

GAHC010225422021



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

Case No. : WP(C)/7265/2021

ARATI RANI MAZUMDER
W/O- SRI BIJAN KUMAR PURKAYASTHA, R/O- VILL.- BHEUL (SYEDPUR),
P.O. SYEDPUR, P.S. AND DIST.- HAILAKANDI, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
EDUCATION DEPARTMENT, DISPUR, GUWAHATI-06.

2:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI-19.

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER
HAILAKANDI
P.O.
P.S. AND DIST.- HAILAKANDI
ASSAM

4:THE DEPUTY INSPECTOR OF SCHOOL
HAILAKANDI
P.O.
P.S. AND DIST.- HAILAKANDI
ASSAM
PIN- 788155.

5:HEAD TEACHER
BARBOND M.E. SCHOOL
P.O. BOBOND PART-I
DIST.- HAILAKANDI

ASSAM
PIN- 788164

Advocate for the Petitioner : MD I H LASKAR

Advocate for the Respondent : SC, EDU

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Judgment & Order(Oral)

Date : 06.05.2024

Heard Mr. R. A. Mazumder, learned counsel for the petitioner. Also heard Mr. B. Kaushik, learned Standing Counsel for the Elementary Education, Assam appearing for the respondents no. 1, 2, 3 & 4.

None has appeared for the respondent no. 5.

3. The petitioner, by way of instituting the present proceeding has raised a grievance with regard to non-regularisation of her services as an Assistant Teacher of Barbond M. E. School, Hailakandi, although, the petitioner contends that she is a “dropped teacher”.

4. As projected in the writ petition, the Managing Committee of Barbond M. E. School, Hailakandi adopted a resolution in its meeting held on 04.03.1977, towards appointing the petitioner as a Sanskrit Teacher in the said school. In terms of the said resolution, the petitioner had joined her

services in the said school on 01.04.1977 and served therein, till the year 2018. It is to be noted that at the time of appointment and joining of the petitioner in the said school, the school was in its venture stage. The respondent authorities w.e.f. 01.07.1977, brought the said school under the deficit system of grant-in-aid. On such application of the provisions of deficit system of grant-in-aid in the said school, the services of 6(six) teachers serving therein were brought under the said system, leaving out the petitioner from purview of the benefits now accrued to the serving teachers in the said school on it being brought under the deficit system of grant-in-aid. Thereafter, the petitioner approached the authorities for extending to her the benefit of provincialisation of her services w.e.f. 01.03.1978, as was so extended to the other teachers so working in the said school. The authorities having not considered her case, the petitioner had approached this Court by way of filing a writ petition being WP(C)/6963/2003.

5. This Court, vide an order dated 02.09.2003, on considering the issues arising in the matter was pleased to dispose of the said petition holding that the case of the petitioner is covered by the Judgment and Order dated 01.09.2003, passed in the case of *Jiban Ch. Deka and Ors. Vs. State of Assam and Ors.*, reported in 2008 (3) GLT 229 and required the case of the petitioner to be considered by the committee so constituted by the said Judgment and Order of this Court, for regularizing the services of the "dropped teachers".

6. The petitioner, in pursuance to the said order dated 02.09.2003, passed by this Court in WP(C)/6963/2003, approached the Director of Elementary Education, Assam for regularization of her services. Thereafter, the Director of Elementary Education, Assam vide a communication dated 09.07.2004 sought a report from the District Elementary Education Officer, Hailakandi with regard to the services rendered by the petitioner and the said report was submitted on 10.01.2005. It is contended in the writ petition that on 15.12.2005, an advertisement was issued requiring the "dropped teachers" of Elementary schools to appear before the Screening Committee as constituted in the matter along with all their requisite documents for screening and the dates was so fixed on 24.12.2005. The petitioner appeared before the Screening Committee on 28.12.2005, however, the Headmaster of the said school could not appear before the said committee on the said date on account of certain personal difficulties, which was communicated to the Chairman of the Screening Committee by the Headmaster.

