

GAHC010271312022



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

Case No. : WP(C)/957/2023

SMT. ARATI HAZARIKA
W/O LATE RATNESWAR LAHAN, R/O VILL-SILAPATHAR SAMABAI
VILLAGE, P.O. AND P.S.-SILAPATHAR, PIN-787059, DIST-DHEMAJI, ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, SCHOOL EDUCATION DEPARTMENT,
GOVERNMENT OF ASSAM, DISPUR, GUWAHATI-781006

2:THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF ASSAM
FINANCE DEPARTMENT
GOVERNMENT OF ASSAM
DISPUR
GUWAHATI-781006

3:THE DIRECTOR
ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-781019

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER
DHEMAJI
DHEMAJI-787057

5:THE BLOCK ELEMENTARY EDUCATION OFFICER
DHEMAJI
PIN-787057
DHEMAJI

6:THE SCHOOL MANAGING COMMITTEE OF PUMI GAON M.V. SCHOOL
REPRESENTED BY ITS PRESIDENT

P.O.-MECHAKI TONGANI
PIN-787110
DHEMAJI

7:THE HEAD MASTER
PUMI GAON M.V. SCHOOL
P.O.-MECHAKI TONGANI
PIN-787110
DHEMAJ

Advocate for the Petitioner : MR. J C GOGOI

Advocate for the Respondent : SC, EDU

Linked Case : WP(C)/959/2023

REKHA GOGOI
W/O- SHRI KESAB GOGOI
R/O- VILL- BHADOI NAGAR VILLAGE
P.O. BHADOI PANCHALI
P.S. DULIAJAN
PIN- 786191
DIST.- DIBRUGARH
ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
SCHOOL EDUCATION DEPTT.
GOVT. OF ASSAM
DISPUR
GHY-06

2:THE PRINCIPAL SECRETARY
TO THE GOVT. OF ASSAM
FINANCE DEPTT.
GOVT. OF ASSAM
DISPUR
GHY-06

3:THE DIRECTOR
ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GHY-19

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER

DIBRUGARH
DIBRUGARH- 786001
5:THE BLOCK ELEMENTARY EDUCATION OFFICER
TENGAKHAT
PIN- 785103
DIBRUGARH
6:THE SCHOOL MANAGING COMMITTEE OF GODADHAR SINGHA M.V.
SCHOOL
REP. BY ITS PRESIDENT
P.O. BHADOI PANCHALI
PIN- 786191
DIBRUGARH
7:THE HEAD MASTER
GODADHAR SINGHA M.V. SCHOOL
P.O. BHADOI PANCHALI
PIN- 786191
DIBRUGARH

Advocate for : MR. J C GOGOI
Advocate for : SC
EDU appearing for THE STATE OF ASSAM AND 6 ORS

Linked Case : WP(C)/958/2023

SMT. MONISHA SAIKIA
W/O SHRI HUMEN GOGOI
R/O VILL-BOKOLONI VILLAGE
P.O.-BHADOI PANCHALI
P.S.-DULIAJAN
PIN-786191
DIST- DIBRUGARH
ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM
SCHOOL EDUCATION DEPARTMENT
GOVERNMENT OF ASSAM
DISPUR
GUWAHATI-781006

2:THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF ASSAM
FINANCE DEPARTMENT
GOVERNMENT OF ASSAM

DISPUR
GUWAHATI-781006
3:THE DIRECTOR
ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-781019
4:THE DISTRICT ELEMENTARY EDUCATION OFFICER
DIBRUGARH
DIBRUGARH-786001
5:THE BLOCK ELEMENTARY EDUCATION OFFICER
TENGAKHAT
PIN-785103
DIBRUGARH
6:THE SCHOOL MANAGING COMMITTEE OF MADHUTING M.E. SCHOOL
REPRESENTED BY ITS PRESIDENT
P.O.-BHADOI PANCHALI
PIN-786191
DIBRUGARH
7:THE HEAD MASTER
MADHUTING M.E. SCHOOL
P.O.-BHADOI PANCHALI
PIN-786191
DIBRUGARH

Advocate for : MR. J C GOGOI
Advocate for : SC
EDU appearing for THE STATE OF ASSAM AND 6 ORS

B E F O R E

HON'BLE MR. JUSTICE LANUSUNGKUM JAMIR

22-02-2023

As all these three writ petitions having common cause of action and the reliefs prayed for being identical, they are being disposed of by this common order.

