

GAHC010185442022



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

Case No. : WP(C)/5977/2022

THE PURBANCHAL EDUCATIONAL WELFARE SOCIETY (PEWS)
A REGD. SOCIETY BEARING REGISTRATION NO. RS/KAM/240/R/201 OF
2003-04 UNDER THE SOCIETIES REGISTRATION ACT, 1860, HAVING ITS
OFFICE AT R.G.BARUAH ROAD, OPP. GUWAHATI COMMERCE COLLEGE,
GHY, DIST.- KAMRUP (M), ASSAM, PIN- 781003, REP. BY ITS SECY., SRI
RAMENDRA KUMAR CHAMUAH

VERSUS

THE STATE OF ASSAM AND ANR.
NOTICE THROUGH THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,
LABOUR WELFARE DEPTT., DISPUR, GHY-6

2:SRI JAYANTA SAIKIA
S/O- SRI SADHAN CHANDRA SAIKIA
C/O- SHRI BIRAJ BARMAN
NARENGI HOUSING COLONY
NARENGI
GHY-26
DIST.- KAMRUP (M)
ASSA

Advocate for the Petitioner : MR. U K DAS, MS. B D SARMAH, MS. H THAKURIA, MR. K M HALOI

Advocate for the Respondent : GA, ASSAM, MR. A D GUPTA (r-2), MR J K SHARMA (r-2), MS B DAS (r-2), MR B YADAV (r-2), MS S DAS (r-2), MS N DEKARAJA (R-2), MR. Y S MANNAN (R-2), MS. A S BAIDYA (r-2), MR. T BAIDYA (r-2)

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

ORDER

Date : 06.08.2024

Heard Mr. U. K. Das, learned counsel for the petitioner. Also heard Ms. U. Das, learned Addl. Senior Government Advocate, appearing for the respondent no. 1 and Mr. A. Dasgupta, learned counsel appearing for the respondent no. 2.

The petitioner, in the present proceeding has assailed an order dated 01.09.2022, passed by the learned Labour Court at Gauhati, Assam, wherein the challenge as presented by the petitioner to the sole respondent, engaging one B. Kalita to represent him in the proceedings so pending, was negated.

In pursuance to the award dated 18.09.2017, passed in favour of the respondent no. 2, herein, by the learned Labour Court, Gauhati, Assam and the same having been upheld by this Court, vide an order dated 03.09.2019, in WP(C)/6956/2017, the respondent no. 2 had instituted a proceeding under the provisions of Section 33-C (2) of "The Industrial Disputes Act, 1947; for computation of the amounts receivable by him, in terms of the award passed by the learned Labour Court, Gauhati, Assam.

During the pendency of the said proceeding and the management witnesses being examined, the petitioner having been found that such examination was being carried out by one B. Kalita, as the representative of the respondent no. 2, herein, raised an objection in the matter on the

ground that said Mr. B. Kalita, could not have represented the respondent no. 2 before the learned Labour Court, inasmuch as, the same would have been in violation of the provisions of Section 36 of the said Act of 1947 to be more specific in violation of Section 36(1) (c) of the said Act of 1947. Accordingly, the learned Labour Court, on considering the said issue, rejected the objection raised by the petitioner herein, vide an order dated 01.09.2022 and thereby permitted the respondent no. 2 to be continued to be represented by said Mr. B. Kalita.

Being aggrieved, the petitioner has instituted the present proceeding before this Court.

At the outset, it is to be noted that this Court while issuing notice in the matter, was pleased vide order dated 14.09.2022 to stay the proceeding, under Section 33-C (2) of the said Act of 1947, as instituted before the learned Labour Court, Gauhati, Assam.

The learned counsel for the petitioner and the respondent no. 2 have stated at the Bar that an agreement has been reached, by which the respondent no. 2, herein, shall not insist for being continued to be represented by said Mr. B. Kalita, and he would engaged a learned Advocate for representing him in the proceeding so instituted by him before the learned Labour Court, Gauhati, Assam.

It is to be noted that the provisions of Section 36(4) of the said Act of 1947, mandates that in any proceeding before a Labour Court, Tribunal or National Tribunal; a party to a proceeding/dispute may be represented by a legal practitioner with the consent of the other party to the proceeding and with the leave of the Labour Court, Tribunal or National

Tribunal, as the case may be.

The learned counsel for the petitioner has also submitted that he would have no objection in the respondent no. 2 being represented by a learned Advocate before it, inasmuch as, the management is also represented in the proceeding by a learned counsel.

At the stage, the learned counsel for the petitioner has submitted that in terms of the directions passed by this Court, vide an order dated 17.05.2023; an amount of Rs. 1, 88, 600/- was deposited in form of a draft bearing No. 499485, dated 30.05.2023, drawn in the name of the respondent no. 2, herein. It is contended by the learned counsels to the proceeding that the said draft was not received by the respondent no. 2 and consequently, not encashed by him and accordingly, the same has so lapsed.

The petitioner herein is at liberty to take back the said draft from the Registry of this Court for having the amount so involved re-authorized to itself, on submission of an application along with a copy of this order.

In view of the above position, the writ petition need not be retained any further and the same is disposed of by requiring the respondent no. 2, herein, to engage an Advocate of his choice to represent him before the learned Labour Court, Gauhati, Assam in Case No. 02/2020, under Section 33-C (2) of "The Industrial Disputes Act, 1947"; presently pending disposal before the learned Labour Court, Gauhati, Assam.

In view of the above agreement between the parties and the observations made, by this Court herein above, the present writ petition

stands disposed of in terms thereof.

JUDGE

Comparing Assistant