

GAHC010265212017



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

Case No. : WP(C)/2078/2017

MOHAN BARUAH and 7 ORS.
SON OF LATE INDIRAM BARUAH, RESIDENT OF VILLAGE BAMKAMCHI,
P.O. SRIPANI JANAKLYAN, DIST. DHEMAJI ASSAM, ASSTT. TEACHER OF
KAMACHI NAGAON L.P. SCHOOL

2: SHRI MAHENDRA DUTTA
SON OF PHANIDHAR DUTTA
RESIDENT OF NILAKH BALIJAN
P.O. NILAKH CHARIALI
DIST. DHEMAJI ASSAM
ASSTT. TEACHER OF NILAKH KOILASPUR L.P. SCHOOL

3: SHRI DAMBARU CHETIA

SON OF LATE AKYIA CHETIA
RESIDENT OF VILLAGE MORIDHAL
P.O. MORIDHAL
DIST. DHEMAJI ASSAM
ASSTT. TEACHER OF B SHAMARA L.P. SCHOOL

4: SMTI BINA DUTTA
WIFE OF PRANAB DUTTA
RESIDENT OF VILLAGE and P.O. NAGAKHELIA
DIST. DHEMAJI ASSAM
ASSTT. TEACHER OF HAHCHARA L.P. SCHOOL

5: SHRI RAJENDRA NATH NEOG
SON OF DULAL NEOG
RESIDENT OF VILLAGE JAMUGURI
P.O. JAMUGURI
DIST. DHEMAJI ASSAM ASSTT. TEACHER OF KAMCHIBAM L.P. SCHOOL

6: SMTI MANJU DUTTA
WIFE OF DEBEN SAIKIA

RESIDENT OF MILAN NAGAR
P.O. DHEMAJI
DIST. DHEMAJI ASSAM
ASSTT. TEACHER OF NAHARANI L.P. SCHOOL

7: SHRI PURNANANDA GOGOI
SON OF LATE LALIT GOGOI
RESIDENT OF VILLAGE PASCHIM SUBAHI
P.O. SUBAHI
DIST. DHEMAJI ASSAM
ASSTT. TEACHER OF PASCHIM SUBAHI L.P. SCHOOL

8: SMTI NIRADA DAS
WIFE OF SRI MOHAN DAS
RESIDENT OF VILLAGE KAPAHUA
P.O. KHUBALIA
DIST. DHEMAJI ASSAM
ASSTT. TEACHER OF BATHAMIRI L.P. SCHOO

VERSUS

THE STATE OF ASSAM and 4 ORS.
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,
EDUCATION ELEMENTARY DEPARTMENT, DISPUR, GUWAHATI-6

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER
DHEMAJI DISTRICT
DHEMAJI

4:THE DEPUTY INSPECTOR OF SCHOOLS
DHMAJI
DIST. DHEMAJI ASSAM

5:THE DEPUTY COMMISSIONER

DHEMAJI
DIST. DHEMAJI ASSA

Advocate for the Petitioner : MR.P P BORA

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 19.04.2023

None appears for the petitioners on call.

2. Mr. P. N. Sarma, the learned counsel appears on behalf of the Elementary Education Department and submits that the appointments of the petitioners have been found to be illegal/irregular by a committee constituted by the Government of Assam and thereupon as a one time measure, the Cabinet had taken a decision on 07/10/2020 to accommodate the various illegal/irregular Teachers. The learned counsel has further drawn the attention of this Court to an instruction being submitted by the Director of Elementary Education wherein it has been mentioned that the petitioners herein were accommodated as Tutors. However, out of the eight petitioners, the petitioner No. 1 and petitioner No. 3 did not join. However, the other petitioners had duly accepted the appointment offer and joined their services. The learned counsel appearing on behalf of the Elementary Education Department further submitted that one of the conditions of appointment was that all claims prior to the date of appointment have to be waived by giving an undertaking, which the Petitioner Nos.2, 4, 5, 6, 7 & 8 have already given.

3. Taking into account that the petitioner Nos. 2, 4, 5, 6, 7 & 8 have already joined and accepted the orders of appointment by accepting the terms of the appointment orders, the instant petition so filed has become infructuous insofar as the petitioner Nos. 2, 4, 5, 6, 7 & 8 are concerned.

4. As regards the petitioner Nos. 1 and 3, as their appointments were found

to be irregular/illegal, the question of passing any direction for payment of the arrear salary in the opinion of this Court would not be proper inasmuch as to issue a writ of mandamus there appointment has to be legal by following the due process. Considering the above, the instant writ petition insofar as the petitioner Nos. 1 and 3 are concerned stands dismissed.

5. The instruction so produced by Mr. P.N. Sarma is kept on record and marked with the letter "X".

JUDGE

Comparing Assistant