

GAHC010193582017



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

Case No. : WP(C)/1262/2017

PREMODA BORO and ANR.
W/O SRI BIMAL BASUMATARY, R/O VILL- DEWONPUKHURI, P.O.
KUHIARKUCHI, PO.S. KHOIRABARI DIST. UDALGURI BTAD, ASSAM PIN -
7854522

2: SMTI. KANDURI BORO
W/O LT. KAMAL BORO
R/O VILL- DEWONPUKHURI
P.O. KUHIARKUCHI P.S. KHOIRABARI
DIST. UDALGURI BTAD
ASSAM
PIN - 785452

VERSUS

THE STATE OF ASSAM AND 8 ORS
REP. BY THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM,
EDUCATION ELEMENTARY DEPARTMENT, DISPUR, GUWAHATI -6.

2:THE DIRECTOR EDUCATION

BODOLAND TERRITORIAL COUNCIL
KOKRAJHAR
ASSAM

3:SARBA SIKSHA ABHIJAN MISSION

ASSAM REP. BY ITS STATE MISSION DIRECTOR
SSA
DISPUR
GUWAHATI.

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER
CUM-DISTRICT MISSION CO-ORDINATOR

SARBA SIKSHA ABHIJAN MISSION
UDALGURI
BTAD
ASSAM

5:THE DEPUTY COMMISSIONER

BEING THE NODAL OFFICER OF MID DAY MEAL SCHEME UNDER SSA
SARBA SIKSHA ABHIJAN
UDALGURI
BTAD
ASSAM

6:THE SCHOOL MANAGING COMMITTEE
OF BINAPANI L.P. SCHOOL
REP. BY ITS PRESIDENT
KHOIRABARI
UDALGURI
BTAD
ASSAM- 784522.

7:THE HEADMISTRESS

BINAPANI LP SCHOOL
KHOIRABARI
UDALGURI
BTAD
ASSAM-784522

8:THE BLOCK ELEMENTARY EDUCATION OFFICER

CUM BLOCK MISSION CO-ORDINATOR
SARBA SIKSHA ABHIJAN MISSION SSA KHORABARI UDALGURI
BTAD
ASSAM.

9:SMT. JAYANTI SWARGIARY
W/O JOGEN SWARGIARY
R/O VILL- DEWONPUKHURI
P.O. KUHIARKUCHI
P.S. KHOIRABARI
DIST. UDALGURI BTAD
ASSAM
PIN - 78542

Advocate for the Petitioner : MR. U K GOSWAMI

Advocate for the Respondent : MS. K SHARMA (R-9)

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

12.02.2024

Heard Mr. U. K. Goswami, learned counsel for the petitioner. Also heard Mr. B. Kaushik, learned standing counsel for the Elementary Education Department and Ms. P. Das, learned counsel appearing on behalf of Mr. P. Nayak, learned standing counsel for the BTC.

2. The petitioners have instituted the present proceedings presenting a challenge to an order dated 01.02.2017, issued by the District Elementary Education Officer (DEEO), Udalguri, terminating the services of the petitioners herein, who were engaged as Cook and Helper by the School Managing Committee (SMC) of Binapani LP School and directing for re-engagement of the respondent no. 9 herein.

3. As projected in the writ petition, the respondent no. 9 was initially engaged as a Cook by the SMC of Binapani LP School on 09.09.2012. The respondent no. 9 having been found to be remaining absent from the school, the SMC resolved to engage the petitioner no. 1 herein as a Cook and petitioner no. 2 herein as a Helper. Accordingly, orders were issued to the petitioners engaging them as Cook and Helper respectively. The petitioners in terms of the said orders of appointment joined their services in the said school.

4. The respondent no. 9 being aggrieved by the termination of her services and the engagement of the present petitioners as Cook and Helper in the school, approached this Court by way of instituting WP(C)/4633/2014, assailing the resolution adopted in this connection by the SMC of Binapani LP School.

5. This Court, upon appreciating the facts involved was pleased vide order dated 10.09.2014, to dispose of the writ petition by directing the DEEO, Udalguri, Assam to

consider and dispose of the representation as preferred by the respondent no. 9 on 26.08.2014 and to take a decision thereon in accordance with law. Thereafter, the DEEO, Udalguri, Assam proceeded to issue the order dated 01.02.2017, directing for re-engagement of the respondent no. 9 by terminating the services of the present petitioners. The present petitioners have by instituting the present proceedings assailed the said order dated 01.02.2017.

6. At the outset, it is to be noted that this Court vide order dated 06.03.2017 was pleased to stay the effect and operation of the said order dated 01.02.2017, until further order(s). The said order dated 06.03.2017 continues to hold the field.

7. The petitioners on 21.05.2019 have filed an affidavit and therein have contended that due to no enrollment of students in Binapani LP School, the said school was merged with Amrakona LP School vide an order dated 18.12.2018. On such merger being effected, there was no existence of Binapani LP School and accordingly, the engagement of the petitioners in the said school has also come to an end. It was also highlighted in the said additional affidavit by the petitioners that they were paid their regular wages till February 2018 and thereafter, w.e.f. March 2018 till 17.12.2018, the petitioners have not been paid their wages.

8. In view of the categorical statements made by the petitioners in their pleadings brought on record by them that the school wherein they were engaged as Cook and Helper respectively, no longer being in existence, this Court is not in a position to issue any direction to the respondent authorities for continuing with the services of the petitioners as Cook and Helper respectively.

9. The petitioners being engaged by the SMC of Binapani LP School, the said SMC no longer being in existence, the services of the petitioners also must be deemed to have come to an end with effect from the date the school was merged with Amrakona LP School, i.e., w.e.f. 18.12.2018. Accordingly, while interfering with the order dated

01.02.2017; it is provided that the services of the petitioners shall be deemed to have continued in Binapani LP School only till 17.12.2018 and thereafter they are deemed to be not in service.

10. The above conclusions having been reached with regard to the continuance of the services of the petitioners in the said school, it is to be noted that the petitioners having continued in the said school till at least 17.12.2018, they are entitled to the wages as due to them for the works as rendered by them as Cook and Helper in the said school. Accordingly, the DEEO, Udalguri, Assam is directed to verify the services rendered by the petitioners w.e.f. March 2018 till 17.12.2018 and upon such verification, if it is found that the petitioners were infact serving in the said school during the said period, they shall be released their due wages for the period they have actually served in the said school.

11. The petitioners are required to submit a detailed representation before the District Elementary Education Officer (DEEO), Udalguri, Assam by bringing on record materials to justify that they were actually in services w.e.f. March 2018 till 17.12.2018 along with a certified copy of this order. The DEEO, Udalguri, Assam on receipt of the said representation along with a certified copy of this order shall carry out the verification as directed herein above and on conclusion shall pass a speaking order and communicate the same to the petitioners. The entire exercise now required to be carried out, shall be so done and concluded by the DEEO, Udalguri, within a period of 90(ninety) days from the date of receipt of the said representation and a certified copy of this order.

12. With the above observations and directions, the writ petition stands disposed of.

JUDGE

Comparing Assistant