

GAHC010260772017



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

Case No. : WP(C)/2156/2017

APARUPA PHUKAN
W/O. SRI SATYA SAIKIA, R/O. WARD NO. 4, P.O. and P.S. DHEMAJI, DIST.
DHEMAJI, ASSAM. WORKING AS ASSTT. TEACHER IN THE SALMARI L.P.
SCHOOL, DHEMAJI.

VERSUS

THE STATE OF ASSAM and 4 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, EDUCATION ELEMENTARY DEPTT., DISPUR, GUWAHATI-6,
DIST. KAMRUPM, ASSAM.

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM

KAHILIPARA
GUWAHATI-19
DIST. KAMRUPM
ASSAM.

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER

DHEMAJI
DIST. DHEMAJI
ASSAM.

4:THE DEPUTY INSPECTOR OF SCHOOLS

DHEMAJI
DIST. DHEMAJI
ASSAM.

5:THE TREASURY OFFICER

DHAMAJI
P.O. DHEMAJI
DIST. DHEMAJI
ASSAM

Advocate for the Petitioner : MS.B BORAH

Advocate for the Respondent : SC, ELEMENTARY EDUCATION

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 19.04.2023

None appears for the petitioner on call. Mr. P.N. Sarma, the learned Standing Counsel appears on behalf of the Elementary and Mr. R. Borpujari, the learned Standing Counsel appears for the Treasury Officer, Dhemaji.

2. The case of the petitioner herein is that the petitioner claims the arrear salary since May, 1992. It is the case of the petitioner that the petitioner was appointed as an Assistant Teacher by the Deputy Inspector of Schools, Dhemaji vide Memo No.20067-850 dated 19/12/1989. The petitioner thereupon joined in her respective school in Jiadhal Dihiri L.P. School. However, the petitioner was not paid the salary for which the petitioner filed a writ petition which was registered and numbered as W.P.(C) No. 1378/2001 seeking a direction for release of her salary.

3. This Court vide an order dated 5/3/2021 disposed off the said writ petition directing the respondents to examine the claim of the petitioner, and if any amount is found payable to her, the same be paid within a period of two months from the date a copy of the order was furnished to the respondent authorities.

4. It further appears that in pursuance to the order dated 15/3/2001 passed in W.P.(C) No. 1378/2001, the Deputy Inspector of School, Dhemaji vide an order dated 31/3/2001 observed that "Smti Aparupa Phukan A/T of Jiadhal Dihiri L.P.School is hereby released of pay in as usual scale of pay from the current month and transferred by the Salmari L.P. School".

5. It further appears that the petitioner thereupon claims to be working in the Salmari L.P. School w.e.f. 31/3/2001. Further to that, it is alleged that on 29/12/2014 a personal hearing of the petitioner was taken by the District Elementary Education Officer, Dhemaji and the petitioner's documents were verified. In paragraph No. 13 of the writ petition, it has been mentioned that a direction be issued that monthly salary of the petitioner be released, which has been stopped since May, 1989. However, it appears from the relief sought for that the petitioner has claimed entitlement to the arrear salary from May, 1992.

6. It appears on record that this Court had issued notice on 7/4/2017. In pursuance to that, the respondent No. 1 had filed an affidavit-in-opposition on 16/3/2021. In paragraph 5 of the said affidavit-in-opposition the respondent No. 1 disputed the appointment of the petitioner on the ground that it was not done by following the due process as is required under the established norms. The respondent No. 1 further states in his affidavit-in-opposition that the petitioner was never a Government servant but rather a person, who claims to be appointed by the Deputy Inspector of Schools, Dhemaji which is apparently illegal and nonest in law. It was further stated that in connection with the communication dated 31/3/2001 issued by the Deputy Inspector of Schools, Dhemaji, that the said order was simply a transfer order to another school without any reference to any enquiry conducted by the Director of Elementary Education. It was further mentioned that the Deputy Inspector of Schools was

not the authority to comply with the order passed in W.P.(C) No. 1378/2001 and the respondent No. 1 further mentions that the connivance of the petitioner with the persons in the Office of the Deputy Inspector of Schools, Dhemaji, cannot be ruled out. It was further stated in the Affidavit-in-Opposition that in view of various illegal appointments being made, there was a screening committee so constituted by the Government, North Assam Division Commissioner, Tezpur but the petitioner never participated in the verification proceedings. It is the specific stand of the respondent No 1 in the affidavit-in-opposition that the petitioner was never on the service roll of the Government and she had never received any salary from the date of her alleged appointment. There is no service book or any other documents available for the petitioner in the Government records. It was further stated in the form allegedly filled up by the petitioner, the appointment basis is kept unfilled and there is no reference to any selection. The advertisement number, advertisement date and the roll number have been kept blank thereby supporting the view that the petitioner was appointed without participation in any selection process.

7. It is relevant to mention that to the affidavit-in-opposition so filed, the petitioner did not file any reply and the allegations made in the affidavit-in-opposition stands untraversed.

8. Taking into account that the petitioner has not participated in the verification proceedings which was constituted by the Government to verify the legality of appointments made to various school teachers, the question of issuance of a mandamus in the present case for releasing the salaries to the petitioner from May, 1992 in the opinion of this Court does not arise inasmuch as the petitioner has failed to show that the petitioner was appointed as a school teacher by following the due process of law.

9. Considering the above, as this Court does not find any merit in the instant petition, the petition stands dismissed.

JUDGE

Comparing Assistant