

GAHC010036812022



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

Case No. : WA/255/2022

THE STATE OF ASSAM AND 3 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM EDUCATION (ELEMENTARY) DEPARTMENT, DISPUR,
GUWAHATI 781006

2: THE DIRECTOR OF ELEMENTARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI 781019

3: THE DISTRICT ELEMENTARY EDUCATION OFFICER
NALBARI
ASSAM

4: THE DEPUTY INSPECTOR OF SCHOOLS
NALBARI
ASSAM

VERSUS

ALAKA KALITA AND ANR.
W/O SRI APURBA KUMAR TALUKDAR ,RESIDENT OF VILLAGE AND PO
BANGAON, DIST BARPETA .ASSAM

2:THE DIRECTOR OF EDUCATION

BODOLAND AUTONOMOUS COUNCIL
KOKRAJHAR
ASSAM

Advocate for the Petitioner : SC, ELEM. EDU

Advocate for the Respondent : SC, BTC

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

ORDER

04.04.2024

(Vijay Bishnoi, CJ)

This Writ Appeal is filed by the State being aggrieved with the order dated 22.01.2019 passed by the learned Single Judge in WP(C) No.1728/2015 whereby the learned Single Judge has disposed of the writ petition filed by the petitioner (respondent herein) while issuing a direction to the Director of Elementary Education, Assam to verify as to whether the respondent has been discharging her duties as an Assistant Teacher of No.1131 Jalkhan L. P. School presently and upon such verification if it is found that the petitioner is indeed discharging her duties in the said school as Assistant Teacher, her salaries, both arrear and current should be paid. It is further directed that the entire exercise which is directed to be undertaken has to be completed within a period of 45 days from the date of receipt of a certified copy of the order.

2. The brief facts of the case are that the respondent was appointed as an Assistant Teacher in a sanctioned vacant post in a recruitment initiated in the year 1997. She was appointed as Assistant Teacher at No.143 Baroma Nimna Buniyadi Bidyalaya on 04.12.1999. She was paid salary pursuant to the said recruitment upto April, 2006. However, later on, the appellants have stopped the payment of salary to the respondent. Being aggrieved with the same, the respondent had approached this Court by way of filing the writ petition which came to be disposed of by the impugned order.

3. It is noticed that during the pendency of this appeal, learned Standing Counsel for the Elementary Education Department has drawn the attention of this Court regarding the order dated 30.01.2021 whereby the respondent has been accommodated afresh as a Tutor on a purely temporary basis on fixed salary of Rs.10,800/- per month. This Court while taking note of the fact that the respondent's appointment as Assistant Teacher vide order dated 04.12.1999 has not been reversed/recalled at any point of time, observed VIDE order dated 03.10.2023 that the action on the part of the appellants of appointing her afresh as a Tutor vide order dated 30.01.2021 is highly questionable. While observing this, this Court had granted opportunity to the learned counsel for the appellants to place on record the Minutes of Scrutiny Committee meeting in which the case of the respondent was considered leading to the issuance of the order dated 30.01.2021.

4. Thereafter, on 07.03.2024 the learned counsel for the appellants has submitted before this Court that the Screening Committee has found the initial appointment of the respondent No.1 to be illegal. Considering the same, this Court had directed the Education (Elementary) Department to file an affidavit to this effect and pursuant to that affidavit of the Secretary to the Government of Assam, Department of School Education has been filed. In the said affidavit the deponent has stated that since more than twelve thousand incumbents belonging to illegal/irregular teachers appeared in the screening process before the Screening Committees headed by the Divisional Commissioners in their jurisdiction, no minutes of the meeting was prepared and therefore, the same is not available. It is noticed that in the said affidavit there is no whisper about the reversal/cancellation of the order dated 04.12.1999 whereby the

respondent was appointed as Assistant Teacher.

5. Taking into consideration the fact that the respondent was appointed as Assistant Teacher on 04.12.1999 and the said appointment has never been cancelled, the fresh appointment of the respondent as a Tutor vide order dated 30.01.2021 cannot be sustained and the same is liable to be set aside and therefore, set aside.

6. At the same time, we do not find any case for interference of the impugned order passed by the learned Single Judge whereby a direction is issued to the Director, Elementary Education, Assam to pay the arrear and the current salary to the respondent for the post of Assistant Teacher after verifying the said claim.

7. It is submitted by the learned counsel for the respondent that till date the respondent is serving as Assistant Teacher and this fact has not been disputed by the learned counsel for the appellants. In such circumstances, a month's time is granted to the appellants to comply with the impugned order passed by the learned Single Judge.

8. We make it clear that if the arrears of the salary have not been paid within a period of 30 days from today to the respondents, the appellants shall be liable to pay interest at the rate of 9% per annum on the arrears of the salary.

Writ Appeal stands disposed of.

JUDGE

CHIEF JUSTICE

Comparing Assistant