

GAHC010189542019



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

WA No.185/2022

Sri Kamala Kanta Phukan @ Kamala Phukan
S/O Late Padmeswar Phukan,
Resident of Vill Phukan Gaon,
P.O. And P.S. Ghilamara, Dist. Lakhimpur, Assam, PIN 787053

....Appellant

-Versus-

The State of Assam and 5 Ors.
Represented by The Commissioner And Secretary
To The Government of Assam, Education
(Secondary) Department,
Dispur, Guwahati-6

2. The Director of Secondary Education
Assam
Kahilipara
Guwahati-19

3. The Inspector of Schools
Lakhimpur District Circle
Lakhimpur
District Lakhimpur
Pin 787001

4.The Headmaster
Dakhin Ghilamara High School
P.O And P.S. Ghilamara
District Lakhimpur
Pin 787058

5. Smti Indrani Baruah
W/O Mr. Indreswar Gogoi
Resident Of Bhakat Gaon
P.O. And P.S. Ghilamara
District Lakhimpur
Pin 787058
6. Sri Mileswar Saikia
S/O Late Mayaram Saikia
Resident Of Vill. No. 2
Batamari
P.O. - Batamari
P.S. Ghilamara
Dist. Lakhimpur
Pin-787 058

....Respondents

For petitioner/appellant(s) : Mr. P.J. Saikia, Sr. Advocate
Mr. R.S. Mishra, Advocate

For respondent(s) : Mr. J. Roy, Sr. Advocate
Mr. R. Hazarika, Advocate
Mr. N.J. Khataniar, SC, Education Department

Date of Hearing : **18.06.2024**

Date of Judgement : **21. 06.2024**

– B E F O R E –

HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI

HON'BLE MR. JUSTICE KARDAK ETE

JUDGMENT & ORDER (CAV)

(Kardak Ete, J)

Heard Mr. P.J. Saikia, learned senior counsel assisted by Mr. R.S. Mishra, learned counsel for the appellant. Also heard Mr. J. Roy, learned senior counsel assisted by

Mr. R. Hazarika, learned counsel for the respondents No.5 and 6 and Mr. N.J. Khataniar, learned counsel for the State Respondents.

2. This intra-court appeal is preferred against the judgment and order dated 31.10.2016 passed by the learned Single Judge in WP(C) No.513/2015, whereby the writ petition filed by the appellant and one Shri Mantu Changmai has been dismissed.

3. The case, in brief, is that the appellant was initially appointed as Assistant Teacher (Arts) in Dakhin Ghilamara High School (Venture) Dhakuakhana in the district Lakhimpur, Assam on 25.01.1996. The respondent no. 5 and 6 have filed the WP(C) No. 36/2013, claiming seniority against the appellant and one Shri Mantu Changmai.

4. During the process of provincialization, the names of the appellant and Shri Mantu Changmai were dropped. Being aggrieved, the appellant along with Mantu Changmai have filed the WP(C) No. 2876/2013. The learned Single Judge vide common order dated 13.05.2014 disposed of both the writ petitions and directed the respondent authority to resolve the seniority dispute after hearing the parties. Pursuant thereto vide speaking order dated 01.08.2014, the dispute regarding seniority has been resolved, whereby, the appellant and Shri Mantu Changmai were declared seniors to the respondent Nos. 5 and 6. Thereafter, vide order dated 14.08.2014, the services of the appellant and Shri Mantu Changmai were provincialized under the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011.

5. The respondent Nos. 5 and 6 filed writ petition being WP(C) No. 4747/2014, challenging the provincialisation of the appellant and Shri Mantu Changmai. Vide order dated 17.09.2014, the learned Single Judge passed an interim order to the

effect that till the returnable date, the services of the appellant and Shri Mantu Changmai shall not be provincialised. Pursuant to the said interim order, the respondent authority vide order dated 16.10.2014 has withdrew the provincialisation order dated 14.08.2014, by which the services of the appellant and one Mantu Changmai were provincialized. Being aggrieved, the appellant and Mantu Changmai filed the WP(C) No. 513/2015.

