

GAHC010125502023



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

Case No. : WA/306/2023

JUNU DAS
VILL- MOIRAMARA WARD NO. 3, P.O. HOWLI DIST. BAKSA BTAD, ASSAM
PIN-781316.

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE COMMISSIONER and SECRETARY EDUCATION DEPARTMENT,
DISPUR, GUWAHATI-6.

2:THE DIRECTOR OF ELEMENTARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI-19.

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER

BARPETA
P.O. HOWLI DIST. BAKSA
BARPETA

4:THE TREASURY OFFICER

BARPETA/BAKSA BTAD

5:THE DISTRICT ELEMENTARY EDUCATION OFFICER

BAKSA DIST.
MUSHALPUR - 78131

Advocate for the Petitioner : MS P SAHA, DR.R SARMAH

Advocate for the Respondent : SC, ELEM. EDU, MS. R B BORA, SC, BTC, SC, FINANCE

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

Date of Hearing : 21-11-2024

Date of Judgment : 21-11-2024

JUDGMENT & ORDER (Oral)

(N. Unni Krishnan Nair. J)

Heard Dr. R. Sarma, learned counsel appearing for the appellant. Also heard Mr. N. J. Khataniar, learned Standing Counsel for the Elementary Education Department appearing for the respondent nos. 1, 2, 3 & 5 and Mr. B. Gogoi, learned Standing Counsel for the Finance Department appearing for the respondent no. 4.

2. The present Intra Court Appeal has been instituted, assailing the Judgment & Order dated 28.04.2023, passed by the learned Single Judge in WP(C)6427/2017. The appellant herein, as petitioner, had instituted WP(C)6427/2017, praying for a direction upon the respondent authorities for release of her salaries which were in arrears since the date of her initial appointment i.e. w.e.f. 06.12.1999.

3. The appellant, herein, was appointed vide the order dated 06.12.1999 by the District Elementary Education Officer, Barpeta, as an Assistant Teacher and was posted at Kaurpara M. E. School. The appellant continued to serve in the said school; however, her salaries were not released. The petitioner had also highlighted that the Government in the Education had, vide a communication dated 19.12.2000, required the District Elementary Education, Barpeta to release the salaries of the appellant and other persons mentioned in the list annexed to the said communication. However, the salaries of the appellant were not released on account of the fact that in the said list, the name of the school wherein the appellant was appointed was wrongly reflected as "Adarsa Vidyapith M.E.". The Government in the Elementary Education Department

had constituted Screening Committees, for the purpose of screening the teachers, whose appointments were found to be either illegal and/or irregular. The appellant, in the year 2014, was required to appear before a Screening Committee for verification of her records. The Elementary Education Department, in terms of the recommendation of the Screening Committees proceeded to appoint teachers so recommended as "Tutors", however, the name of the petitioner not having been recommended for such appointment by the constituted Screening Committee, the appellant was not extended with an appointment as "Tutor". The appellant although was not released her salaries w.e.f. the date of her initial appointment i.e. w.e.f. 06.12.1999, she had not instituted any proceedings claiming her salaries, till instituting WP(C) No. 6427/2017.

4. The learned Single Judge upon examining the matter in details had vide order dated 28.04.2023, proceeded to draw the following conclusions:-

"19. The question which arises for consideration on the basis of the materials on record and the relief sought for in the writ petition is as to whether the petitioner is entitled to the salary for the period from the date of her appointment i.e. 6/12/1999 till her alleged date of retirement in the year 2021. It may not be out of place to take note that the petitioner though as submitted by the counsel for the petitioner that the petitioner retired in the year 2021 but has not been issued any superannuation notice. Mr. R. Sarma, the learned counsel however submitted that the petitioner was verbally informed that she would retire in the year 2021 and it is on account of the pendency of the writ petition, no superannuation notice was issued.