7. On conclusion of the process of screening as was undertaken in the matter in pursuance to the said advertisement dated 15.12.2005, the High Power Committee (HPC) so constituted, proceeded to publish a list of "dropped teachers" district wise, on 15.12.2011 and therein, on the basis of seniority, the name of the petitioner figured therein at Serial No. 2 against the district of Hailakandi.

8. In spite of the said developments taking place, the services of the

petitioner not being regularized and accordingly, the representations as submitted in the matter by the petitioner praying for regularization of her services in view of the recommendations made in her favor by the High Power Committee and as evident from the publication made in the Newspaper on 15.12.2011 and the name of the petitioner figuring therein, not being considered the petitioner has instituted the present proceeding praying for regularization of her services retrospectively, along with other consequential benefits. The learned counsel for the petitioner has submitted that the only reason as evident for not regularising the services of the petitioner, as evidenced from the materials brought on record in the present proceedings, is that the petitioner having been initially appointed as a Sanskrit Teacher, it was held by the respondent authorities that there being no occasion for appointing any person as a Sanskrit subject teacher in a L.P. & U.P. School, the services of the petitioner did not merit to be regularised. The learned counsel for the petitioner submits that although the petitioner was appointed as a Sanskrit Teacher in the said school, but, she has been teaching the other subjects and was functioning as a normal Assistant Teacher in the said school since the date of her initial appointment till, the date she had retired from her services upon reaching the age of superannuation. The learned counsel for the petitioner has also by referring to the affidavit filed by the Secretary to the Government of Assam, Department of School Education contended that the fact that the petitioner was teaching the General subject in the school was also admitted by the respondents.

9. Mr. B. Kaushik, learned Standing Counsel for the Elementary

Education, Assam by referring to the affidavit as filed in the matter on behalf of said respondents has contended that it is an admitted position that the name of the petitioner figured at Serial No. 2 with regard to the District of Hailakandi in the list as published by the Screening Committee on 12.12.2011, but, the services of the petitioner was not regularized inasmuch as her case was recommended for such regularization as a "dropped teacher" against the subject Sanskrit and there being no posts of Sanskrit Teacher created for Elementary Schools, the process for regularization of services of the petitioner could not be taken forward. Mr. B. Kaushik, learned Standing Counsel also submits that the petitioner in terms of the said affidavit was teaching the General subject and for the said purpose, the Government in the Department of Secondary School Education had required the Director of Elementary Education Department to clarify as to who has authorized the petitioner herein, to attend classes and teach General subject when she was appointed as a Sanskrit teacher in the School.

10. I have heard the learned counsel for the petitioner and also considered the materials placed on record.

11. While it is an admitted position that the petitioner was initially appointed in the said school as a Sanskrit teacher, the materials as brought on record demonstrate that the petitioner was also engaged for teaching the General subjects and she continued to teach such subjects in the school till, the date of her superannuation.

12. The petitioner had joined her services in the school i.e. on 01.04.1997 and the said school was brought under the deficit grant-in-aid scheme w.e.f. 01.03.1978. The Director of Elementary Education, Assam had furnished a written instruction in the matter to the learned Standing Counsel, Elementary Education, Assam, which was placed before this Court and therein, it was contended that the petitioner was initially appointed as a Sanskrit Teacher and her case was duly considered by the Screening Committee constituted by the Government for verification of the particulars of “dropped teachers” and on such verification, the name of the petitioner was so recommended as a Sanskrit teacher against Barband M. E. School. It was contended therein that the petitioner was appointed as a Sanskrit teacher before a period of one year of the provincialisation of the said school inspite of the fact that there was no provision for appointment of any teacher to teach Sanskrit subject in Elementary Schools. It was further contended that neither the School Managing Committee of the said school in question nor, the department had authorized/allowed the petitioner to teach General subject in lieu of subject of Sanskrit in the said school.

