

GAHC010255932019



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

Case No. : WP(C)/7913/2019

JEUTI THAKURIA
W/O. SRI KHANIN TALUKDAR, VILL. PATHSALA, PRAGATI NAGAR, P.O.
AND P.S. PATHSALA, DIST. BARPETA, ASSAM.

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, SECONDARY
EDUCATION DEPTT., DISPUR, GUWAHATI-06.

2: THE DIRECTOR OF SECONDARY EDUCATION

ASSAM
KAHILIPARA
GHY.-19.

3: THE PRINCIPAL CHANDRA NATH H.S. SCHOOL

PITHAKHOWA
SONITPUR
ASSAM

Advocate for the Petitioner : MR. N H MAZARBHUIYAN

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK**

ORDER

17.08.2023

Heard Mr. V Kumar, learned counsel for the petitioner and Mr. N J Khataniar, learned Standing counsel, Department of School (Secondary) Education, Assam for the respondents.

2. The petitioner herein was the Subject Teacher of Economics at Chandra Nath Sarma (CNS) Higher Secondary School, Pithakhowa in the district of Sonitpur, a provincialised secondary school of the State.

3. The petitioner remained absent from service in said C.N.S. H.S. School, Sonitpur since 12.05.2010.

4. The petitioner raised certain allegations against the Principal of said C.N.S. H.S. School, Sonitpur, stating that the concerned Principal of said C.N.S. H.S. School, Sonitpur had sexually abused her in the working place.

5. The Inspector of Schools, Sonitpur on 17.07.2010 wrote to the Director of Secondary Education (DSE), Assam for transfer of the petitioner to another school to maintain the academic environment in said C.N.S. H.S. School, Sonitpur.

6. The petitioner approached this Court by filing a writ petition being WP(C) No. 883/2011, praying for her transfer from said C.N.S. H.S. School, Sonitpur to any other higher secondary school for the reasons indicated therein and also to release her salary from May, 2010.

7. The Court by order dated 30.04.2014 disposed of said WP(C) No. 883/2011 directing the petitioner to approach the Director of Secondary Education, Assam agitating her grievances and further directing the authorities in the Secondary Education Department of the State to consider the grievances of the petitioner by taking note of all the attending facts and circumstances. But the Director of Secondary Education, Assam on 09.06.2014 came to the finding that as the petitioner remained absent from her service from 12.05.2010, claim for

her salary from the said date, i.e., 12.05.2010 is not tenable under the provisions of "No Work No Pay" and further advised the petitioner to submit prayer petition for her transfer before the concerned authority and directed her to join the said C.N.S. H.S. School till her transfer from it.

8. Being aggrieved with the said order of the DSE, Assam dated 09.06.2014, noted above, the petitioner preferred an appeal before the Commissioner & Secretary to the Government of Assam in the Secondary Education Department.

9. As the same was not considered, the petitioner again approached this Court by filing another writ petition being WP(C) No. 3811/2014.

10. The Court by order dated 02.03.2016 disposed of said WP(C) No. 3811/2014 of the petitioner directing the DSE, Assam to consider the transfer of the petitioner from said C.N.S. H.S. School, District-Sonitpur to Palhazi H.S. School, District-Barpeta.

11. It is to be noted herein that the petitioner obtained approval from the Principal of said C.N.S. H.S. School, Sonitpur as well as the Inspector of Schools, Sonitpur for her transfer to a vacant sanctioned post of Subject Teacher in Economics at Palhazi H.S. School, District-Barpeta and the Principal as well as the President of the School Management and Development Committee (SMDC) of Palhazi H.S. School also agreed for such transfer of the petitioner to the said school from C.N.S. H.S. School, District-Sonitpur.

12. The inter-district transfer of any Teacher serving in a Provincialised/ Government Higher Secondary School is to be considered by the Director of Secondary Education, Assam with the approval of the State Government in the Secondary Education Department.

13. It is seen that by order dated 31.05.2018 passed in WP(C) No. 601/2017 preferred by the petitioner, the Court directed the petitioner to submit a certified copy of the said order dated 31.05.2018 before the Commissioner & Secretary to the Government of Assam in the Secondary Education Department, who in turn was directed to pass necessary order in terms of the order dated 02.03.2016 passed in WP(C) No. 3811/2014.

14. Due to non-compliance of the order dated 02.03.2016 passed in WP(C) No. 3811/2014, the petitioner preferred a contempt petition being Cont.Cas(C) No. 435/2016, wherein the respondents in the Secondary Education Department of the State filed an

affidavit clarifying that the Director of Secondary Education, Assam pursuant to the order dated 02.03.2016 passed in WP(C) No. 3811/2014 issued an order on 10.05.2016 and in view of the same, by order dated 02.12.2016 said Cont.Cas(C) No. 435/2016 was closed.

15. The petitioner has annexed a copy of the order dated 10.05.2016 issued by the Director of Secondary Education, Assam that was made available with the affidavit filed by the respondents in the Secondary Education Department of the State in said Cont.Cas(C) No. 435/2016.

16. From the said order No. GB-EST/Misc/10/2010/533 dated 10.05.2016 issued by the Director of Secondary Education, Assam, it is seen that the petitioner was required to submit duly filled up transfer Format 'A' before the DSE, Assam which in turn was to be placed before the State Government in the Secondary Education Department for approval as per the normal procedure, considering it to be inter-district transfer.

17. By the said order dated 10.05.2016, the DSE, Assam directed the petitioner to submit the said transfer Format 'A' at the earliest.

18. Though the petitioner filed this writ petition on 21.10.2019 for a direction to the respondents in the Secondary Education Department of the State for her transfer from C.N.S. H.S. School, Sonitpur to Palhazi H.S. School, Barpeta; but on being enquired, the learned counsel appearing on behalf of the petitioner failed to place before the Court as to when the petitioner submitted the duly filled up transfer Format 'A' for her inter-district transfer from C.N.S. H.S. School, Sonitpur to Palhazi H.S. School, Barpeta.

19. From the affidavit filed by the Commissioner & Secretary to the Government of Assam in the Secondary Education Department on 25.09.2020, it is seen that the concerned Principal of C.N.S. H.S. School, Sonitpur has already retired from service in the year 2018 and one Smti. Meenakshi Goswami was transferred as Principal of said H.S. School. Even then the petitioner remained absent from her service and was found running a Junior College, namely, Sonitpur College at Kawoimari, Sonitpur since long prior to the allegation of sexual harassment on her by the earlier Principal of the said C.N.S. H.S. School, which has not been rebutted by the petitioner.

20. The statements made by the Commissioner & Secretary to the Government of Assam

in the Secondary Education Department in the affidavit filed on 25.09.2020 has not been rebutted by the petitioner till date.

21. Considering the above and the non-submission of the requisite transfer Format 'A' for inter-district transfer of the petitioner pursuant to the order dated 10.05.2016 issued by the Director of Secondary Education, Assam in compliance of the order dated 02.03.2016 passed by the Court earlier in WP(C) No. 3811/2014, the prayer of the petitioner for a direction to the respondents in the Secondary Education Department of the State for her transfer from C.N.S. H.S. School, Sonitpur to Palhazi H.S. School, Barpeta cannot be considered, as the petitioner did not submit the requisite transfer Format 'A' for her such inter-district transfer.

22. Accordingly, this writ petition being devoid of merit stands dismissed.

JUDGE

Comparing Assistant