DIST- DARRANG
ASSAM
PIN- 784125

4:THE TREASURY OFFICER
MANGALDAI TREASURY
P.O- MANGALDAI
DIST- DARRANG
ASSAM
PIN- 784125

5:THE HEAD MASTER
HALDHA HIGH SCHOOL

HALDHA
P.O- HALDHA
DIST- DARRANG
ASSAM

6:MAMTAZ ALI
S/O- LATE MAMAT ALI
VILL- BISHNUPUR
P.O- BURHA
DIST- DARRANG
ASSAM
PIN- 78112

Advocate for the Petitioner : MR. R SARMA

Advocate for the Respondent : SC, SEC. EDU.

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER(ORAL)

Date : 29/05/2023

Heard Mr. R. Sarma, the learned counsel appearing on behalf of the Petitioner. Ms. D. Mushahary, the learned counsel appears on behalf of the Respondent Nos. 1, 2 & 3, Mr. R. Borpujari, the learned counsel appears for the Respondent No. 4. None appears on behalf of the Respondent Nos. 5 and 6.

2. The case of the petitioner herein is that the Director of Secondary Education had issued an order under Memo No.PC/Sec/115/2013/19 dated 17/8/2013 whereby it was mentioned that the Government vide Letter No. ASE.86/2013/Pt.-II/290 dated 25/7/2013 created 682 Nos. of teaching and non-teaching staff for Darrang District under the provisions of the Assam Venture Educational Institution (Provincialisation of Services) Act, 2011 (for short 'the Act of 2011'). On the basis of the same, the Director of Secondary Education vide the order dated 17/8/2013

allotted 11 posts to Haldha High School w.e.f. 1/1/2013. It appears from the said order dated 17/8/2013 that the services of the petitioner herein was provincialised w.e.f 1/1/2013 in the designation of Assistant Teachers (Arts).

3. The Respondent No. 6 herein had filed a writ petition before this Court which was registered and numbered as W.P.(C) No. 955/2013 being aggrieved by the action of the School Headmaster in downgrading his seniority position in the staff list and apprehending that he may not secure the provincialisation benefits.

4. It appears that this Court vide an order dated 28/10/2013 disposed of the said writ petition thereby directing the Director of Secondary Education, Assam to cause an enquiry through the District Scrutiny Committee represented by the Deputy Commissioner, Darrang in respect to the grievances of the petitioner therein (the Respondent No.6 herein). It was further directed that depending upon the outcome of the said exercise, the future course of action in the matter would govern.

5. Pursuant thereto, on the basis of the directions passed by this Court on 28/10/2013 in W.P.(C) No. 955/2013 an enquiry report was submitted by the Inspector of Schools, Darrang District Circle, Mangaldoi wherein it was mentioned that on the basis of the relevant records, the Respondent No. 6, Md. Mamtaz Ali was senior to the Petitioner herein in the category of Assistant Teacher(Arts) of Haldha High School. However, the name of the petitioner herein was recommended by the District Scrutiny Committee (HS/H/HM), Darrang as 3rd Assistant Teacher to the DSE, Assam on the basis of the staff pattern submitted by the Headmaster, though the Petitioner herein was junior to the Respondent No. 6 in the same category. Therefore, the said enquiry report was submitted to the District Scrutiny Committee for taking further action as per Rule.

6. Subsequent thereto, the Chairman of the District Scrutiny Committee i.e. the

Deputy Commissioner, Darrang submitted a report. In the said report, it was stated that the Respondent No. 6 had been signing and discharging his duties as Office Assistant even after upgradation as Assistant Teacher on 30/4/1994. The name of the petitioner was enlisted in the provincialisation particulars as Assistant Teacher (Arts) 3rd post, considering as a lady teacher as per the Regulation No. 1 of the MC meeting held on 22/10/2012 and accordingly the Petitioner has been rendering her service as Assistant Teacher (Arts) till that date. It was further mentioned that the decision of the DSE, Assam for provincialisation of the services of the petitioner against the 3rd post of Assistant Teacher of the School as per recommendation of the District Scrutiny Committee was found to be justified on the ground that the Respondent No. 6 had been signing and discharging his duties as Office Assistant w.e.f. from 30/4/1994 to 1/7/1995 even after his upgradation as an Assistant Teacher on 30/4/1994, whereas the Petitioner was appointed as Assistant Teacher Class-VIII(Section-B) by the Managing Committee as per the Resolution No. 1 of Managing Committee meeting held on 25/9/1994 and she joined as Assistant Teacher on 21/10/1994 in the school.

7. Pursuant thereto, on 20th of June, 2015, the Director of Secondary Education passed an order stating inter alia that the order dated 17/8/2013 shall hold the field and the Petitioner would be entitled to receive salary on the strength of provincialisation order dated 17/8/2013 and approval of the Finance Department accorded vide Letter dated 1/2/2014.

8. The further case of the petitioner is that the petitioner has been rendering service since the date of her appointment and she has not been paid her monthly salary w.e.f. 1/1/2013 till date inspite of the approval of the Finance Department. After having approached the authorities and as the case of the petitioner was not redressed, the instant writ petition was filed seeking a direction upon the

Respondent Authorities to release the pay and allowance to the petitioner w.e.f. 1/1/2013 till date with 10% interest per annum and with a further direction to disburse to the petitioner her pay and allowance as Assistant Teacher on regular basis.

