

GAHC010217902023



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

Case No. : WP(C)/5705/2023

PADUMI RAY
W/O LATE SUBODH CH. ROY, R/O VILL-77, KAMARGAON, P.O.-
KAMARGAON, P.S.-SORBHOG, DIST- BARPETA (ASSAM), PIN-781317

VERSUS

THE STATE OF ASSAM AND 7 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,
DEPARTMENT OF ELEMENTARY EDUCATION, DISPUR, GUWAHATI-6

2:THE SECRETARY TO THE GOVERNMENT OF ASSAM
DEPARTMENT OF ELEMENTARY EDUCATION
DISPUR-6

3:THE DIRECTOR
ELEMENTARY EDUCATION DEPARTMENT
GOVERNMENT OF ASSAM
KAHILIPARA
GUWAHATI-19

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER
BARPETA
P.O. AND DIST- BARPETA
ASSAM
PIN-781314

5:THE I/C DEPUTY INSPECTOR OF SCHOOLS
BARPETA
P.O. AND DIST- BARPETA
ASSAM
PIN-781301

6:THE BLOCK ELEMENTARY EDUCATION OFFICER
GOBARDHANA

P.O. AND DIST- BARPETA
ASSAM
PIN-781315

7:THE BLOCK ELEMENTARY EDUCATION OFFICER
BHABANIPUR
P.O.-HOWLY
DIST- BARPETA
ASSAM
PIN-781316

8:HEMEN BARMAN
ASSISTANT TEACHER OF 617 NO. KAYASTHA GAON TRIBAL L.P. SCHOOL
KAMARGAON
P.O.-KAMARGAON
P.S.-KAMARGAON
DIST- BARPETA
ASSAM
PIN-78131

Advocate for the Petitioner : MR J MOLLAH, MR H P GUWALA,MR. A BORO,MS. S P
DAS,MRS. A BHANU

Advocate for the Respondent : SC, ELEM. EDU, MR. A ALI (r-8)

**BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK**

ORDER

30-09-2024

Heard Mr. A. Boro, learned counsel for the petitioner and Mr. G. Pegu, learned Standing Counsel, Elementary Education Department for the respondent Nos. 1 to 7. Also heard Mr. A. Ali, learned counsel for the respondent No.8.

2) Pursuant to the order of the State Government in the Elementary Education Department dated 11.09.1995 and the order of the Director of Elementary Education, Assam dated 27.09.1995, the Deputy Inspector of Schools, Barpeta vide order dated 17.02.1998 appointed the petitioner, a

Matriculate as a stipendiary teacher on compassionate ground in place of her husband late Subodh Ray, Assistant Teacher of 617 No. Kayastha Gaon Tribal L. P. School under Gobordhana Education Block of Barpeta district at stipend of Rs.900/- per month. On completion of her Basic Training w.e.f., 22.11.2001, she started receiving her regular Scale of Pay, pursuant to the order of the Deputy Inspector of Schools, Barpeta dated 29.01.2002. After the retirement of the regular Head Teacher of said 617 No. Kayastha Gaon Tribal L. P. School, the Deputy Inspector of Schools, by order dated 30.01.2018 allowed the petitioner, the senior most Assistant Teacher of said 617 No. Kayastha Gaon Tribal L. P. School to hold the charge of Head Teacher of said L. P. School with financial authority.

3) As she was on leave on medical ground with the application of leave before the Block Elementary Education Officer, Gobordhana, the In-Charge Deputy Inspector of Schools, Barpeta by an order dated 06.12.2022 in absence of the petitioner allowed the respondent No.8, one of the senior most teacher of the said L. P. School, to hold the charge of In-Charge Head Teacher of said 617 No. Kayastha Gaon Tribal L. P. School along with power of financial transaction on temporary basis for smooth functioning of the School and for proper management of mid-day-meal in the said School with the observation that the said order shall come into force with immediate effect and shall be cancelled at any time without any reason thereof.

4) Though the petitioner on regaining her health and on obtaining permission of the BEEO, Gobordhana Education Block went to join her said 617 No. Kayastha Gaon Tribal L. P. School, but she was not allowed to join her service in the said School allegedly by the respondent No.8 and a few guardian of the students of the said School and she informed the said incident to the BEEO,

Gobordhana Education Block as well as to the Deputy Inspector of Schools, Barpeta.

5) As no action was taken by the concerned BEEO as well as by the Deputy Inspector of Schools, Barpeta, the petitioner on 05.06.2023 submitted a representation before the District Elementary Education Officer, Barpeta requesting the said authority to do the needful, so that she can serve her duty as Head Teacher in said 617 No. Kayastha Gaon Tribal L. P. School.

