

GAHC010113082024



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

Case No. : CRP/67/2024

MANAGING COMMITTEE OF MOTHER TERESA L.P. SCHOOL AND ANR
REPRESENTED BY ITS PRESIDENT AND HEADMASTER
SRI SUNIL BHENGRA,
MOTHER TERESA L.P. SCHOOL,
KHALIHAMARI- (KHA),
DIST.- SONITPUR, AGE 42 YRS.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY, DEPARTMENT
OF EDUCATION (ELEMENTARY), ASSAM,
DISPUR.

2:THE DIRECTOR OF ELEMENTARY EDUCATION
KAHILIPARA
GUWAHATI-19.

3:THE ELEMENTARY EDUCATION OFFICER
SONITPUR
TEZPUR.

4:SUSHANTI TOPNO
D/O- SRI NUHA TOPNO

R/O VILL.- RAJGARH

P.O.- MANSIRI- 784105

DIST.- SONITPUR
ASSAM.

5:SANGITA SARMA
D/O- GIRISH SARMA

R/O- BORGHAT DEBENDRA NAGAR

P.O.- KHALIAHAMARI- 784026

DIST.- SONITPUR
ASSAM

Advocate for the Petitioner : DR. R SARMAH, MS. D SHARMA,MS. N BARMAN,MS P SAHA

Advocate for the Respondent : SC, ELEM. EDU,

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA
ORDER

07.08.2024

1. Heard Mr. R. Sarmah, learned counsel for the petitioner. Also heard Ms. S. Konwar, learned Standing Counsel, Elementary Education Department.
2. This application under Section 115 of the Code of Civil Procedure, read with Section 151 of the said Code has been filed by the petitioner, namely, Managing Committee of Mother Teresa L.P. School, impugning the order dated 04.03.2024, passed by the learned District Judge-cum-Presiding Officer of Educational Tribunal, Sonitpur at Tezpur in Misc.(Education) Case No. 01/2018.
3. The learned counsel for the petitioner has submitted that the petitioner was directed by this Court in 5350/2015 to seek redressal of this grievance by filing a case before the Educational Tribunal having jurisdiction to entertain the claim of the petitioner. Accordingly, the petitioner approached the Educational Tribunal, Sonitpur at Tezpur and filed the case which was registered

as Misc.(Education) Case No. 01/2018.

4. The learned counsel for the petitioner has submitted that during the pendency of the proceeding of the aforesaid case before the Educational Tribunal, Sonitpur, the petitioner intended to bring on record, photocopies of certain documents as originals were not available with it.

5. The petitioner was directed by the Educational Tribunal to file an application in proper format under proper provisions of law. By order dated 19.07.2023, thereafter the said case was fixed on several dates. The petitioner could not file the application as directed by the learned Educational Tribunal.

6. The learned counsel for the petitioner has submitted that the petitioners had prepared the application under Section 65(c) of the Indian Evidence Act and on 04.03.2024 sought time to file the same. However, before he filed the said application, the learned Tribunal dismissed the Misc. (Education) Case No. 01/2018 for not taking proper steps by the petitioner.

7. The learned counsel for the petitioner has submitted that as the petitioner was ready to file the application which was directed to be filed by the Tribunal on the date on which the case was dismissed, he would be highly prejudiced if the said case is not restored.

8. The learned counsel for the petitioner has also submitted that after dismissal of the Misc.(Education) Case No. 01/2018, the petitioner sought to file a restoration application before the Tribunal, but the Office of the Tribunal asked them not to do so.

9. The learned counsel for the petitioner has also submitted that if the Misc.(Education) Case No. 01/2018 is not restored, the petitioner school would be highly prejudiced.

10. On the other hand, the learned Standing Counsel, Elementary

Education Department has submitted that the conduct of the petitioners is not inspiring as apparent from the impugned order itself, as it took more than eight months for filing the appropriate application as directed by this Court and hence, she has opposed the prayer of the petitioner.

11. The learned Standing Counsel, Elementary Education Department has also submits that the spirit of Code of Civil Procedure is applicable in proceedings before the Educational Tribunal.

12. I have considered the submissions made by the learned counsel for both the parties and have perused the materials available on record.

13. It appears that the petitioners approached the Educational Tribunal at Sonitpur, in pursuant to the directions of this Court, passed in W.P. (C) No. 5350/2015 and the date on which the Education Case was dismissed, the petitioner was present in the Court with the application under Section 65(c) of the Indian Evidence Act, however, before he could file the same, the Misc. (Education) Case No. 01/2018 was dismissed.

14. Considering the above facts, this Court is of the considered opinion that for just and fair adjudication of the claim of the petitioner, the Misc. (Education) Case No. 01/2018 is required to be restored. However, from the impugned order itself, it appears that the conduct of the petitioners is also very negligent and not inspiring, therefore, a cost of Rs. 5,000/- is imposed on the petitioner. The petitioner shall deposit the cost to the District Legal Services Authority, Sonitpur, within a period of 3(three) weeks, from the date of this order. The said cost shall be deposited by the petitioner's school before the Secretary, District Legal Services Authority, Sonitpur. The cost from the amount of the said authority and after deposit of the said cost, he shall be furnished with a receipt and subject to payment of such cost, the Misc.(Education) Case No. 01/2018 is directed to be

restored by the Educational Tribunal at Sonitpur. The petitioner shall approach before the said Educational Tribunal, along with a certified copy of this order and the receipt of the deposit of cost as directed by this Court on or before 13th September, 2024.

15. On such appearance, the Tribunal is directed to restore the Misc. (Education) Case No. 01/2018 and proceed with the case to its logical conclusion.

16. With the above observations, this writ petition is accordingly disposed of.

JUDGE

Comparing Assistant