13. With regard to the issue that the petitioner was recruited in the said school as a Sanskrit teacher and there being no provision for appointment of a teacher to teach Sanskrit subject in an Elementary School, the services of the petitioner cannot be regularized, it is to be noticed that this Court, in the case of *Jiban Ch. Deka* (supra) had issued directions for consideration on the cases of teachers, construed to be “dropped teachers”, after having their cases examined by a committee to be so constituted in the matter. The

petitioners services having been considered by the said committee and having been found to be eligible for being regularized in her services, which is evident from the seniority list of “dropped teachers”, district wise, as published by the said committee on 12.12.2011, the only ground taken for not regularizing the services of the petitioner is that she was appointed for the subject of Sanskrit, which post was contended to be not available in Elementary Schools. Such a position has been adopted by the authorities, ignoring the fact that the petitioner was teaching the students General subject like any other Assistant Teacher in the said school and only for the fact that during her initial recruitment, she was denoted to have been so recruited as a Sanskrit Teacher, the fact that the petitioner was teaching the General subject could not have been ignored by the respondent authorities.

14. The nomenclature as assigned by the School Managing Committee to teachers appointed by it during the venture stage would be of no relevance and what would be of relevance is, the duties discharged by such teachers in the school. In other words, what is material to be considered, is the subjects taught by teachers appointed by the School Managing Committee during the period the school concerned was in the venture stage. The materials available on record having demonstrated that the petitioner was engaged for teaching the General subjects in the said school in absence of students in the Sanskrit subject, the respondents ought to have considered the actual nature of duties rendered by the petitioner. The respondents while processing the recommendations as made in favor of the petitioner by the High Power Committee had not considered the said aspect of the

matter and only by reckoning the nomenclature as given to her during the time of her initial appointment i.e. as a Sanskrit Teacher, proceeded to not reject the case of the petitioner even after her case was recommended by the High Power Commission for regularization of her services. The said aspect of the matter, in the considered view of this Court has caused prejudice to the service interest of the petitioner herein. This brings the Court to consider the other contention which was raised by the respondent authorities that the case of the petitioner for regularization of her services is not acceptable on the ground that she had not completed 2(two) years of continuous services before the date, the school in question was so provincialized. The said issue is no longer res-integra inasmuch as this Court, in the case of *Md. Harunal Rashid Vs The State of Assam & Ors*, this Hon'ble Court, vide *Judgment and Order dated 05.04.2013* in *WP(C)/6666/2010* by noticing the decision of the this Court in *Jibon Ch. Deka* (Supra) had proceeded to draw the following conclusions:-

"29. Before proceeding further, it will be useful to briefly refer to the relevant provisions of the Act and the Rules. The Act has been enacted to provide for provincialisation of elementary education in the State of Assam and to bring the teachers and staff of elementary schools under the management and control of the State Government. The Rules have been framed in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India to regulate the recruitment and conditions of service of teachers of the elementary schools which have been provincialised under the Act. Rule 5 of the Rules lays down the conditions for taking over of elementary schools. In the present case, we are concerned with Sub-rule (3) of Rule 5, which reads as under :- "(3) The teachers in venture School may be retained at the time of taking over if they possess the minimum qualification and age for recruitment provided that such teachers have put in at least two years continuous service immediately preceding the taking over of the School and provided further that the prescribed ratio of students and teacher is maintained in the School."

30. Rule 7 deals with power of Government to dispense with or relax any Rule. It provides that where the Government is satisfied that the question of any of these Rules may cause undue

hardship in any particular case, it may dispense with or relax the requirement of that Rule to such extent and subject to such conditions as it may consider necessary for dealing with the case in a just and equitable manner.

31. It is in the above context that the notification dated 13-01-2003 is required to be construed, which was issued to streamline the procedure of adjustment of dropped teachers. Condition No.1 of the said notification dated 13-01-2003 provided that the teachers must have put in atleast two years of continuous service immediately preceding the taking over of the concerned schools by the Government. The said condition was as per the requirement of Rule 5(3) of the Rules.

