

GAHC010018372019



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

Case No. : WA/30/2019

SMTI MOMTAZ BEGUM
W/O MD. RAFIQUUL ISLAM, C/O AKABASTI MIDDLE ENGLISH SCHOOL,
VILLAGE AKABASTI BONGALI, PO SILONI BALIPARA, DIST SONITPUR,
ASSAM

VERSUS

SMTI MOUSUMI MAZUMDAR AND 7 ORS
W/O ABDUL MOTLEB,
RESIDENT OF AKABASTI BANGALI,
PS CHARDUAR, DIST SONITPUR, ASSAM

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM
DEPARTMENT OF ELEMENTARY EDUCATION
DISPUR
GUWAHATI 06

3:THE DIRECTOR OF ELEMENTARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI 19

4:THE DEPUTY COMMISSIONER
SONITPUR DIST TEZPUR
784001

5:THE DISTRICT ELEMENTARY EDUCATION OFFICER
SONITPUR
TEZPUR

784001

6:THE BLOCK ELEMENTARY EDUCATION OFFICER
BALIPARA DIST SONITPUR
ASSAM

7:THE HEADMASTER
AKABASTI MIDDLE ENGLISH SCHOOL VILLAGE AKABASTI BANGALI
PO SILONI BALIPARA
DIST SONITPUR
ASSAM

8:SARBA SIKSHA ABHIYAN
ASSAM
KAHILIPARA
GUWAHAT

For the Appellants : Mr. K.N. Choudhury, Sr. Advocate
Mr. N. Borah, Advocate

For the Respondents : Mr. R. Sharma, Advocate
Mr. R. Mazumder, Advocate
Mr. N. Das, Advocate

**BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

JUDGMENT & ORDER (ORAL)

Date : 06-03-2024

(Vijay Bishnoi, CJ)

This *intra-court* appeal is filed by the appellant being aggrieved with the order dated 11-01-2019 passed by the learned Single Judge in W.P.(C) No. 2354/2014 whereby the writ petition filed on behalf of the respondent No. 1 herein has been allowed and the appointment of the respondent No. 7/ writ appellant as Assistant Teacher in Akabasti M.E. School was

cancelled. Further direction is also issued by the learned Single Judge to the respondent authorities, more specifically to the Director of Elementary Education to examine whether withdrawal of Rs. 1.52 Lakhs by the respondent No. 7/ writ appellant was in accordance with law and, if not, to initiate recovery proceedings. It is further directed by the learned Single Judge that resultant vacancy on discontinuation of service of respondent No. 7/ writ appellant may be filled up by a duly conducted recruitment process by giving the respondent No. 1 an opportunity to participate, if found to be eligible and qualified.

2. The issue raised by the respondent No. 1 in the writ petition was regarding the appointment of the appellant as Assistant Teacher vide order dated 17-11-2011. The learned Single Judge has concluded that her appointment on the post of Assistant Teacher was illegal. Hence, the same was cancelled by the impugned judgment.

3. During the course of hearing of this appeal, a coordinate Bench of this Court vide order dated 27-02-2023 has directed to conduct an enquiry into the allegation pertaining to the irregularities and illegalities in the provincialisation of the appellant under Section 13(10) and 13(11) of the Assam Education (Provincialisation of Services of Teachers and Re-Organization of Educational Institutions) Act, 2017. As per the direction given by this Court the enquiry was conducted by the Director of Elementary Education and report of the same was placed before this Court on 09-06-2023.

4. The concluding part of the enquiry report is quoted here-in-below for ready reference:-

“In view of the statement of BEEO, Balipara original Attendance Registers and SMC Proceeding Books of Akabasti M.E. School was called for and verified. However, no discrepancies were seen in the proceeding book wherein resolution was adopted for appointment of the petitioner Momtaz Begum as 6th Assistant Teacher of the school on 02/08/2006 and also upgradation of the petitioner to 5th Assistant Teacher of the school as sequence of SMC meeting held as well as resolutions adopted are found to

be aligned as per time line and also no distortion of the proceeding book is found.

From the above facts and circumstances, it reveals that the petitioner, Momtaz Begum was appointed on 02/08/2006 in Akabasti M.E. School as the sixth teacher and was upgraded to the post of 5th assistant teacher of the said school on 08/07/2011. During Provincialisation as per Act 2011 as amended 2012, in provincialisation order issued against Akabasti MES in the year 2013 the name of the petitioner was missing and one post was shown as vacant. The petitioner had claimed that due to inadvertent mistake her date of joining was taken to be 08/07/2011 but she was appointed on 02/08/2006 as 6th teacher and thereafter she joined as 5th teacher on 08/07/2011. Thereafter, the service of the petitioner was provincialised on 22/10/2013 upon correction of her date of joining. Thereafter, the petitioner Momtaz Begum received arrear salary in pursuance of her Provincialisation order w.e.f. 01/01/2013."

5. As in the enquiry conducted as per direction given by this Court, it is concluded that the appellant was appointed as Assistant Teacher in the Akabasti M.E. School on 02-08-2006 and there is no irregularity in her appointment, we are of the view that the impugned order passed by the learned Single Judge cannot be sustained. It also to be noticed that the findings of the enquiry report is not under challenge either by the respondent No. 1 or the other respondents.

In view of the above, this appeal is allowed and the impugned order dated 11-01-2019 is set aside.

JUDGE

CHIEF JUSTICE

GS

Comparing Assistant