2. Heard Mr. J.C. Gogoi, learned counsel for the writ petitioners. Also heard Mr. S.M.T. Chistie, learned Standing Counsel, School Education (Elementary) Department for Respondents No.1, 3, 4 and 5; and Mr. A.

Chaliha, learned Standing Counsel, Finance Department for Respondent No.2.

3. All the petitioners in these writ petitions i.e. W.P.(C) No.957 of 2023; W.P.(C) No.958 of 2023 and W.P.(C) No.959 of 2023; were appointed as honorary Hindi Teachers by the respective School Managing Committees of provincialized schools.

4. A Hon'ble Division bench of this Court in ***Abdul Bari Vs. State of Assam and ors, reported in (1999) 3 GLT 31*** has laid down the principle that any person appointed by the Managing Committee after the provincialization of the school on 'honorary basis' are not eligible for regularization.

5. In this batch of writ petitions, the common prayer of the writ petitioners is that a direction be given to the respondents to initiate the process of recruitment for the vacant posts of Hindi teacher and also for release of salary for the period they have rendered service.

6. With regard to engagement of Honorary Hindi Teacher by the School Managing Committee, the Government has also made its stand clear in the letter dated 3rd January, 2018, which is reproduced hereinbelow :

“
GOVERNMENT OF ASSAM
ELEMENTARY EDUCATION DEPARTMENT
Dispur, Guwahati – 6

No.PMA.76/2016/325 Dated, Dispur the 3rd January, 2018

From : Shri Preetom Saikia, IAS
Commissioner & Secretary to the Govt of Assam

**To : The Director of Elementary Education, Assam
Kahilipara, Guwahati – 19.**

**Sub : Regarding Honorary Hindi Teachers engaged by the School
Managing Committee.**

**Ref : (i) Your letter no.EAA/B/11/2016/644 dated 05/12/2017
(ii) Govt. O.M. No.A(I)62/2003/320 dated 24/01/2004**

Sir,

I am directed to say that as per the provisions contained in the Assam Elementary Education (Provincialisation) Rules, 1977 in force at the relevant point of time, there is no rule under which the SMCs are entitled to engage Honorary Teachers in a Govt./ Provincialized School. In this connection necessary instructions were issued to all concerned vide orders issued in March, 2022 & vide O.M. dated 24/01/2004 not to make appointments in violation of the Assam Elementary Education (Provincialisation) Rules, 1977.

However, in flagrant violation of the Provincialisation Rules and orders issued from time to time, the SMCs continued to engage Honorary Hindi Teachers. The emphasis of the Govt. now is to provide quality education as per the provisions of the RTE Act along with improved learning outcomes under the guidelines of NCTE. The Govt. cannot regularize any Honorary Teacher who were appointed/ engaged by SMC in violation of the existing Rules. However, if the Hindi posts are lying vacant, the same should be filled up through TET examination and following the due process of law.

In view of the above position, SMCs must release all the Honorary Hindi Teachers immediately as no person can enter a Govt. School without a valid appointment order from the Competent Authority.

You are, therefore, requested to issue instructions to the Headmaster/Headmistress and Secretary of the SMCs to release these Honorary Hindi Teachers forthwith.

Yours faithfully,

Sd/-

***Commissioner & Secretary to the Govt. of Assam
Elementary Education Department".***

A perusal of the aforesaid letter dated 3rd January, 2018, clearly indicates that the concerned SMC of different provincialized schools were directed to release all honorary teachers immediately as no person can enter a Govt. School without a valid appointment order from the competent authority.

7. In that view of the matter, I am unable to accept the submission made by the learned counsel for the petitioners. The release of salary with regard to the period of service rendered as honorary Hindi Teachers by the petitioners in their respective provincialized schools is left to the wisdom of the concerned School Managing Committees.

8. It is also made clear that all vacant Hindi Teacher's posts should be filled up after initiating recruitment process through TET Examination, as and when Government so desires. As and when the said posts are advertised, the petitioners may apply for the same subject to fulfillment of eligibility criteria.

9. With the above observations, these writ petitions stand dismissed.

JUDGE