

GAHC010094962024



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

Case No. : WP(C)/2473/2024

DEEPAK BORGOHAIN AND 4 ORS
ASSISTANT TEACHER, BHORIDHOWA M.E. SCHOOL, P.O. BHORIDHOWA,
DIST. NAGAON

2: NURUL AMIN
ASSISTANT TEACHER
TELICHAPARITUP ADARSHA M E MADRASSA
PO. SAIDARIA

DIST. NAGAON.

3: ZAKIRUL ISLAM
ASSISTANT TEACHER
CHOTA RUPAHI M E MADRASSA
P.O. HERAPATI
DIST.NAGAON

4: DILUARA HASINA
ASSISTANT TEACHER
CHOTA RUPAHI M E MADRASSA
.O. HERAPATI
DIST. NAGAON.

5: MUZAKKIR HUSSAIN
ASSISTANT TEACHER
(DROPPED)
NAKHUTI KHAGORIJAN M E SCHOOL
P.O. NAKHUTI BAZAR
DIST. NAGAO

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM,

DEPARTMENT OF SCHOOL EDUCATION, DISPUR, GUWAHATI-781006

2:THE HIGH POWER COMMITTEE (HPC)
FOR PROVINCIALISATION OF SERVICE OF DROPPED TEACHERS UNDER
ELEMENTARY EDUCATION DEPARTMENT
REPRESENTED BY ITS CHAIRMAN
DISPUR
GUWAHATI -781006

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER (DEEO)

NAGAON
ASSAM
PIN-782001.

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER (DEEO)

NAGAON
ASSAM
PIN-782001

5:THE BLOCK ELEMENTARY EDUCATION OFFICER (BEEO)

KALIABORKHAGARIJAN
ASSAM
PIN-78202

Advocate for the Petitioner : MRS. K DEVI

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR

ORDER

Date : 29.05.2024

Heard Mr. A. Deka, learned counsel for the petitioner as well as Mr. B. Kaushik, learned standing counsel, Elementary Education Department for all the respondents.

2. The Petitioner No.1 was appointed as Assistant Teacher of Bhoridhowa M.E. School, Nagaon on 05.11.1991, the Petitioner No.2 was appointed as Assistant Teacher, Teliachaparitup Adarsha M. E. Madrassa, Nagaon on 25.04.1989, the Petitioner No.3 was appointed as Assistant Teacher Chota Rupahi M. E. Madrassa, Nagaon on 26.10.1991, the Petitioner No.4 was appointed as Assistant Teacher, Chota Rupahi M. E. Madrassa on 29.10.1991 and the Petitioner No.5 was appointed as Assistant Teacher (dropped) Nakhuti Khagorijan M.E. School, Nagaon on 17.02.1991. The Schools under which the petitioners were appointed were provincialised by different orders w.e.f 19.11.1991. However, when the Schools were provincialised the names of the petitioners were dropped.

3. In the meantime, the Govt. of Assam issued a policy decision by way of Notification dated 13.01.2003 issued by the Commissioner and Secretary to the Govt. of Assam, Education Department to streamline the procedure of adjustment of dropped teachers of ME/MEM/MV and High Schools of various districts in the State. The Notification dated 13.1.2003 is reproduced herein below:

“GOVERNMENT OF ASSAM

EDUCATION (ELEMENTARY) SECONDARY DEPARTMENT

NOTIFICATION

ORDERS OF THE GOVERNOR OF ASSAM

Dated Dispur, the 13th Jan, 03

No. (C) 26/2002/341/69 in order to streamline the procedure of dropped teachers of ME/MEM/MV and High Schools in various districts in the State the following criteria will be

adopted with prospective effect:-

- 1. The teachers must have put at least two years of continuous service immediately preceding the taking over of the concerned schools by the Government.*
- 2. The appointment of dropped teachers must have been duly approved by the concerned District Elementary Education Officer/Inspector of schools.*
- 3. The appointment of dropped teachers by the Managing Committee must be commensurate with the enrolment of the students in the school at the time of provincialisation.*
- 4. The school wise norms of number of sanctioned posts to be maintained.*
- 5. The provincialisation particulars submitted by the then District Elementary Education Officer, Nagaon/Inspector of Schools and in the respective Directorates will be used as reference documents.*
- 6. Teacher fulfilling the above criteria will be considered for regularisation of their services subject to the availability of sanctioned post in the concerned districts.*

Sd/- Prem Saran

*Commissioner & Secretary to the Govt. of Assam,
Education Deptt.*

Dtd. Dispur, the 13th Jan'03."

