

GAHC010114452024



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

Case No. : WP(C)/2981/2024

MD. CHAN MIAH AND ANR
S/O- LATE IMAN ALI, RESIDENT OF TARANGAJHAR, P.O. JAMADARHAT,
P.S. FAKIRGANJ, DIST.- DHUBRI, PIN- 783330

2: RUPCHAN ALI
S/O- BILAT ALI
RESIDENT OF VILLAGE- KUMRI
P.O. CHIRAKUTI BAZAR
P.S. FAKIRGANJ
DIST.- DHUBRI PIN- 78333

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, ELEMENTARY EDUCATION, DISPUR, ASSAM

2:DIRECTOR OF ELEMENTARY EDUCATION
KAHILIPARA
GUWAHATI-19

3:DISTRICT ELEMENTARY EDUCATION OFFICER
DHUBRI
ASSAM

4:BLOCK ELEMENTARY EDUCATION OFFICER
SOUTH SALMARA
ASSA

Advocate for the Petitioner : MR. D P CHALIHA

Advocate for the Respondent : SC, ELEM. EDU

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

ORDER

Date : 21.06.2024

Heard Mr. U. P. Chaliha, learned counsel for the petitioners. Also heard Mr. A. Phukan, learned Standing Counsel for the Elementary Education, Assam.

The petitioners, by way of instituting the present proceedings has prayed for a direction upon the respondent authorities to release to them their due salaries upon provincialisation of their services w.e.f. 01.01.2021 vide order 05.02.2021.

The records reveal that in the same name i.e. Gunaipani M.E. Madrassa two schools were functional and there was a dispute as to which school, amongst the two, would be now entitled to be considered for provincialisation of the services of the serving teachers therein. The school wherein, the petitioner was so serving and the other school wherein, the Headmaster is one Abul Hussain had a dispute and accordingly, said Abul Hussain and other teachers working in his school had approached this Court by way of instituting WP(C)/2282/2021. This Court, vide an order dated 05.04.2023 was pleased to dispose of the said writ petition with a direction to the petitioners therein to approach a Civil Court of competent jurisdiction for redressal of their grievance. Further, noticing the enquiry report

submitted in the matter by the Deputy Secretary, Elementary Education Department in favor of the petitioners herein and the other staffs working in the school, the prayer as made in the writ petition for setting aside the order of provincialisation issued in respect of the petitioners herein was not interfered with. Being aggrieved, the said Abul Hussain and other teachers working in the school had instituted Writ Appeal No. 143/2023 assailing the said Judgment and Order dated 05.04.2023.

The Division Bench of this Court, vide order dated 12.02.2024, proceeded to dismiss the said writ appeal on the same being withdrawn with liberty to the appellants therein to approach the appropriate Tribunal for redressal of their grievances.

In spite of the provincialisation as made in respect of the petitioners herein not being interfered with by this Court in proceedings instituted in the matter, the salaries of the petitioners were not being released and accordingly, the present proceedings was instituted.

The respondent authorities on being required by this Court to submit instructions in the matter had placed before this Court an order dated 05.01.2023, passed in WP(C)/4652/2021, instituted by one Abdul Razak, who was working in the same school wherein the petitioners was working but, his services were not provincialised. This Court, vide order dated 05.01.2023, on consideration of the issues involved, proceeded to dispose of the said writ petition requiring the said Abdul Rezzak to prefer a statutory appeal in the matter before the said Secretary, Department of School, Assam on or before 31.01.2023.

It was further provided that in the event of filing of such appeal on or

before 31.01.2023, the provincialisation benefits extended to the petitioner no. 1 herein shall remain suspended till disposal of the said statutory appeal.

On a pointed query made by this Court, the learned counsel appearing for the State respondents has submitted that in pursuance to the directions as passed by this Court vide the order dated 05.01.2023, said Abdul Rezzak had not preferred any appeal in the matter and accordingly, in terms of the directions passed, the order of provincialisation of the petitioner no. 1 herein cannot be deemed to be under suspension any further.

In the above view of the matter and there being no legal impediment brought on record to indicate that the petitioners herein are not entitled to receive their salaries in terms of the provincialisation of their services effected vide order dated 05.02.2021, this Court is of the considered view that the denial of the said benefits is clearly without any jurisdiction and the same has caused severe prejudice to the interest of the petitioners herein.

Accordingly, the Director of Elementary Education, Assam is directed to release to the petitioners their due salaries in terms of the order of their provincialisation of services dated 05.02.2021 w.e.f. 01.01.2021 within a period of one month from the date of receipt of a certified copy of this order.

It is provided that in view of the directions as passed by this Court in WA/143/2023 requiring the appellant therein to institute proceedings before the jurisdictional Educational Tribunal, the present directions as passed in the matter, would be subject to the final outcome of the proceedings so instituted before the said Educational Tribunal.

With the above observations and directions, the writ petition stands

disposed of.

JUDGE

Comparing Assistant