6. During the pendency the above two writ petitions, this Court vide order dated 23.09.2016 passed in WP(C) No. 319/2012 and other connected writ petitions has declared the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 constitutionally invalid. In view of such development, the learned Single Judge, by a common order dated 31.10.2016 dismissed both the writ petition i.e. WP(C) No. 4747/2014 filed by the Respondent No. 5 and 6 and WP(C) No. 513/2015 filed by Appellant and Shri Mantu Changmai, as no live issue survives for adjudication in the said two writ petitions.

7. Thereafter, on the review petition No. 167/2016 filed by the State Government, this Court vide order dated 02.01.2017, has held that the rights of the employees who have been benefitted under the struck down statute can be taken care of by giving retrospective effect to the proposed legislation, if the legislature so decides, till then, it is ordered that the services of the provincialised category and their status as Govt. employees shall not be disturbed and they will continue to receive all the benefits which they are getting under the Provincialisation Act, 2011, since struck down by the judgement under review and disposed of the review petition.

8. In the meanwhile, the State respondents has enacted the Assam Educational (Provincialisation of Services of Teachers and Re-Organisation of Educational Institutions) Act, 2017, wherein under Section 24, provides that all the

teachers whose services were provincialised prior to 23.09.2016 to continue and their cases shall be reviewed as the eligibility norms set forth for provincialisation under the new Act.

9. The appellant and Shri Mantu Changmai approached the authority after dismissal of the two writ petitions i.e. WP(C) No. 4747/2014 filed by the respondent nos. 5 and 6 and WP(C) No. 513/2015 filed by the appellant and Shri Mantu Changmai and in view of the order dated 02.01.2017 passed by this Court in Review Petition No. 167/2016. The respondent authority has rejected the claim of the petitioner, on the grounds that since the writ petitions have been dismissed vide order dated 31.10.2016, the case of the petitioner could not be considered.

10. The appellant along with Mantu Changmai have filed the WP(C) No. 3306/2017 praying for restoration of the provincialisation of services as Assistant Teacher (Arts) along with all consequential benefits. The learned Single Judge vide order dated 22.11.2019 dismissed the writ petition, on the ground that impugned order dated 31.10.2016 passed in WP(C) No. 513/2015 still being in force and unless the same is reviewed, modified or altered by competent Court, no such direction to the respondent authorities can be passed in the said proceedings. Hence, this present writ appeal against order dated 31.10.2016 passed in WP(C) No. 513/2015.

11. We have considered the submissions of learned counsel for the parties and perused all the judgement and orders passed by this Court in the above referred proceedings.

12. The learned Single Judge vide impugned order dated 31.10.2016 has dismissed the writ petitions being WP(C) No. 4747/2014 and WP(C) No. 513/2015 in view of the declaration of the Assam Venture Educational Institutions

(Provincialisation of Services) Act, 2011 being constitutionally invalid and having been found no live issue survived for adjudication.

13. The dismissal of the writ petitions was in view of declaration of the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 under which the services of the appellant and one Mantu Changmai were provincialised. In our considered view we find no infirmity in impugned order dated 31.10.2016 passed by learned Single Judge in dismissing the writ petitions, WP(C) No. 4747/2014 and WP(C) No. 513/2015 as there was no live issue survived to be adjudicated at that point of time. Therefore, the above writ petitions filed by the appellant as well as the respondent No. 5 and 6 were rightly dismissed.

14. However, in view of the order dated 02.01.2017 passed in Review petition No. 167/2016 by this Court on the review Petition filed by the State Government subsequently and coming into force of the new Act, namely, the Assam Educational (Provincialisation of Services of Teachers and Re-Organisation of Educational Institutions) Act, 2017, wherein under Section 24, provides that all the teachers whose services were provincialised prior to 23.09.2016 to continue and their cases shall be reviewed as the eligibility norms set forth for provincialisation under the new Act, coupled with the judgment and order dated 21.06.2024 which we have rendered in the Writ Appeal No. 260/2019, we are of the view that the impugned order dated 31.10.2016 would cause no impediment to the grievances of the parties, therefore, no further deliberation is required in this writ appeal. Accordingly, writ appeal stands closed.

JUDGE

CHIEF JUSTICE

Comparing Assistant