20. Be that as it may, it is relevant to take note of that this Court in exercise of the power under Article 226 of the Constitution would be in a position to issue a writ in the nature of mandamus for the purpose of directing the respondents to release the salary of the petitioner, provided that it is found that the petitioner was entitled to salary for the period she claims to be rendering service in connection with the affairs of the respondent Department. It is no longer res

integra that the right to salary would depend upon an appointment being given to the person in accordance with law. Therefore, it is only in respect to a valid legal appointment, the right to salary accrues and a corresponding duty is there upon the Respondent State to pay the salary and denial or deprivation of the salary in such case would render the action of the Respondent State arbitrary and unreasonable which would violate the mandate of Article 14 of the Constitution. This Court in exercise of the powers under Article 226 of the Constitution in such circumstances would be justified to issue a writ of mandamus or any other appropriate writ, direction or order thereby compelling the Respondent State to pay/release the salary to the employee.

21. In the backdrop of the above proposition, let this Court analyse the case of the petitioner. Annexure-A to the writ petition is the only document placed on record to show that the petitioner was appointed as an Assistant Teacher by the then District Elementary Education Officer on 06/12/1999. At that relevant point of time, the applicable statute was the Assam Elementary Education (Provincialisation) Act, 1974(hereinafter for short referred to as 'the Act of 1974'). The said Act of 1974 was enacted to provincialise the services of the teachers of elementary schools including the pre-Primary schools and the employees of the respective Board. In terms with Section 27 of the Act of 1974 the State Government has been empowered to make Rules for carrying out the purpose of the said Act of 1974. In exercise of the said powers, the Assam Elementary Education (Provincialisation) Rules, 1977(hereinafter for short referred to as 'the Rules of 1977') was made providing for the method of recruitment, payment of liabilities of the Board and management of elementary schools etc. As the date of appointment of the petitioner as could be seen from Annexure-A is 6/12/1999; it would be relevant to take note of the Rules of 1977 as it stood prior to 2005 inasmuch as after 10/11/2005 and 25/10/2012 there have been major changes brought to the Rules of 1977 by amendments.

22. The Rules of 1977 provides the methods of recruitment, payment of liability of the Board and the management of the elementary schools etc. Rule 3 as it stood prior to the Amendment dated 10.11.2005 stipulates the method of

recruitment. In terms with Rule 3 (i) which stipulates the method of recruitment, the Deputy Inspector of Schools in the month of January every year shall invite applications in prescribed form for vacancies of Elementary School Teachers which is likely to occur in the year in his establishment. The qualification was stipulated in Rule 3 (iii) of the Rules of 1977 to be (a)Matriculation/High School/School Leaving Certificate Examination or any other examination of equivalent standard shall be the minimum qualification for the post of teacher in Lower Primary and Junior Basic Schools preference being given to candidates trained in Senior Basic, Normal and Junior Basic Training Courses and (b) For M.V. and Senior Basic Schools, qualification shall be Matric, Normal or P.U. or intermediate or its equivalent.

23. Rule 3 (v), (vi) , (vii), (viii) and (ix) as stood on 23.06.1979 and prior to 10.11.2005 are reproduced herein below :-

“(v) The shall be a Selection Committee in each Educational Sub-Division to be constituted by the Sub-Division Level Advisory Board for Elementary Education. The Chairman of the Sub-Division Level Advisory Board for Elementary Education and the D.I. of Schools shall be the Chairman and Secretary of the Selection Committee respectively.

(vi) On receipt of applications, the Selection Committee shall scrutinize the mark sheets and other necessary testimonials of the candidates and prepare a list of candidates for interview by the Selection Committee.

The selection Committee shall then finalise the list of successful candidates in order of merit after interview and shall put up the list before the Board for approval. While approving the list before the Board for approval, the Board shall be guided by the declared policies of the Government and instructions issued by the Government from time to time. After approval of the list by the Board the same shall be sent to the Director of Elementary Rules and Government instruction for the time being in force. The Deputy Inspector of Schools will appoint the selected candidates in order of merit from the list approved by the Director of Elementary Education as and when required as per

instructions for the time being in force. The list shall be valid for one year unless its validity is extended by Government.

