

GAHC010241802022



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

Case No. : WP(C)/7614/2022

NARAYAN THAPA
S/O- LT. MAN BAHADUR THAPA R/O- VILL AND P.O. AMALIGHAT, DIST.-
MORIGAON, ASSAM, PIN- 782413

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, EDUCATION
DEPTT., ASSAM, SECRETARIATE, DISPUR, GHY-06, ASSAM

2:THE DIRECTOR OF ELEMENTARY EDUCATION
KAHILIPARA
GHY KAMRUP (M)
ASSAM PIN- 781019

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER
MORIGAON DISTRICT
MORIGAON ASSAM
PIN- 782105

4:THE DY. INSPECTOR OF SCHOOL
MORIGAON P.O. MORIGAON
DIST.- MORIGAON
ASSAM PIN- 78210

Advocate for the Petitioner : MR. A SARMA
Advocate for the Respondent : SC, ELEM. EDU

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

23-01-2023

Heard Mr. A. Sarma, learned counsel for the petitioner and Mr. SMT Chistie, learned Standing Counsel, Department of School Education for all the official respondent Nos. 1 to 4.

2. The petitioner stated that a public meeting was held on 24.06.1996 pertaining to constitution of the Amlighat Village Education Samittee in terms of the Notification of the State Government in the Elementary Education Department. In the said meeting a Committee was accordingly constituted and was also decided to appointment the petitioner, a local unemployed youth as a Teacher of said Amlighat L.P. School on honorary basis. In the said meeting it was further resolved to request the authorities concerned as well as the State Government in the Education Department to consider his appointment in the said L.P. School considering the pupil teacher ratio of that School.

3. The petitioner also stated that the Deputy Inspector of Schools, Morigaon by its communication dated 29.09.2000 wrote to the Headmistress of said Amlighat L.P. School regarding the requirement of appointment of the 3rd Teacher in said L. P. School. The Headmistress of said L.P. School on 09.10.2000 issued a certificate that pursuant to the Resolution dated 24.06.1996, the petitioner is serving as Teacher in said Amlighat L.P. School since 01.04.1996.

4. The petitioner, a Matriculate (Class-X passed) along with 8 others earlier preferred a writ petition, being WP(C) No. 3086/2002 (*Bharati Deka and 8 Others Vs. State of Assam and Others*) praying for a direction to the respondents to regularise their services as Assistant Teachers serving in

different Lower Primary Schools in the District of Morigaon.

5. The Court by order dated 15.05.2002, while disposing of said WP(C) No. 3086/2002, preferred by the petitioner along with 8 others, directed the respondents therein, particularly, the District Elementary Education Officer, Morigaon to make an enquiry as to the averments made by the petitioners in that petition and to pass appropriate orders in accordance with the provisions of law after due consideration of their cases along with other similarly situated persons.

6. Pursuant to the said order of the Court dated 15.05.2002, passed in WP(C) No. 3086/2002, the State Government in the Elementary Education Department vide Order No.AEE.231/2005/ 22 date 13.04.2005 passed an order observing that the School Managing Committee of a provincialised School has no right to appoint honorary Teachers in such Schools. However, considering the facts and circumstances, the Director of Elementary Education Department, Assam was directed to consider the case of the petitioners of said WP(C) No. 3086/2002 including that of the petitioner in due course as per Rule when occasion arises.

7. The petitioner stated that without his service being regularised and without receiving any remuneration for his service, he retired from service in the month of January, 2022 on attaining the age of superannuation at 60 years.

8. Hence, this writ petition by the petitioner praying amongst others-

- (i) to direct the respondents herein to release his remuneration for his service rendered as an Assistant Teacher in said Amlighat L. P. School till the time of his superannuation;
- (ii) to consider his case as per direction of the Court dated 15.05.2002, passed in WP(C) No. 3086/2002 and
- (iii) to grant him regular pension.

9. Pursuant to the order of the Court, the District Elementary Education Officer (DEEO), Morigaon vide communication No.DEEO/MRG/WP(C) 7614/2022/3401 dated 06.12.2022, apprised the Court that said Amlighat L. P. School was established by the local people during the year 1955. However, the records of the said School were washed away during a heavy flood in the year 2004 and that the remaining records of the School were damaged due to the said flood and that the Headmaster of the School failed to place any relevant documents regarding provincialisation of the said School and other related documents.

10. However, in the said communication dated 06.12.2022, the DEEO, Morigaon apprised the Court that with regard to the said School, the Government sanctioned in the year 1959 grants-in-aid and further vide Sanction No.EPS-16/75/32 dated 29.11.1975, the Government sanctioned three numbers of posts of regular teachers in the said L.P. School. The DEEO, Morigaon by the said communication dated 06.12.2022 further apprised the Court that presently there are 115 numbers of students studying in said Amlighat L.P. School from Class-I to Class-V and that there are three numbers of regular teachers serving in the said School.

11. It is to be noted herein that the State Government by enacting the provisions of the Assam Elementary Education (Provincialisation) Act, 1974 w.e.f., 05.09.1975 provincialised all such Elementary Schools that were established under the *Assam Basic Education Act, 1954*; the *Assam Elementary Education Act, 1962* and the *Assam Elementary Education Act, 1968*.

