

GAHC010210332015



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

Case No. : WP(C)/1272/2015

RAHIZUDDIN DEWAN S/O- LT. HAFIZUDDIN DEWAN, R/O VILL.- KOKILA
NAYAPARA, P.S.- KOKILA BAZAR, DIST.- BONGAIGAON, ASSAM.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE CHIEF SECY. TO THE GOVT. OF ASSAM, DISPUR, GHY- 6.

2:THE COMMISSIONER and SECY. TO THE GOVT. OF ASSAM
EDUCATION SECONDARY DEPTT. DISPUR GHY- 6.

3:THE HIGH POWER COMMITTEE
REP. BY ITS CHAIRMAN THE COMMISSIONER AND SECY. TO THE GOVT.
OF ASSAM SECONDARY EDUCATION DEPTT. DISPUR GHY- 6.

4:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM KAHILIPARA GHY- 19.

5:THE INSPECTOR OF SCHOOLS
BONGAIGAON DIST. CIRCLE BONGAIGAON ASSAM.

6:THE SUPERINTENDENT KOKILA PUB-PARA HIGH MADRASSA
P.O.- KOKILA BAZAR DIST.- BONGAIGAON ASSAM

Advocate for the Petitioner : MS.C DAS

Advocate for the Respondent :

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

ORDER

Date : 04.04.2024

Heard Mr. K. R. Patgiri, learned counsel for the petitioner. Also heard Mr. U. Sarma, learned standing counsel, Secondary Education Department, appearing on behalf of Respondents No. 1, 2, 3, 4 & 5. However, none has appeared on behalf of Respondent No. 6.

2. The petitioner, by way of instituting this present proceedings, has presented a challenge to a decision of the High Powered Committee(HPC) arrived at in its meeting held on 06.08.2011, towards rejecting the case of the petitioner for regularization of his services as a “dropped teacher” of Kokila Pub-Para High Madrassa.

3. The petitioner, herein, in pursuance to an Advertisement, published by the School Managing Committee (SMC) of the said school, submitted his application for the post of Assistant Teacher in Arts. The petitioner was contended to have been selected and thereafter, appointed as an Assistant Teacher in the said school wherein, he joined as an Assistant Teacher on 26.05.1992. The appointment of the petitioner was thereafter provisionally approved by the jurisdictional Inspector of Schools, vide his order, dated 06.11.1992. The said school of the petitioner after being found to be eligible to have the services of the serving teachers therein provincialized w.e.f. 01.08.1995; the cases of all the serving teachers were considered and thereafter, services of 11(eleven) teachers came to be provincialized. The services of the petitioner was not so

provincialized in spite of the fact that he was working in the said school in the year 1992 as an Assistant Teacher.

4. The services of the petitioner having not been provincialized, he was known as a “dropped teacher”. The State respondents, thereafter, vide a Notification, dated 13.01.2003, mandated the procedure to be followed for regularization of the services of such “dropped teachers” like the petitioner, herein.

5. This Court in the case of ***Jiban Chandra Deka & ors. v. State of Assam & ors.***; reported in ***2008(3) GLT 229***; proceeded to dispose of the said writ petition by directing that the cases of the “dropped teachers” be considered in accordance with the norms, criteria and eligibility conditions as prescribed vide the said Notification, dated 13.01.2003, with the modification as directed by this Court in the said case.

6. It is contention of the petitioner that the respondent authorities in terms of the decision of this Court in the case of ***Jiban Chandra Deka***(supra), constituted a High Powered Committee(HPC) and the case of the petitioner along with other similarly situated persons were scrutinized by a screening committee and thereafter, referred to the said High Powered Committee(HPC) for taking necessary action.

7. On conclusion of the process of verification of the cases of the “dropped teachers”; a list of such “dropped teachers” found eligible for provincialization of

their services was published in the media on 21.02.2008. However, the name of the petitioner did not figure in the said list of "dropped teacher" found eligible for regularization of their services. Accordingly, the petitioner, herein, instituted WP(c)1362/2008, praying for regularization of his services as a "dropped teacher" wherein the respondent authorities preferred an affidavit and contended therein, that the petitioner did not appear before the screening committee and as such, his name could not be placed before the High Powered Committee(HPC) for consideration. However, a disputed question of fact having arising into the matter, this Court, vide the order, dated 26.11.2009, permitted the said writ petition being WP(c)1362/2008, to be withdrawn with liberty granted to the petitioner to take recourse to such provisions of law, as may be permissible.