32. However, this aspect was not placed before the Court and the State Counsel also agreed to the submission of the Counsel for the petitioners that condition No.1 may be read as covering the cases of all dropped teachers in service as on the date of provincialisation of the concerned schools. The relevant portion of the order of this Court in Jibon Ch. Deka is as under :-

"(6) In view of the above, this bunch of cases will stand now disposed of with the following directions:

(i) The cases of the petitioners in each of the cases will be considered in accordance with the norms, criteria and eligibility conditions prescribed by the policy document dated 13-01-2003 subject to the modification in Condition Nos. 1 and 2, as stated above.

(ii) The Chief Secretary to the Government of Assam, shall within 7 days from today, constitute a Committee to examine the cases of the petitioners in the present bunch of cases and such other cases, as may be referred to the said Committee, from time to time, by this Court. As the said Committee will be executing and implementing the policy decision taken by the state, this Court considers it appropriate to leave it to the discretion of the Chief Secretary to the Government of Assam to decide on the composition of the Committee with the suggestion that the Committee may be a high powered committee constituting of 3 members and the present Secretary to the Government of Assam, Education Department may act as the Member Secretary.

(iii) The Committee, upon due verification of the cases before it, shall within 6 months from the date of its constitution, prepare district wise list of "stopped teachers" eligible for regularisation in terms of the norms and criteria laid down as per direction No.1 above. The eligible persons, on being identified, shall be arranged in the district wise lists, in order of seniority.

(iv) Suitable adjustments in the placements assigned in the district wise lists, as may be required, upon consideration of such other cases which may be referred to the Committee in the future shall be made by the Committee.

(v) Appointment against available posts in each district shall be made on the basis of the lists prepared.

(vi) All appointments made would be prospective but will carry the benefit of past services for the purpose of computation of pensionary benefits."

33. When it was found out by the departmental authorities that the above direction of this Court relating to condition No.1 of notification dated 13-01-2003 was in conflict with the statutory provision, the State filed a review petition. As has already been noticed in the earlier part of this judgment, this Court acknowledging the error which occurred in Jibon Ch. Deka, however, took the view that any review as sought for would effect the entitlement of several persons who had in the meantime been selected for regularisation though they might not have completed two years of service prior to the date of provincialisation of the schools. The Court, therefore, took the view that the directions issued earlier should be taken as the tentative opinion of the Court. Subsequently, this Court observed that considering the human problem associated with the review petition, the possible remedy to the situation could be exercise of the power vested in the State Government by Rule 7 of the Rules, if required even as a one time measure.

34. The State Government thereafter took the decision to relax the provision of Rule 5(3) of the Rules in so far as the requirement of having two years of continuous service as on the date of provincialisation was concerned in respect of 130 dropped teachers of Lower and Upper Primary Schools as a one time measure. This was contained in the Government notification dated 17-07-2010. In view of above development, this Court closed the review petition as not pressed.

35. In the subsequent decision in Luleswar Hazarika, this Court passed the following order:-

"(i) The candidates who did not respond to the aforementioned advertisement issued by the High Power Committee cannot now claim that their cases have been ignored or not responded to by the High Power Committee. There cannot be any endless exercise. The High Power Committee has already carried out the same.

(ii) So far as the cases which have been rejected by the High Power Committee, the candidates involved in the said cases are entitled to know the reason for such rejection. Although such reasons may be available in the report of the High Power Committee but it will be appropriate for the Govt. to furnish and/or provide reason to the individual candidates. Necessary

communication in this regard shall be made to the candidates whose plea of being dropped teachers has been rejected.

(i) In spite of the exercise that has been carried out by the High Power Committee, if there are still any pending case of dropped teachers of LP/ME Schools with which the present proceeding is concerned, the High Power Committee shall carry out necessary exercise in terms of the said notification dated 16-07-2010.

(iv) The Government in the Education Department shall take necessary follow up action in terms of the list of dropped teachers that has already been published in the newspaper on 01-03-2008."

36. Thus, this Court had directed that if there were any pending cases of dropped teachers with which the said proceeding was concerned, the High Power Committee should carry out the necessary exercise in terms of notification dated 16-07-2010 whereby the High Power Committee was reconstituted to examine all pending cases of dropped teachers.

