

GAHC010271342022



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

Case No. : WP(C)/1138/2023

JOON SAIKIA
SON OF LATE HERAMBA SAIKIA,
RESIDENT OF VILLAGE- NAHARANI VILLAGE,
P.O.- NAHAZAR, P.S.- KHOWANG,
PIN- 785675,
DIBRUGARH, ASSAM.

VERSUS

THE STATE OF ASSAM AND 7 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM,
SCHOOL EDUCATION DEPARTMENT,
GOVERNMENT OF ASSAM,
DISPUR, GUWAHATI- 781006.

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

DISPUR
GUWAHATI- 781006.

3:THE DIRECTOR
SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI- 781019.

4:THE DIRECTOR
ELEMENTARY EDUCATION
ASSAM

KAHILIPARA
GUWAHATI- 781019.

5:THE DISTRICT ELEMENTARY EDUCATION OFFICER
DIBRUGARH
DIBRUGARH- 786001.

6:THE BLOCK ELEMENTARY EDUCATION OFFICER
KHOWANG
PIN- 785676
DIBRUGARH.

7:THE SCHOOL MANAGING COMMITTEE OF NAHARANI HIGH SCHOOL
REPRESENTED BY ITS PRESIDENT

P.O.- NAHAZAR
PIN- 7856765 DIBRUGARH.

8:THE HEAD MASTER
NAHARANI HIGH SCHOOL
P.O- NAHAZAR
PIN- 785676
DIBRUGARH

Advocate for the Petitioner : MR. J C GOGOI

Advocate for the Respondent : SC, EDU

BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR

ORDER

Date : 03.03.2023

Heard Mr.B.Islam, learned counsel for the petitioner. Also heard Mr.S.M.T.Chistie, learned standing counsel, Secondary Education appears for respondent Nos. 1, 3, 4, 5 and 6 and Mr.A.Chaliha, learned standing counsel, Finance Department appears for respondent No.2.

3. The petitioner was appointed as honorary Hindi Teacher in Naharani High

School in the district of Dibrugarh by the School Managing Committee which is a provincialized school.

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 writ petition, the prayer of the writ petitioner is that a direction be given to the respondents to initiate the process of recruitment for the vacant post of Hindi teacher and also for release of salary for the period he has 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 3 rd 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 petitioner. The release of salary with regard to the period of service rendered as honorary Hindi Teacher by the petitioner in his provincialized school is left to the wisdom of the concerned School Managing Committee.

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, this writ petition stands dismissed.

JUDGE

Comparing Assistant