

GAHC010165452022



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

Case No. : WP(C)/5509/2022

MOMI GOGOI
W/O-MAHENDRA BURAGOHAIN,
R/O- VILLAGE SUKAFANIMONAGARH,
P.O-NIMONAGARH,
DIST- CHARAIDEO, ASSAM, PIN-785689

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
EDUCATION DEPARTMENT, DISPUR, GUWAHATI- 06.

2:THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI- 06.

3:THE DIRECTOR
OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19.

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER
SIVSAGAR ASSAM

5:THE TREASURY OFFICER
NAZIRA SUB-TREASURY
SIVSAGAR

ASSAM

6:THE BLOCK ELEMENTARY EDUCATION OFFICER
NAZIRA
SIVASAGAR
ASSA

Advocate for the Petitioner : MR. J M A CHOUDHURY, MR. A B T HAQUE

Advocate for the Respondent : SC, EDU, SC, FINANCE

BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR

ORDER

Date : 13.08.2024

- 1.** Heard Mr. J.M.A. Choudhury, learned counsel for the petitioner.
- 2.** Also heard Mr. B. Talukdar, learned Standing counsel, Elementary Education Department, Government of Assam, for respondent Nos. 1, 3, 4 & 6 and Mr. A. Chalia, learned Standing counsel, Finance Department, for respondent Nos. 2 & 5.
- 3.** Pursuant to an Employment Notice, dated 28.12.1996, issued by the Director of Elementary Education, Assam inviting applications for filling up 7500 vacant posts of Assistant Teachers in ME/MV/ME Madrassa/Upper Primary/Lower Primary Schools in the different districts of Assam, the petitioner made her application for the post of Assistant Teacher of L.P. School. After going through the whole selection process, the petitioner along with two others were appointed as Stipendiary Teachers in Primary Schools against the posts shown against their names by an Order dated 06.12.1999 issued by the Deputy Inspector of Schools, Sivasagar, Assam. In the said order, the name of the petitioner appears at Serial No. 2 and she is shown posted in Amulapatty L.P.

School. The petitioner along with 49 other teachers were deputed to undergo Junior Basic Training Course by an Order, dated 10.01.2002, issued by the Deputy Inspector of Schools, Sivasagar. The petitioner completed Junior Basic Training Course and a certificate to that effect was also issued on 17.04.2003. Thereafter, the petitioner, by an Order, dated 21.06.2003, issued by the Deputy Inspector of Schools, Sivasagar, was allowed to draw scale of pay on passing the Junior Basic Training Examination.

4. While the petitioner was functioning as such, she made an application for transfer to Nimanagarh Bagisha L.P. School under the Deputy Inspector of Schools, Nazira on her own request and consequently, by an Order, dated 30.01.2004, issued by the District Elementary Education Officer, Sivasagar, the petitioner was transferred on her own request and in her own grade and scale of pay to Nimanagarh Bagisha L.P. School under the Deputy Inspector of Schools, Nazira and Block Elementary Education Officer, Nazira with immediate effect. The petitioner continued receiving her salary upto the month of February, 2012, however, the salary of the petitioner, from the month of March, 2012, is being withheld till date by the respondent authorities. Being aggrieved the present writ petition.

5. Mr. J.M.A. Choudhury, learned counsel for the petitioner, submits that after undergoing the selection process, the petitioner was appointed as Stipendiary Teacher in Amulapatty L.P. School. Thereafter, the petitioner underwent a Junior Basic Training Course and was allowed to draw the scale of pay by the Order dated 21.06.2003. Thereafter, due to personal reasons, the petitioner, by an Order 30.01.2004, was transferred to Nimanagarh Bagisha L.P. School under the Deputy Inspector of Schools, Nazira on her own request. The petitioner also continued receiving her salary, however, from the month of March, 2012, her

salary has been withheld without any reasons till date. He submits that were allegation of illegal/irregular appointments of teachers under the Deputy Inspector of Schools, Nazira and in this regard, a verification/inquiry was conducted by the authority. He, however, submits that the case of the petitioner is not a case of illegal or irregular appointment inasmuch as she underwent the selection process in terms of the Employment Notice dated 28.12.1996 issued by the Director of Elementary Education, Assam and after undergoing the selection process, the petitioner was duly appointed. He submits that it was only after the transfer of the petitioner to the said Nimanagarh Bagisha L.P. School that her case has been clubbed up with the illegal / irregular appointments made in the said Nazira Block under the Deputy Inspector of Schools, Nazira and hence, salary of the petitioner has been withheld. He, therefore, submits that a direction be issued to the respondents to release the salary of the petitioner forthwith.

6. Mr. B. Talukdar, learned Standing counsel, Elementary Education Department, submits that initially the petitioner was not paid her salary from August, 2006 due to shortage of post and budget provision as the allotted budget was less than working Teachers in Sivasagar district. However, 1582 Nos. of supernumerary posts were created and temporary retention and budget allocation in respect of 1476 Nos. of posts was accorded out of 1582 Nos. of posts by Government Letter dated 21.01.2009 and thereafter, 1476 Nos. of Supernumerary Teachers including the petitioner received their salary upto February, 2012. In the meantime, as there were illegal / irregular appointments of Teachers, the Government of Assam in the Department of Elementary Education took over the matter and after verification, certain number of posts were approved for appointments in the year 2021 on the basis of the Cabinet

Decision held on 07.10.2020. Accordingly, the appointments were made on 30.01.2021 in terms of the approval communicated vide Letter dated 21.01.2021. He, however, submits that the name of the petitioner is not included in the approved list and therefore, salary of the petitioner has not been paid.

7. This Court has considered the submissions made by the learned counsel for the parties.

8. It is an undisputed fact that the petitioner was appointed by the Order dated 06.12.1995 issued by the Deputy Inspector of Schools, Sivasagar as Stipendiary Teacher after undergoing the selection process in terms of Employment Notice dated 28.12.1996 which was issued by the Director of Elementary Education, Assam. It is also undisputed that the petitioner was deputed for undergoing Junior Basic Training Course by the Order dated 10.01.2002 and she successfully completed the Junior Basic Training Course on 17.04.2004. Thereafter, the petitioner was allowed to draw the scale of pay on completion of Junior Basic Training Examination by Order dated 21.06.2003. The petitioner was also permitted to open her Service Book also to subscribe to the GPF.

9. During the course of employment in the said Amulapatty L.P. School, Sivasagar, the petitioner requested for transfer to Nimanagarh Bagisha L.P. School and after consideration of her request, by Order dated 30.01.2004, the petitioner was transferred to the said Nimanagarh Bagisha L.P. School under the Deputy Inspector of Schools, Nazira on her own request.

10. In the meantime, there were allegations of illegal and irregular appointments made in the different districts of Assam and accordingly, the

Government of Assam decided to have a verification of all those teachers who were appointed illegally and irregularly. Accordingly, a Notice dated 23.06.2014 was issued by the District Elementary Education Officer, Sivasagar requiring the petitioner to appear on 12.08.2014 for verification of her documents. The petitioner, accordingly, appeared and submitted all the required documents before the concerned authority for verification. What is to be noted herein is that the claim of the petitioner that she has been appointed after undergoing selection process consequent to the Employment Notice dated 28.12.1996 is not rebutted by the respondents in their affidavits. The petitioner underwent the Junior Basic Training Course and also was allowed to draw her scale of pay pursuant to the successful completion of the Junior Basic Training Course is also not rebutted in the affidavit of the respondents. The only ground taken is that the name of the petitioner is not included in the Government approved list after verification of the illegal and irregular appointments of teachers.

11. An important point of note in the present writ petition is that after the petitioner was appointed after undergoing the selection process and was posted in Amulapatty L.P. School, Sivasagar, the petitioner made a request for being posted to Nimanagarh Bagisha L.P. School under the Deputy Inspector of Schools, Nazira and she was permitted to draw her salary up to February, 2012. It was at this stage that the case of the petitioner was clubbed up with the case of irregular / illegal appointments of teachers in the State of Assam. The petitioner also appeared before the concerned authority in terms of the Notice dated 23.06.2014 by submitting all her documents. However, there is no explanation in the affidavit filed by the respondents with regard to the status of the petitioner. There is no denial of the fact that the petitioner is continuing to teach in the said Nimanagarh Bagisha L.P. School under the Deputy Inspector of

Schools, Nazira till date.

12. Accordingly, this writ petition is disposed of directing the Director of Elementary Education, Assam to have a verification of all the documents in respect of the petitioner. The petitioner is permitted to produce all her documents before the Director of Elementary Education, Assam within a period of 2 (two) weeks from today. Thereafter, after verification if the petitioner is found to have been legally appointed in terms of the Employment Notice dated 28.12.1996, the arrear salary w.e.f. March, 2012 as well as current salary of the petitioner shall be paid to the petitioner within a period of 3 (three) months by the respondents after following all prescribed procedures.

13. With the above observations and directions, this writ petition is disposed of.

JUDGE

Comparing Assistant