37. Respondents have not denied that the cases of the petitioners are similar to those of the 130 dropped teachers whose services were provincialised vide notification dated 17-07-2010 by relaxing the requirement of Rule 5(3) of the Rules as a one time measure. There is no reasonable explanation or justification as to why power of relaxation was not similarly invoked in the case of the petitioners. The only explanation given in all the three cases is that the petitioners did not serve for two years prior to the date of provincialisation of the respective schools. This is also the stand evident from the notings in the file. Such reason is already there which is the cause of this continuous litigation for more than a decade and really is no justification. The question is why the power of relaxation, which was invoked in respect of 130 dropped teachers, has not been exercised in the case of the petitioners? What is the basis of differentiation between the petitioners and those 130 dropped teachers? Respondents are unable to give any answer to the above questions. All that is said is that the power of relaxation was invoked as a one time measure and cannot be invoked any further as it may open the flood gate of similar claim.

38. The above apprehension expressed by the respondents appears to be without any basis as this Court in LuleswarHazarika had already made it abundantly clear that those who did not respond to the earlier advertisement of the High Power Committee cannot claim consideration of their cases any further as there cannot be any endless exercise. It was also made clear that if there were any pending cases of dropped teachers with which the proceeding in LuleswarHazarika was concerned, those cases should also be considered in terms of the notification dated 16-07-2010. Moreover, there are only three writ petitions now being considered by this Court espousing the cause of 28 dropped teachers.

39. In Secretary, State of Karnataka-Vs- Uma Devi reported in (2006) 4 SCC 1. the Hon'ble Supreme Court while declaring claim for regularisation of temporary, contractual, casual, daily wage or ad-hoc employees as unconstitutional, had however made an exception in case of irregular appointments, which was clarified in paragraph 53 of the judgment. The State was directed to take steps to regularize the services of irregularly appointed persons, who had worked for ten years or more in duly sanctioned posts but not under cover of orders of the Courts or of tribunals, as a "one-time measure". The term "one-time measure" was explained by the Hon'ble Supreme Court in the subsequent decision in State of Karnataka -Vs- M.L. Kesari reported in (2010) 9 SCC 247 to mean that it should consider all daily-wage, ad-hoc or casual employees who had put in 10 years of continuous service as on 10-04-2006 (date of judgment in Uma Devi) without availing the protection of any interim orders of Courts or tribunals. If any employer had held the one-time exercise in terms of para 53 of Uma Devi but did not consider the cases of some employees who were entitled to regularisation, the employer concerned should consider their cases also as a continuation of the one-time exercise. The one-time exercise will be concluded only when all the employees who are entitled to be considered are so considered. The fact that the one-time exercise was undertaken only in regard to a limited few will not disentitle such employees the right to be considered for regularisation as a one-time measure. Thus, in the context of the present case, the term "one time measure" has to be understood to be the exercise covering the cases of all similarly situated dropped teachers. If any such dropped teacher, who is similarly placed like the 130 dropped teachers, has been left out of consideration through inadvertence, oversight or for any bonafide reason, his case would also require similar consideration as part of the one time measure.

40. Claims of the petitioners are not fresh ones. They have been knocking the doors of this Court since a long time. Their cases were scrutinized by the departmental authorities and put up before the High Power Committee. As already noticed above, only ground of rejection of their cases is not having two years of service on the date of provincialisation of the respective schools. While the benefit of relaxation under Rule 7 has been extended to 130 similarly situated dropped teachers, the same has not been extended to the petitioners without any reasonable basis or justification. While exercising the power under Rule 7 of the Rules, the State is required to act in a fair and judicious manner. There should not be any arbitrariness or discrimination in the exercise of such power which would be violative of Article 14 of the Constitution. In the facts and circumstances of the case, the Court is of the view that petitioners were subjected to an unfair and discriminatory treatment, which situation is now required to be remedied.

