

GAHC010283772018



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

Case No. : WP(C)/8840/2018

FAJLUL HOQUE CHOUDHURY AND 9 ORS.
ASSTT. TEACHER, AMLOKHI K.A. M.E. MADRASSA, P.O. AMLOKHI,
NAGAON.

2: AKBAR ALI

ASSTT. TEACHER
RAJA ALI ME MADRASSA
P.O. JURIPAR
DIST. NAGAON.

3: MOFIZ UDDIN AHMED

ASSTT. TEACHER
LONGJAP CHANKULA ME SCHOOL
P.O. KACHUA
DIST. NAGAON.

4: ABUL HASHEN

ASSTT. TEACHER
ROWMARI ME MDRASSA
P.O. RONARI BILL
DIST. NAGAON.

5: ABDUL MOTIN
ASSTT. TEACHER
LALIPATHER KHIJIR MORAL M.E. MADRASSA
P.O. BECHAMARI
DIST. NAGAON

6: FAKAR UDDIN

ASSTT. TEACHER
GAYANGAON M.E. SCHOOL
P.O. GAYANGAON
DIST. NAGAON.

7: KHAIRUL ISLAM

ASSTT. TEACHER
BURUGATOLI ME SCHOOL
P.O. BURUNGATOLI BAZAR
DIST. NAGAON.

8: ABDUS SHAHAD

ASSTT. TEACHER
KACHUA M.E. SCHOOL
P.O. KACHUA
DIST. NAGAON.

9: ABDUS SALAM

ASSTT. TEACHER
GAYANGAON M.E. SCHOOL
P.O. GAYANGAON
DIST. NAGAON.

10: FAKAR UDDIN AHMED

ASSTT. TEACHER
GEROKANI M.E. MADRASSA
DIST. NAGAON

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, EDUCATION
(ELEMENTARY) DEPTT., DISPUR, GUWAHATI-06.

2: THE DIRECTOR OF ELEMENTARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI-19.

3: THE DISTRICT ELEMENTARY EDUCATION

OFFICER
NAGAON

DIST. NAGAON
ASSAM.

4:THE DY. INSPECTOR OF SCHOOLS

NAGAON DISTRICT CIRCLE
NAGAON

Advocate for the Petitioner : MR. S K DAS

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 11.04.2023

Heard Mr. S.K. Das, learned counsel for the petitioners. Also heard Mr. R. Mazumdar, learned standing counsel for the Elementary Education Department.

2. In brief, the case of the petitioners is that the petitioner no.1 was appointed on 01.08.1996 in Amlokhi K.A. M.E. Madrassa and his service was regularized on 19.05.1999. The petitioner no.2 was appointed on 02.07.1996 in Raja Ali M.E. Madrassa and his service was regularized on 07.05.1999. The petitioner no.3 was appointed on 13.05.1999 in Longjap Chankhula M.E. School. However, the date of regularization of his service is not pleaded. The petitioner no.4 was appointed on 12.08.1995 in Rowmari M.E. Madrassa and his service was regularized on 19.05.1999. The petitioner no.5 was appointed on 15.11.1994 in Lalipather khijir Moral MEM and his service was regularized on 19.05.1999. The date of appointment of petitioner no.6 in Gayangaon M.E. School is not pleaded, but his service was regularized on 06.05.1999. The

petitioner no.7 was appointed on 03.03.1997 in Burungatoli M.E. School and his service was regularized on 16.04.1999. The date of appointment of petitioner no.8 in Kachua M.E. School is not pleaded, but his service was regularized on 07.05.1999. The petitioner no.9 was appointed on 07.01.1996 in Gayangaon M.E. School and his service was regularized on 13.04.1999. The petitioner no.10 was appointed on 25.09.1997 in Gerokani M.E. Madrassa and his service was regularized on 19.05.1999.