(vii) Reservation.

There shall be reservation of posts for Scheduled Castes and Scheduled Tribes as per rules made by Government from time to time.

(viii) Physical fitness.

(a) A candidate shall be of sound health both physically and mentally and free from organic defects or bodily infirmity likely to interfere with his/her duties.

(b) A candidate shall be required to undergo medical examination and to produce a medical certificate of fitness.

(ix) An appointed candidate may be required to undergo such in-service training as Government may decide from time to time."

24. Rule 4 of the Rules of 1977 as it stood in the year 1979 stipulates that except as otherwise provided in the Act and the Rules all matter relating to pay, allowances, leave, pension discipline and other conditions of service shall be regulated by the general rules framed by the Government from time to time. Rule 4 of the Rules of 1977, being relevant is quoted herein below:-

"4. Other provisions relating to candidates for services. Except as provided otherwise in the Act and in these rules all matters relating to pay, allowances, leave, pension, discipline and other conditions of service shall be regulated by the general rules framed by the Government from time to time."

25. Therefore, from a reading of Rules 3 & 4 of the Rules of 1977 as it stood as on 22.06.1979 and prior to 10.11.2005, it would be seen that upon application being invited by the Deputy Inspector of Schools, the Selection Committee so formed in terms with Rule 3 (v) shall scrutinize the mark sheets and other necessary testimonials of the candidates in and prepare a list of candidates for interviews by the Selection Committee. Thereupon, the Selection Committee

shall finalize the list of successful candidates in order of merit after interview and shall put the list before the Board for approval. The Board, while approving the list, shall be guided by the declared policies of the Government and the instructions issued by the Government from time to time. After approval of the list by the Board, the same shall be sent to the Director of Elementary Education for his final approval. The Deputy Inspector of Schools will then appoint the selected candidates in order of merit from the list approved by the Director of Elementary Education as and when required as per the Government Rules and Government instructions for the time being in force. Rule 3 (ix) is pertinent in as much as it stipulates that an appointed candidate may be required to undergo such in-service training as Government may decide from time to time. This Rules makes it clear that the Training is a follow up to an appointment to a vacant sanctioned post to the services of the Government.

26. From the above, it would be seen that a detailed procedure has been stipulated as to how the selection proceedings would be initiated and culminated. It is very pertinent to mention that Rule 3(vi) of the Rules of 1977 as it stood prior to 10/11/2005 clearly mandated that the appointments would be made by the Deputy Inspector of Schools in order of merit from the list approved by the Director of Elementary Education. Further to that, if the Rules of 1977 are perused after the amendments carried out in the year 2005 and 2012, it would be seen that the 'DEE', defined as the Director of Elementary Education in terms with Rule 2(iv) of the Rules of 1977, would be the appointing authority. This Court further in order to clarify as to whether the District Elementary Education Officer was the appointing authority in terms with the Rules of 1977 at any point of time, enquired with the learned counsels for the petitioner as well as the respondents. However, no provision was shown that the District Elementary Education Officer was an Appointing Authority at any point of time in terms with the Rules of 1977. Under such circumstances, the order of appointment dated 6/12/1999 in favour of the petitioner having been issued by the District Elementary Education Officer, the same was not in accordance with the Rules of 1977 so also the Act of 1974.

27. This Court finds it relevant to take note of another set of Rules known as the Assam Elementary Education (Provincialisation) Service and Conduct Rules, 1981(hereinafter in short referred to 'as the Rules of 1981'). These Rules were framed in exercise of powers under Section 27(1) of the Act of 1974 to regulate the service condition of Elementary School Teachers and Employees. In terms with Rule 3(vi) of the Rules 1981 the recruitment to the post of the teachers in the Elementary School shall be made under the provisions of Part-1 of Rule 3 of the Rules of 1977. It is also relevant to take note of Rule 3(v) of the Rules of 1981 which mandates that the teachers on appointment should be required to undergo Junior Basic or Normal Teachers' Training course or any other training recognized by the Government.