4. Thereafter, the Govt. issued an Advertisement dated 06.11.2004 inviting full particulars from the dropped teachers along with necessary documents for the purpose of scrutiny. The Petitioners in response to the Advertisement dated 06.11.2004 submitted the particulars. The Commissioner and Secretary to the Govt. of Assam Education (Elementary) Department issued a Notification dated 10.07.2010 reconstituting the High Power Committee for examination of all pending cases of dropped teachers of LP/ME/MEM/ High School/ Higher

Secondary Schools including non-teaching staff under Education (Elementary & Secondary) Department. The said Notification dated 10.07.2010 was modified by another Notification dated 06.03.2017, wherein, it was provided that the Committee will hold its meeting at periodic intervals to examine the cases of dropped teaching and /non-teaching staff of Education (Elementary/Secondary) Department and submits report to the Government. As no steps were taken, despite submitting their relevant documents as provided under the Advertisement dated 06.11.2004, some of the dropped teachers approached this Court by filing Civil Rule 1571 of 1998 and other batch of Writ Petitions which were disposed of by judgment and order dated 1st of September, 2003 and the relevant portion of the said judgment reads as under :

“6. In view of the above, this bunch of cases will stand now disposed of with the following directions :

(i) The cases of the petitioners in each of the cases will be considered in accordance with the norms, criteria and eligibility conditions prescribed by the policy document dated: 13.1.2003 subject to the modification in Condition Nos.1 and 2, as stated above.

(ii) The Chief Secretary to the Government of Assam, shall within 7 days from today, constitute a Committee to examine the cases of the petitioners in the present bunch of cases and such other cases, as may be referred to the said Committee, from time to time, by this Court. As the said Committee will be executing and implementing the policy decision taken by the state, this Court. considers it appropriate to leave it to the discretion of the Chief Secretary to the Government of Assam to decide on the composition. i of the Committee with the suggestion that the Committee may be a high powered Committee consisting of 3 members and the present Secretary to the Government of Assam, Education Department may act as the Member-Secretary.

(iii) The Committee, upon due verification of the cases before it, shall within 6 months from the date of its constitution, prepare district wise lists of "dropped teachers" eligible for regularization in terms of the norms and criteria laid down as per direction No. 1 above. The eligible persons, on being identified, shall be arranged in the district wise lists, in order of seniority.

(iv) Suitable adjustments in the placements assigned in the district wise lists, as may be required upon consideration of such other cases which may be referred to the Committee in the future, shall be made by the Committee.

(v) Appointment against available posts in each district shall be made on the basis of the lists prepared.

(vi) All appointments made would be prospective but will carry the benefit of past services for the purpose of computation of pensionary benefits.

6.All the writ petitions shall stand closed in terms of the above direction.”

5. The Education Department proposed for constitution of a Screening Committee to examine the selection procedure, nature of appointments, status of post, working status etc., and accordingly the Director of Elementary education, Assam invited applications from the irregularly/illegally appointed teachers during 1991-2001 throughout the State by Advertisements dated 01.02.2012 and 04.02.2012. The petitioners having no option also submitted their applications pursuant to the Advertisement dated 01.02.2012 and 04.02.2012. A Committee was thereafter constituted in the Education Department. Thereafter, in its report, the case of the petitioners were placed under List No.3 under category of neither received salaries nor having prescribed training. Thereafter a Cabinet Memorandum was submitted praying for approval for accommodating those teachers who have received salary up to 2007 and have successfully completed the Junior Basic Training/Diploma of Elementary Education Course by creating personal post with prospective effect from the date of approval of Cabinet and also approval was sought for those who received salary up to 2007 but have not acquired the provisional qualification before 2011 to be accommodated as Tutor with prospective effect from date of approval of the Cabinet. As the names of the petitioners did not fulfill the criteria laid down in the Cabinet Memorandum, they could not be considered for accommodation to any of the post of teacher/tutor under illegal/irregular category. Accordingly, they approached this Court by filing

WP(C)/3211/2023 which was disposed of by order dated 05.06.2023 with the following directions:

“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 6 (six) 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 6 (six) petitioners.”

6. Consequently, the Secretary to the Govt. of Assam Department of School Education passed the order dated 29.08.2023 holding that the names of the petitioners are found in List 3 (no salary, no training) of the illegal/irregular

category under Nagaon District who never received salary nor had training. Accordingly, the payment of salary and allowances to the petitioners was rejected. Being aggrieved, the present writ petition.

7. Mr. A. Deka, learned counsel for the petitioner submits that the petitioners are neither illegal nor irregular appointees inasmuch as they were dropped teachers when their respective schools were provincialised w.e.f 19.11.1991. He also submits that by the Notification dated 13.01.2003 the Government have taken a policy decision to streamline the procedure for adjustment of dropped teachers and accordingly in terms of the said policy, High Power Committee was constituted by the Notification dated 06.03.2017. He submits that the High Power Committee is still in existence, however the case of the petitioners were never placed before the High Power Committee and therefore, the respondents be directed to place the case of the petitioner before the High Power Committee for consideration.

8. Mr. B. Kaushik, learned standing counsel, Secondary Education Department also submits that High Power Committee constituted by the Notification dated 06.03.2017 is still in existence and as the petitioners claims to be dropped teachers their cases may be placed before the High Power Committee for consideration.

9. After hearing the parties and on consideration of the materials available on record, this Writ petition is disposed of directing the respondent No. 1, 3 and 4 to place the case of the petitioner before High Power Committee constituted by

the Notification dated 06.03.2017 for consideration of the case of the petitioners.

10. Let such exercise be done and completed within a period of 4(four) months from the date of receipt of a copy of the order of this Court. The High Power Committee while considering the case of the petitioners shall also hear the petitioners in person and thereafter pass appropriate orders.

11. With the above observations and directions, this writ petition stands disposed of.

JUDGE

Comparing Assistant