12. From the said communication dated 06.12.2022 of the DEEO, Morigaon, it is already noted above, that the State Government had sanctioned three posts of regular teachers in said Amlighat L.P. School on 29.11.1975. As such, it can

be well presumed that said Amlighat L.P. School was brought under provincialisation under the said *Assam Elementary Education (Provincialisation) Act, 1974* that came into force w.e.f., 05.09.1975.

13. Further, pursuant to the order of the Court dated 15.05.2002, passed in WP(C) No. 3086/2002, the Commissioner and Secretary to the Government of Assam in the Elementary and Secondary Education Department by order under No.AEE.231/2005/22 dated 13.04.2005, noted above, have already clarified that the School Managing Committee has no such right to appoint any such teacher on honorary basis in a provincialised School.

14. The petitioner did not challenge the said observation of the Commissioner and Secretary in the Elementary Education Department.

15. As per the provisions of said 1975 Act, the State Government framed the *Assam Elementary Education Provincialisation Rules, 1977* in exercise of the power conferred by Article 309 of the Constitution of India regulating the recruitment and condition of service of teachers of the Elementary Schools that have been provincilised under *Assam Elementary Education (Provincialisation) Act, 1974*.

16. After coming into the force of *Right of Children to Free and Compulsory Education Act, 2009*, the State Government have formulated the *Right of Children to Free and Compulsory Education Rules, 2011*.

17. Moreover, applying the law laid down by the Hon'ble Apex Court in the case of *Dr. Chanchal Goel State of Rajasthan* reported in (2003) 3 SCC 485 as well as a decision of this Court in the case of *Abdul Bari Vs. State of Assam and others* reported in 1999 (3) GLT 31, a co-ordinate Bench of this Court in the case of *Jahangir Alom and others Vs. State of Assam and others* reported in

2003 (3) GLT 544 at paragraphs 15, 16 and 17 have held as follows:---

“15. Applying the law laid down by the Apex Court to the facts of the present case what this court notices is that at no point of time, the State had permitted any of the petitioners to continue to work as honorary teachers nor was any assurance given by the State that on continuing to work honorary teachers, the petitioners would be entitled to the benefit of regularization. Not act on the part of the authority of the State creating any impression that the petitioners would be entitled to regularization, can be attributed so as to hold that the petitioners could have entertained a reasonable impression that if they continue to render services on honorary basis, such service would be regularized at some point of time. To invoke the doctrine of legitimate expectation, the representation or the action on which an expectation is born, must be by an authority competent and further such representation or impression cannot be contrary to law. Viewed from the aforesaid perspective the approval granted in the cases of some of the petitioners and the recommendation made for regularization of the petitioners being clearly not authorized by the provisions of the specific law holding the field, the doctrine of legitimate expectation cannot come to the aid and assistance of the petitioners. In the last resort the doctrine of legitimate expectation is an equitable principle; equitable principles must follow the law and cannot be applied to achieve what is not contemplated by the law in force.

16. There is yet another aspect of the matter. The elaborate discussion that has proceeded was necessitated by the very strenuous arguments advanced by the several counsels appearing for the petitioners, though the question raised in the present cases appears to be, in a way, covered by a Division Bench judgment of this Court in the case of Abdul Bari v. State of Assam and Ors., reported in (1999) 3 GLT 31. In the case of Abdul Bari (supra), the Division Bench considered the entitlement of a honorary graduate teacher of a secondary school to seek regularization of his services. The honorary appointment made by the Managing Committee on 15.5.1986 was approved by the jurisdictional Inspector of Schools by his order dated 1.8.1988. On the basis of the aforesaid approval and long years of service rendered, a claim for regularization was raised, which was expressly negated by this Court by holding that in view of the provisions of Rule 7 of the Assam Secondary Education (Provincialised) Service Rules, 1982, the Managing Committee had no power to appoint teachers in a provincialised school. The Division Bench in Abdul Bari's case considered another Division Bench judgment in the case of Kunjalata Gogoi and Ors. v. State of Assam and Ors., reported in (1993) 1 GLJ 278 and clarified that no law was laid down in Kunjalata's case to the effect that honorary teacher who had rendered 10 years of service or more, would be entitled to the benefit of regularization. In Abdul Bari's case, the doctrine of legitimate expectation and equitable principles were urged in support of the claim for regularization, which were also considered and negated.

17. Following the law laid down by the Division Bench in the case of Abdul Bari (supra) and also in view of the conclusions reached in the present case, it must be held that the petitioners have no legal or equitable right for regularization. Consequently, this bunch of Writ Petitions must be held to be disclosing no merit for interference. Accordingly, all the Writ Petitions are rejected. However, having regard to the facts and circumstances of the case, there shall be no order as to costs."

18. From the above, it is very clear that Amlighat L.P. School is a provincilised School under the provisions of said 1974 Act, where the State Government have sanctioned three posts of regular teachers in that L.P. school, in November, 1975 itself. The above fact established that said Amlighat L.P. School, District Morigaon is a provincilised Lower Primary School in the State and therefore, Managing Committee of the said School have no such right to appoint any such teacher on honorary basis in said provincilised Amlighat L.P. School.

19. The provisions of said 1977 Rules, as well as 2011 Rules, noted above, does not provide for any such provision for regularisation of any honorary teacher appointed by the Managing Committee in such provincialised Elementary Schools who have been appointed without any advertisement and selection in violation of the provisions of Articles 14 and 16 of the Constitution of India.

20. Considering entire aspect of the matter and hearing the learned counsels for the parties, this writ petition being devoid of any merit stands dismissed.

JUDGE

Comparing Assistant