28. Rule 4 of the Rules of 1981 relates to confirmation. In terms with the said Rule subject to availability of a permanent vacancy, every member of the service shall be confirmed in the cadre/class/grade to which he/she is appointed substantively if he/she has completed at least 3 years of continuous service after provincialisation or he/she has successfully undergone necessary training as may be prescribed by the department and facilities for which have been offered to him/her by the department during the period of 3 years. The first proviso to Rule 4(b) of the Rules of 1981 further stipulates that those teachers who have completed 45 years of age or have completed 3 years of continuous service after provincialisation but no facilities have been provided to him/her for the prescribed training, his/her service will be confirmed, provided there is nothing adverse against him/her. Further to that, the second proviso to Rule 4(b) of the Rules of 1981 stipulates that all teachers whose services have been confirmed and approved by the State Board or the Regional Board prior to 5/9/1975 shall be deemed to be confirmed duly with effect from the date of such confirmation. In terms with Rule 5 (b) of the Rules of 1981 all matters relating to pay, allowances, leave, pension, discipline and other conditions of service shall be regulated by the general Rules framed by the Government from time to time.

29. Therefore, from the above provisions of the Rules of 1981, it would be seen that a person upon being appointed in terms with the Rules of 1977 would be

facilitated by the respondent authorities to undergo a training and upon qualifying in such training, the person concerned would be confirmed by virtue of Rule 4(b) of the Rules of 1981. Otherwise, if no training is facilitated for a period of three years, the person would have a right to be confirmed provided there is nothing adverse against the employee. However, from the records, nothing is available which would show that the petitioner was sent for training or the petitioner was confirmed even otherwise. It would also be seen that there are no materials to show that the petitioner was at any point of time was given any of the benefits as mentioned in Rule 5(b) of the Rules of 1981.

30. In that view of the matter and taking into consideration that the appointment letter dated 6/12/1999 so issued was not by an authority competent under the Rules of 1977 to do so and there being no materials which would show that the petitioner was appointed as per the mandate of law above referred, this Court is not in a position to issue a writ in the nature of mandamus to compel the authorities to release the salary for the period from 6/12/1999 to the date of alleged superannuation of the petitioner”.

5. Dr. R. Sarma, learned counsel for the appellant, has contended that the learned Single Judge had erred in drawing conclusion that the authority authorized to appoint teachers as of the year 1999 was the Deputy Inspector of Schools and not the District Elementary Education Officer. In this connection, Dr. Sharma has referred to the provisions of the Assam elementary Education (Provincialisation) Rules 1977 and has submitted that the appointing authority at that relevant point of time was the jurisdictional District Elementary Education Officer and the appellant having been appointed by a competent authority, such appointment cannot be denoted to be invalid. Accordingly, Dr. Sarma had submitted that the Judgment and Order dated 28.04.2023 would call for an interference.

6. We have heard the learned counsels appearing for the parties and also perused the materials available on record.

7. Although Dr. Sarma, learned counsel for the appellant had raised a contention

with regard to the conclusion reached by the learned Single Judge with regard to the authority empowered to appoint teachers in Elementary Schools during the year 1999, the said issue would not merit a consideration, inasmuch as, the appellant has not brought on record the select list as prepared and has not demonstrated that such select list was authenticated by the Director of Elementary Education, in terms of the Rules of 1977.

8. We have carefully perused the conclusions drawn by the learned Single Judge in the Judgment & Order dated 28.04.2023 and are of the considered view that the same are well reasoned. The learned counsel for the appellant has failed to persuade us to take a different view in the matter. Accordingly, the Judgment & Order dated 28.04.2023; passed by the learned Single Judge in WP(C) No. 6427/2017 would call for no interference.

9. In view of the above position, the writ appeal is held to be devoid of any merit and accordingly, the same stands dismissed. However, there would no order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant