

GAHC010170872024



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

Case No. : WA/291/2024

THE STATE OF ASSAM AND ANR
REP BY THE SECRETARY TO THE GOVT OF ASSAM EDUCATION
ELEMENTARY DEPTT DISPUR, GUWAHATI 06

2: THE DIRECTOR OF ELEMENTARY EDUCATION
KAHILIPARA
GUWAHATI-781019
DISTRICT- KAMRUP(METRO)
ASSAM

VERSUS

SADOU AXOM PRATHMIK TET UTTIRNO SIKSHAK SAMAJ AND ORS
- A SOCIETY HAVING REGISTERED OFFICE AT HOUSE NO. 4, MULA
GABHORU PATH, NEAR RAJDHANI MASJID, DISPUR, GUWAHATI, ASSAM,
PIN- 781006 AND REPRESENTED BY ITS PRESIDENT SRI TRAILOKYA
DEKA.

2:TRAILOKYA DEKA
SON OF LATE THANESWAR DEKA
RESIDENT OF MULAGABHARU PATH
RAJDHINI MASJID
DISPUR
GUWAHATI- 781006
DISTRICT- KAMRUP(M)
ASSAM.

3:THE MISSION DIRECTOR
AXOM SARBA SIKSHA ABHIYAN MISSION
KAHILIPARA
GUWAHATI- 781019
DISTRICT- KAMRUP(M)
ASSAM.

4:THE OFFICER ON SPECIAL DUTY
AXOM SARBA SIKSHA ABHIYAN MISSION
KAHILIPARA
GUWAHATI- 781019
DISTRICT- KAMRUP(METRO)
ASSAM

Advocate for the Petitioner : MR. N J KHATANAR, SC, EDU,MS K DAS

Advocate for the Respondent : sc, ssa, MR. I CHOWDHURY SR ADV (R-1,2),K AHMED(R-1,2),MR. S P SHARMA(R-1,2)

BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE SUMAN SHYAM

ORDER

Date : 30/08/2024
Vijay Bishnoi, CJ

Heard Mr. D. Saikia, learned Advocate General, Assam, assisted by Mr. N.J. Khataniar, learned Standing Counsel, Education Department, Assam, appearing for the appellants. We have also heard Mr. I. Chowdhury, learned senior counsel assisted by Mr. S.P. Sharma, learned counsel for the respondents.

2. This writ appeal is preferred on behalf of the State being aggrieved with the order dated 12/08/2024 passed by the learned Single Judge in WP(C) No. 4031/2024 whereby, the learned Single Judge while issuing notices to the respective respondents in the writ petition, has passed an interim order to the effect that the advertisement dated 06/08/2024 issued by the Director of Elementary Education, Assam, inviting online application from the contractual and State Pool contractual teachers under SSA for filling up 35,133 posts of teachers of Lower Primary, Assistant Teachers of Upper Primary and Science Graduate Teachers in Upper Primary School shall remain suspended till the next date.

3. The State being aggrieved with the said interim order has preferred this writ appeal, *inter-alia*, on the ground that the order passed by the learned Single Judge is non-speaking and not supported by any reasons. It is also submitted that the order impugned was passed on the very first date and no opportunity was granted to the State respondents to place their case. It is further submitted that though several submissions were made before the learned Single Judge but none of the submissions

were taken into consideration.

4. It is argued by Mr. D. Saikia, learned Advocate General, Assam, that the advertisement dated 06/08/2024 clearly stipulates that only willing and eligible candidates can apply pursuant to the advertisement dated 06/08/2024 whereby, the State Government has decided to fill up 35,133 posts of Assistant Teachers and Science Graduate Teachers in Lower Primary as well as the Upper Primary Schools from the contractual teachers working since 2012. It is contended that if any contractual teacher is not willing to apply pursuant to the said advertisement, the State Government is not compelling contractual teacher to apply pursuant to the said advertisement.

5. It is also contended by Mr. Saikia that pursuant to the said advertisement, out of 35,133 contractual teachers, more than 24,000 have applied and they are willing to be appointed as Assistant Teachers on the conditions mentioned in the advertisement. It is submitted that no person would be benefited by staying the whole process of recruitment and the interest of the contractual teachers can very well be protected by allowing the State to continue with the selection process pursuant to the advertisement in question and the grounds on which the petitioners have approached the learned Single Judge, can be considered at the time of decision of the writ petition. The learned Advocate General has, therefore, prayed that the interim order passed by the learned Single Judge be set aside and the State be allowed to continue with the selection process pursuant to the advertisement in question during the pendency of the writ petition.

6. Mr. I. Chowdhury, learned senior counsel appearing for the writ petitioners/respondents has submitted that as a matter of fact, these contractual employees working with the State of Assam since 2012 are regularly agitating for regularization of their services as per the provisions of the Right to Education Act. It is submitted that their claim regarding regularization is pending before this Court and the contractual teachers are apprehensive that if the selection pursuant to the concerned advertisement is allowed to continue their rights regarding regularization and other benefits would be adversely affected. The learned counsel has fairly submitted that if the interest of the contractual teachers is protected and the State is allowed to continue with the recruitment process, the petitioners' association may not have any objection.

7. Having heard the learned counsel for the parties and after going through the materials available on record as well as the impugned order, we are of the view that the impugned order is a non-speaking order issued without assigning any reasons and without taking into consideration the ramifications which may cause on account of halting the process of selection pursuant to the advertisement in question. Nobody would be benefited if the whole process of the recruitment

pursuant to the advertisement in question is halted. However, at the same time, we are conscious of the fact that the contractual teachers are agitating for their rights for regularization and other benefits before this Court and the matter is pending.

8. Hence, in the interest of justice, it is appropriate to allow the State Government to continue with the selection process pursuant to the advertisement dated 06/08/2024. In such circumstances, the interim order passed by the learned Single Judge is interfered and the State is allowed to continue with the selection process initiated pursuant to the advertisement dated 06/08/2024. However, it is made clear that the selection process pursuant to the said advertisement would not affect the claims of the contractual teachers raised in WP(C) 4031/2024 and other writ petitions, regarding regularization etc. pending before this Court and the selection pursuant to the advertisement in question would remain subject to the outcome of WP(C) No. 4031/2024 and other writ petitions filed by the contractual teachers.

9. The interim order dated 12/08/2024 passed by the learned Single Judge in WP(C) 4031/2024 is modified accordingly.

The Writ Appeal is disposed of.

JUDGE

CHIEF JUSTICE

sukhamay

Comparing Assistant