8. It is the further contention of the petitioner that the High Powered Committee(HPC) was further reconstituted vide the Notification, dated 10.07.2010, for the purpose of examination of all pending cases of "dropped teachers" of LP/ME/MEM/High School/Higher Secondary Schools. The petitioner, accordingly, approached the respondent authorities praying for placing his case before the High Powered Committee(HPC). No steps having been taken in this connection; led the petitioner to approach this Court by way of preferring a writ petition being WP(c)1875/2011 praying for consideration of his case for regularization by the said High Powered Committee(HPC). This Court vide order, dated 30.03.2011, disposed of the said writ petition by directing that the case of the petitioner be given its due consideration by the High Powered Committee(HPC) as a "dropped teacher" of Kokila Pub-Para High School. Thereafter, the case of the petitioner was considered by the High Powered

Committee(HPC) and vide Notification, dated 29.11.2014, the petitioner was intimated about the decision of the said High Powered Committee(HPC). The said High Powered Committee (HPC) in its meeting held on 06.08.2011, upon consideration of the case of the petitioner, proceeded to reject the same, holding that as per the norms prescribed, the petitioner was not eligible to be considered as a "dropped teacher"; therefore, his name was not recommended. Being aggrieved with the said decision as arrived at by the High Powered Committee(HPC) in its meeting held on 06.08.2011; the present proceedings has been constituted by the petitioner.

9. A perusal of the Minutes of the meeting of the High Powered Committee(HPC) held on 06.08.2011, wherein, the case of the petitioner reveals that the case of the petitioner was rejected on the ground as per the norms prescribed; the petitioner was not considered as a "dropped teacher". The Commissioner and Secretary to the Government of Assam, Education(Secondary), has filed an affidavit in the present matter and therein, has contended that the petitioner although had contended that he had appeared before the screening committee on 29.11.2005; but has failed to bring on record any evidence of his such appearance before the screening committee pursuant to the Advertisement, issued in this connection. By referring to the decisions of this Court to the effect that the candidates who did not respond to the Advertisement, made in the year 2004 or 2005 would not be permitted to have their cases considered by the High Powered Committee(HPC), it was contended that the case of the petitioner requires no further consideration.

10. It was contended that the norms as held to be not fulfilled by the petitioner, by the High Powered Committee (HPC) in its meeting held on 06.08.2011, relates to the decision of this Court rendered vide the judgment & order, dated, 16.11.2010, in WP(c)4626/2007[**Luleswar Hazarika v. State of Assam & ors.**]; wherein, in paragraph No. 16, it was held that candidates who did not respond to the Advertisement, made in the year 2004 and 2005, in respect of the “dropped teachers”, cannot now claim that their cases have been ignored or not responded to by the High Powered Committee(HPC). This Court further observed that the consideration by the High Powered Committee(HPC) cannot be an endless exercise. The Commissioner and Secretary to the Government of Assam, Education(Secondary), has further referred to an affidavit filed in **Luleswar Hazarika**(supra) wherein it was contended that the Department would only consider the applications as received in pursuance of the Advertisement, issued in the year 2004 and 2005, and would not entertain any new application.

11. Accordingly, it was contended that the petitioner not having appeared before the screening committee, as mandated; the High Powered Committee(HPC) had held that the petitioner had not fulfilled the norms, criteria and eligibility conditions, to be considered as a “dropped teacher”.