41. In that view of the matter, the cases of the petitioners for provincialisation are required to be reconsidered by invoking the power under Rule 7 of the Rules by the State Government at par with the 130 dropped teachers in whose cases the provision of Rule 5(3) was relaxed. The above exercise shall be carried out within a period of four months from the date of receipt of a certified copy of this order."

15. Applying the said decision of this Court in the case of *Md. Harunal Rashid* (supra), to the case of the petitioner herein, it is seen that the petitioner is also similarly situated like the petitioners in the above noted case, and accordingly, the relaxation of the provisions of Rule 5(3) of the Assam Elementary Education (Provincialisation) Rules, 1977, is also entitled to be extended to the petitioner herein as was extended by this Court in the said case to “dropped teachers”. There is another aspect which is has to be noted in the present proceedings that although the petitioner did not have the requisite length of services as mandated under the provisions of Rule 5(3) of the said Rule of 1977, the case of the petitioner was duly considered by the High Power Committee as constituted in the matter and on such consideration without any reservation whatsoever, the petitioner was recommended to be eligible for regularisation of her services and in this connection, the name of the petitioner was so included in the list of “dropped teachers” found eligible for regularization of their services by the High Power Committee on 15.12.2011. Accordingly, the recommendation as made in case of the petitioner herein by the High Power Committee, demonstrates that as far as the petitioner’s case is concerned, there was a deemed relaxation of the provisions of Rule 5(3) of the said Rules of 1977 and accordingly, the said condition requiring 2(two) years continuous service in the school before provincialisation of the said school in question is not attracted in the case of the petitioner herein.

16. In view of the conclusions as reached herein above, the case of the petitioner is held entitled to have her services regularized in terms of the decision of this Court in the case of *Jibon Ch. Deka* (Supra) and *Md.*

Harunal Rashid (supra). Accordingly, the following directions are issued:-

(i). In view of the fact that the petitioner's services was not regularized only on the ground that her case was so recommended by High Power Committee as a Sanskrit Teacher, the Director of Elementary Education, Assam is now directed to place the case of the petitioner again before the High Power Committee with the stipulation that the petitioner, during her service tenure in Borband M. E. School, Hailakandi had been teaching the General subject and accordingly, she would be entitled to be regularized in her services as a Assistant Teacher in the said school.

(ii). The case of the petitioner being placed before the High Power Committee, the committee shall again verify the particulars of the petitioner and by referring to its earlier recommendation as made in respect of the petitioner, proceed to make fresh recommendation now by reckoning that the petitioner was teaching the General subjects in the school since the date of her initial appointment.

(iii). The recommendations as would now be made in the case of the petitioner by the High Power Committee, shall be further processed by the Director of Elementary Education, Assam and in the event, the said recommendation is in favor of the petitioner, proceed to take all requisite steps for regularizing the services of the petitioner w.e.f. the date; when persons similarly situated were regularized in their services in pursuance to the decision of this Court in the case of *Jibon Ch. Deka* (supra) with all consequential benefits of pay, allowances etc.

(iv). The case of the petitioner now being directed to be regularized with retrospective effect, the respondent authorities, under such circumstances shall also consider as to the pension and pensionary benefits that would now be available to the petitioner on account of her such regularization of her services with retrospective effect and thereafter, on computation of the same in the manner as required, release to the petitioner her such benefits.

(v). In the event, the High Power Committee on examination of the case of the petitioner is of the view that the petitioner is not entitled to have her services regularized as an Assistant Teacher in the said school, the High Power Committee shall record its reasons for the same and forward the matter to the Director of Elementary Education, Assam. The Director of Elementary Education, Assam, on receipt of such recommendation shall communicate to the petitioner the reasons for which her services could not be regularized, in the form of a speaking order.

17. The above exercise as now required be carried out by the Director of Elementary Education, Assam shall be so initiated and concluded within a

period of 6(six) months from the date of receipt of a certified copy of this order.

18. The petitioner is directed to submit a certified copy of this order along with a forwarding, before the Director of Elementary Education, Assam for taking the matter forward.

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

JUDGE

Comparing Assistant