9. It appears on record that this Court vide an order dated 21/10/2019 had issued notice. In doing so, this Court further directed the Respondent Authorities to pay the current salary after making necessary verification by the authorities. It appears on record that an affidavit-in-opposition was filed by the Director of Secondary Education on 3rd of January, 2023. In the said affidavit-in-opposition apart from what has been stated hereinabove, it was mentioned that the Respondent No. 6 herein had filed a writ petition being W.P.(C) No. 4828/2015. In the said writ petition an order was passed on 19/8/2015 whereby notice of motion was issued, making it returnable on 5/10/2015 and further in the interim, it was directed that till the next returnable date, the benefit of provincialisation shall not be given to the Respondent No. 7. The Respondent No. 7 in the said writ petition i.e. W.P.(C) No.4828/2015 was the Petitioner herein. On the basis of the said order dated 19/5/2015, the Office of the Director of Secondary Education withdrew the order dated 7/7/2015 wherein provincialisation benefit was given to the Petitioner. It was further mentioned in the said affidavit that subsequently the Government was requested to issue necessary instructions on the matter vide a communication dated 30/8/2020. The Government vide a letter dated 1/10/2020 requested the Director of Secondary Education to submit the detailed report on the status of the Petitioner and accordingly the Director of Secondary Education directed the Inspector of Schools BTC, Darrang to submit the detailed report. It further reveals that the Inspector of Schools submitted a report which was communicated to the Government and the Government was yet to issue any instruction as regards the matter of releasing/withholding the salary of the Petitioner.

10. At this stage, this Court also finds it relevant to take note of that the said writ petition i.e. W.P.(C) No. 4828/2015 was disposed off vide an order dated 24/5/2019 whereby this Court instead of deciding the dispute on merits directed the Respondent No. 6 herein who was the petitioner in W.P.(C) No. 4828/2015 to approach the Educational Tribunal in the District of Darrang for redressal of his grievances pertaining to provincialisation of his service as the 3rd Assistant Teacher in Arts stream in Haldha High School of Darrang. This Court further directed that the said appeal as well as the application for stay be considered by the Educational Tribunal in accordance with the provisions of the Assam Education (Provincialisation of Services of Teachers and Reorganisation of Educational Institution), Act of 2017 and also by considering the fact that the order of the Director of Secondary Education dated 17/8/2013 provincialising the services of the Respondent No. 7 (the Petitioner herein) was stayed by this Court vide order dated 19/8/2015 passed earlier in the proceedings that was in force all along.

11. It further appears that on 23rd of May, 2023 the Director of Secondary Education filed an additional affidavit stating inter alia that the petitioner is not being able to be paid her salary in view of the interim order dated 19/8/2015 was still holding the field. It was mentioned that until and unless an appropriate order is passed by the competent authority, the aforesaid interim order would remain in force and no remedial order or redressal could be found.

12. I have heard the learned counsels for the parties.

13. It has been brought to the notice of this Court that pursuant to the order dated 24/5/2019 passed in W.P.(C) No. 4828/2015, there was no appeal filed before any Educational Tribunal by the Respondent No. 6. It was further mentioned that at present the Respondent No. 6 have already crossed the age of superannuation. From the last additional affidavit filed on 23/5/2023, it transpires

that the only reason why the petitioner's salary has been withheld is on account of the order dated 19/8/2015 passed in W.P.(C) No. 4828/2015. As already observed hereinabove, in the said order dated 19/8/2015 passed in W.P.(C) No. 4828/2015, the benefit of provincialisation was stayed only till the next returnable date on 5/10/2015. Therefore, the said order cannot be said to be holding the field thereafter. Even otherwise a perusal of the order dated 24/5/2019 passed in the said writ petition i.e. W.P.(C) No. 4828/2015 further shows that the said writ petition was disposed off thereby permitting the petitioner therein, who is the Respondent No. 6 herein to approach the Educational Tribunal. Once the said writ petition was disposed off, the interim order, if any, ceased to have effect immediately thereupon unless specifically extended. It could also be seen from the order dated 24/5/2019, that this Court did not extend the interim order passed on 19/8/2015.

14. Considering the above, this Court therefore is of the opinion that the pursuant to the disposal of the writ petition i.e. W.P.(C) No. 4828/2015 vide the order dated 24/5/2019, there is no further impediment not to give effect to the order of provincialisation dated 17/8/2013 whereby the petitioner was granted the benefit of provincialisation w.e.f. 1/1/2013. Accordingly, the instant writ petition therefore stands disposed off directing the respondent authorities to pay the petitioner her entitlement taking into account that her service has been provincialised and brought within the services of the Government w.e.f. 1/1/2013 and pay her arrear as well as her regular salary within a period of 4 (four) months from the date a certified copy of the instant judgment is served upon the Respondent No. 2.

15. It is further directed that in the event of delay in making payment within the time frame stipulated hereinabove, the Respondent Authorities in the Secondary Education Department shall be further liable for interest @ 8% per annum from the

date of such default.

16. With the above observations and directions, the writ petition stands disposed off.

JUDGE

Comparing Assistant