3. It is projected that the Elementary Education Department had conducted a screening process pursuant to order dated 02.03.2010 passed by this Court in WP(C) 1048/2004 to find out as to whether there was any irregularly/illegally appointed teachers during the period 1991 to 2001, more particularly in several districts including Nagaon. It is projected that in the screening process, which was undertaken at the district level, divisional level and zonal level, the authorities had arrived at a conclusion that several appointments were made during the period between 1991 to 2001. Some of such appointments were made by the School Managing Committee, some appointments are made against non-existence posts and in certain cases, there are no records of valid appointments. Thereafter, by the impugned order dated 13.07.2018, the Commissioner & Secretary to the Govt. of Assam, Elementary Education Department had directed the Director of Elementary Education, Assam to issue individual show cause notices to 8470 candidates and 766 candidates including 752 terminated teachers in Dhemaji and Lakhimpur districts indicating therein the reasons as to why their appointments are deemed to be illegal/irregular and why they should not be removed from service for being so appointed in violation of the existing rules.

4. The learned counsel for the petitioners has submitted that in the impugned order dated 13.07.2018, although there was a reference of illegally appointed teachers in Nagaon district, but in the operative part of the said order, the Elementary Education Department proposed steps only in respect of Dhemaji and Lakhimpur districts. It is also submitted that in the said order it is not reflected that the petitioners in this writ petition were appointed illegally or irregularly.

5. The learned counsel for the petitioners has emphasized on the contents of the copy of appointment orders and order of regularization of service of the petitioners, which are annexed to the writ petition as Annexure-1 series. Accordingly, the petitioners have prayed for setting aside and quashing of the order dated 13.07.2018, issued by the respondent no.1 in respect of Nagaon district and for a direction to the respondent authorities to release the pending arrear salaries of the petitioners and for a further direction to the respondent authorities to allow them to continue in their services and to re-do the verification process by the screening committee.

6. Per contra, learned standing counsel for the respondents has submitted that despite directions contained in the impugned order dated 13.07.2018, due to pendency of this writ petition, no show cause notices were issued to the petitioners. It is submitted that as large scale anomalies were found in appointment of teachers during the period from 1991 to 2001, it is imperative that screening be re-done in respect of the petitioners because in the previous screening process, large scale anomalies have been found in appointment of Assistant Teachers in various schools.

7. On a query of the Court, the learned standing counsel for the

respondents has submitted that if the Court permits the respondent authorities to go ahead with the direction contained in the order dated 13.07.2018, the department would be bound to complete the process in a time bound manner, subject to condition that the petitioners cooperate with the exercise to be undertaken by the Director of Elementary Education, Assam.

8. On query made to the learned counsel for the petitioners, he also expresses that the petitioners would cooperate with the exercise to be undertaken by the respondent authorities, subject to condition that the matter be brought to a logical conclusion within a time bound manner and that till a final decision is taken, the authority should not terminate the services of the petitioners. It is submitted that the petitioners are working in their respective schools till date.

9. In view of the submissions made by the learned counsel for the petitioners as well as the learned standing counsel for the respondents, the Court is inclined to provide that in the event, the Director of Elementary Education, Assam issues individual show-cause notices to the 10 (ten) petitioners herein, the petitioners would respond to the allegations made against them.

10. The said show-cause notices should be issued within the outer period of 4 (four) weeks from the date of receipt of certified copy of this order. The petitioners be given sufficient time of about 4 (four) weeks to submit their show-cause reply and thereafter, the competent authority i.e. the Director of Elementary Education, Assam shall give an opportunity to the petitioners of personal hearing and make an endeavour to dispose of the proceedings arising out in connection with the proposed show-cause notice within an outer period of

3 (three) months after the petitioners submit their respective show-cause reply.

11. The respondent authorities including the Director of Elementary Education, Assam is expected to adhere to the time schedule indicated in this order.

12. Till such time, the decision is taken, including decision for payment of arrear salary and current salary to the petitioners, the Director of Elementary Education, Assam or any other competent authority shall not disturb the petitioners from their service.

13. With the aforesaid direction, this writ petition stands disposed of.

14. The learned standing counsel for the respondents shall transmit a downloaded copy of this order to the concerned authorities to bring the order to the notice of the said authority.

15. It is clarified that this order shall be only *qua* the present 10 (ten) petitioners.

JUDGE

Comparing Assistant