12. A perusal of the materials brought on record, reveals that the said High Powered Committee(HPC) was further re-constituted on 10.07.2010 with the stipulation that such re-constitution was for the purpose of examination of all pending cases of “dropped teachers” of all levels of schools. Accordingly, the petitioner, herein, having applied for reconsideration of his case by the re-

constituted High Powered Committee(HPC), and this Court vide order, dated 30.03.2011, passed in WP(c)1875/2011, having specifically required the respondent authorities to have the case of the petitioner considered by the High Powered Committee(HPC) as re-constituted vide Notification, dated 10.07.2010, and such consideration being conceded to by the learned standing counsel appearing for the State respondents; the High Powered Committee(HPC) could not have rejected the case of the petitioner basing on technicalities and his case was mandated to be considered on merits.

13. It is to be noted that while respondents have contended that the petitioner had not appeared before the screening committee; the writ petitioner in his pleadings, has categorically stated that the detailed particulars in his case was prepared by the Superintendent of the said school and forwarded to the respondent authorities at the time of provincialization of the school and the petitioner's name had duly figured therein.

14. It was the further contention of the petitioner that he and along with the said Superintendent of the school had appeared before the screening committee on 29.11.2005 after availing leave for the purpose. This aspect of the matter was also brought to the notice of this Court by the Superintendent of the said school by way of an affidavit filed in the proceeding of WP(c)1362/2008.

15. Upon perusal of the rival claims brought on record, it is not in dispute that the petitioner, herein, comes within the term "dropped teacher". This Court in the case of ***Jiban Chandra Deka***(supra), having prescribed the manner in which

the cases of “dropped teachers” is to be considered and with modification upheld the Notification, dated 13.01.2003; the case of the petitioner, herein, has to be considered on merits strictly in terms of the decision of this Court in the case of **Jiban Chandra Deka**(supra) and in the light of the Notification, dated 13.01.2003.

16. It is seen from the Minutes of the meeting of the High Powered Committee(HPC) as impugned in the present proceedings that the case of the petitioner was rejected by the said committee only by holding that as per the norms prescribed; the petitioner, herein, could not be considered as a “dropped teacher”. The norms for determining as to whether a person whose case was not provincialized along with the other serving teachers of a venture school, would be the norms as spelt-out in the Notification, dated 13.01.2003, and cases of such “dropped teachers” are to be considered for regularization of their services strictly in accordance with the stipulations as made in the Notification, dated 13.01.2003, and the decision of this Court rendered in the case of **Jiban Chandra Deka**(supra).

17. This Court finds that the petitioner satisfies the conditions as mentioned in the Notification, dated 13.01.2003, for being denoted as a “dropped teacher” and accordingly, his case was required to be considered by the High Powered Committee(HPC), on merits.

18. The conclusion of the High Powered Committee(HPC) in its meeting held on 06.08.2011, that the petitioner as per the norms prescribed; was not eligible

to be considered as a “dropped teacher”; in the considered view of this Court, is not acceptable and the same is contrary to the prescription made in this connection in the Notification, dated 13.01.2003.

29. Accordingly, the decision as arrived at by the High Powered Committee(HPC) in its meeting held on 06.08.2011, insofar as it concerns the case of the petitioner, stands interfered with by this Court.

20. In view of the said position; the case of the petitioner, herein, is hereby remanded back to the Secretary to the Government of Assam, Department of School Education, with a direction that the case of the petitioner shall now be placed again before the High Powered Committee(HPC). The High Powered Committee(HPC) shall examine the case of the petitioner strictly in terms of the prescriptions as made in the Notification, dated 13.01.2003, and in the light of the decision of this Court rendered in the case of ***Jiban Chandra Deka***(supra).

21. The above consideration shall be made by the High Powered Committee(HPC) within a period of 3(three) months from the date of receipt of a certified copy of this order.

22. The Secretary to the Government of Assam, Department of School Education, shall, in the event the High Powered Committee(HPC) recommends the case of the petitioner favourably; proceeded to regularize/provincialize the services of the petitioner with effect from the date when the “dropped teachers” similarly situated like the petitioner, were so regularized/provincialized in their

services in pursuance to the issuance of the Notification, dated 13.01.2003. The petitioner, in such an eventuality, would be entitled to all consequential benefits of pay, seniority, etc..

23. The petitioner shall furnish a certified copy of this order before the Secretary to the Government of Assam, Department of School Education, for taking the matter forward.

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

JUDGE

Comparing Assistant