6) As nothing was done, the petitioner on 04.07.2023 submitted a representation before the Secretary to the Government of Assam in the Department of Elementary Education, informing the above and requesting the Secretary to the Government of Assam in the Department of Elementary Education to do the needful enabling her to serve her duty as a Head Teacher of said L. P. School.

7) Since the respondent authorities did not consider her prayer, having no other alternative, the petitioner filed this writ petition on 25.09.2023.

8) Notice in this case was issued on 11.10.2023. The Court after considering the matter, by its order dated 11.10.2023 came to the finding that the order under No. 613 dated 06.12.2022 issued by the Deputy Inspector of Schools, allowing the respondent No.8 to be the In-Charge Head Teacher of said L.P. School was a temporary arrangement to be understood that upon the regular Head Teacher returning back to service after completing the leave period is entitled to a legal right to be restored with her duties as the In-Charge Head Teacher and since the same was not done, this writ petition was filed by the petitioner. The Court while issuing the said order dated 11.10.2023 found that the petitioner could make out a prima facie case therefore, stayed the order

dated 06.12.2022, issued by the Deputy Inspector of Schools, Barpeta by which the respondent No.8 was allowed to serve as the In-Charge Head Teacher of said 617 No. Kayastha Gaon Tribal L. P. School, observing that if the respondent authorities, particularly, the Deputy Inspector of Schools, Barpeta is of the view that the School requires an In-Charge Head Teacher for smooth functioning of the School, then it shall look into the aspect as to why the petitioner being the earlier Head Teacher upon returning back to her duties should not be allowed to resume her duties and directed to pass appropriate order accordingly.

9) In spite of the said order dated 11.10.2023, of the Court the respondent authorities, particularly, the Deputy Inspector of Schools, Barpeta till date did not pass any order.

10) Mr. Ali, learned counsel for the respondent No. 8 on being enquired submitted that in pursuance of the approval of the State Government vide letter dated 26.03.2013, the Director of Elementary Education, Assam by order under No. EE(Plan)-Provn/L.P./Provn/Barpeta/332/2013/55 dated 14.05.2013 provincialised the services of the respondent No.8 w.e.f., 01.01.2013 as an Assistant Teacher of Kamaragaon Lower Primary School under Gobordhana Education Block of Barpeta district as per the provisions of *The Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011*, as amended in 2012 during its force.

11) To that extent, Mr. Ali, learned counsel for the respondent No.8 also placed a copy of the provincialisation order of the respondent No.8 dated 14.05.2013 issued by the DEE, Assam.

12) It is submitted by Mr. Ali, that the service of the respondent No.8 was subsequently attached to 617 No. Kayastha Gaon Tribal L. P. School, wherein, he

is presently serving.

13) The aforesaid facts itself indicates that the respondent No.8 is much junior to the petitioner in service.

14) Considering the entire aspect of the matter and in pursuance of the order dated 11.10.2023, passed by the Court earlier in this proceeding, this writ petition is disposed of directing the Deputy Inspector of Schools, Barpeta to consider the case of the petitioner to be the In-Charge Head Teacher of said 617 No. Kayastha Gaon Tribal L. P. School, as the respondent authorities has not challenged the said finding and the direction of the Court dated 11.10.2023.

15) The Deputy Inspector of Schools, Barpeta shall pass such necessary order within a period of 3 weeks from the date of receipt of a certified copy of this order, to be submitted by the petitioner obtaining necessary acknowledgement from the said authority in that regard.

16) As the petitioner with the due approval of the BEEO, Gobordhana Education Block and the Deputy Inspector of Schools, Barpeta joined her service in said 617 No. Kayastha Gaon Tribal L. P. School, but she was not allowed to join in the said School and as the said fact was intimated to the DEEO, Barpeta way back on 05.06.2023, the respondent authorities shall do the needful allowing the petitioner to join her service in said 617 No. Kayastha Gaon Tribal L. P. School forthwith and to pay her regular salaries from the date of her joining in the said L. P. School.

17) With regard to the arrear salary of the petitioner, as per her entitlement, the respondent authorities in the Elementary Education Department including the Block Elementary Education Department, Gobordhana Education Block, the Deputy Inspector of Schools, Barpeta shall pass necessary order within a period

of 3 months (90 days) from the date of receipt of a certified copy of this order, to be submitted by the petitioner before the Deputy Inspector of Schools, Barpeta as noted above.

18) With the above observation and direction, this writ petition stands disposed of.

19) Copy of the provincialisation order of the respondent No.8 dated 14.05.2013 issued by the Director of Elementary Education, Assam, placed before the Court today by Mr. A. Ali, learned counsel be kept as part of the record.

JUDGE

Comparing Assistant