

GAHC010225702022



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

Case No. : WP(C)/7113/2022

MD. SURUJ ALI
S/O. LT. MAHIRUDDIN, VILL. BARUAJHAR, P.O. BACHIMARI, P.S.
DALGAON, DIST. DARRANG, ASSAM, PIN-784514.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM,
ELEMENTARY EDUCATION DEPTT., DISPUR, ASSAM, GUWAHATI-781006.

2:THE DIRECTOR OF ELEMENTARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI-19.

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER

DARRANG
MANGALDOI
ASSAM
PIN-784125.

4:THE BLOCK ELEMENTARY OFFICER

DALGAON SIALMARI BLOCK
DIST. DARRANG
ASSAM
PIN-784116.

5:THE TREASURY OFFICER

MANGALDOI TREASURY
DIST. DARRANG
ASSAM
PIN-784125

Advocate for the Petitioner : MR. M ALI

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

Date : 19.02.2024

Heard Mr. M. Ali, learned counsel for the petitioner. Also heard Mr. G. Pegu, learned standing counsel, Elementary Education.

2. The petitioner has approached this Court praying for a direction to the respondent Nos. 2, 3 and 5 to release the arrear salaries payable to the petitioner with effect from 01.01.2013 to 28.02.2018 amounting to Rs. 14,02,868/- (Rupees fourteen lakh two thousand eight hundred sixty eight) only as well as the current salaries in the appropriate pay band to the petitioner within a particular time. The petitioner is employed as an Assistant Teacher in Bachimari Girls' M.E Madrasa under Dalgaon, Sialmari Education Block in the district of Darrang, Assam. He was appointed on 03.01.1994. It is submitted that the said Madrasa was established in the year 1986, and recognized on 01.01.1993 and provincialised on 16.05.2013 with effect from 01.01.2013 under the provisions of the Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 amended in 2012.

3. The case projected before this Court is that the petitioner was dropped from the list of teachers forwarded to the Government for provincialisation and

in his place, one Abu Talha Md. Samsuzzuha was provincialised as an Assistant Teacher of that Madrassa in terms of the order of provincialisation issued on 16.05.2013 and the effect of which was to take place from 01.01.2013. The petitioner assailed the inclusion of the said Abu Talha Md. Samsuzzuha in place of the petitioner for provincialisation of the services. The petitioner filed WP (C) 6974 of 2015 assailing the order of Provincialisation dated 16.05.2013 provincialising the services of Abu Talha Md. Samsuzzuha. This writ petition was disposed of on 20.11.2015 directing the Director Elementary Education, Assam to act upon the approved minutes and the recommendation of the District Scrutiny Committee, Darrang, dated 28.04.2015, which was adopted pursuant to the order dated 15.05.2014, passed in WP(C)/2980/2013 and to take necessary action. Pursuant to the directions of this Court in vide Order dated 20.11.2015 passed in WP (C) 6974 of 2015, the Director Elementary Education vide memo number EPD/H/2/2016/80-A, dated 18.07.2016 cancelled the provincialisation of Abu Talha Md. Samsuzzuha. By another order on the same date, the petitioner's name was included in the list of provincialised teachers in place of Abu Talha Md. Samsuzzuha by a different order. It is the grievance of the petitioner that although the corrective order showing the name of the petitioner as a provincialised teacher in place of Abu Talha Md. Samsuzzuha was issued by the competent authorities on 18.07.2016, however, the same was required to take effect from 01.01.2013. It is submitted that all financial benefits payable to the petitioner with effect from the date of provincialisation i.e. 01.01.2013 ought to have been released by the respondent authorities. However, he was given the benefit only with effect from March, 2018 to February, 2019 in respect of his arrear salary.

4. The learned counsel for the petitioner submits that by this writ petition,

the petitioner claims arrear salary of Rs.14,02,868/- (Rupees fourteen lakh two thousand eight hundred sixty eight) only with effect from 01.01.2013 to 28.02.2018, which has not been paid to him. It is submitted that he is entitled to salary with effect from 01.01.2013 at the scale of pay of Rs.5200/--20,200/- and such increments as may be payable. A representation to the effect had already been filed before the DEEO, Darrang praying for release of the salary. The DEEO, Darrang, on the basis of the said representation, a report was called for from the BEEO, Dalgaon, Sialmari calling for a detailed report with specific reasons for non receipt of the salary. However, in spite of such intra department orders, the arrear salary payable to the petitioner at the appropriate scale with effect from 01.01.2013 to February, 2018 has not been released. It is submitted that in pursuance to communication issued by the Director of Elementary Education vide letter dated 16.12.2021, the Director of Elementary Education, Assam also issued a communication to the DEEO, Darrang calling for a proposal for arrear salary payable to the petitioner. In pursuance to the said communication, a proposal for arrear salary of the petitioner amounting to Rs.14,02,868/- (Rupees fourteen lakh two thousand eight hundred sixty eight) only has been forwarded but no steps have been taken for release of the same.

5. Notice in the matter was issued on 06.02.2023. The respondent department, in spite of opportunities granted did not file any response till date.

6. Considering that the prayers made in the writ petition are towards release of arrear salary, this Court has proceeded to hear the matter. The learned counsels for the parties have been heard. The writ petition along with the enclosures has been carefully perused. The grievance urged by the writ petitioner is that pursuant to the corrective order passed by the appropriate authority dated 18.07.2016 although the petitioner's name was incorporated in

the original order of showing the provincialized teachers for the Bachimari Girls' M.E Madrassa in place of Abu Talha Md. Samsuzzuha, his claim for arrear salary has not been granted. Although proposal to that effect has been submitted by the DEEO, the same did not fructify into any result.

7. The present writ petitioner had approached this Court earlier by filing WP (C) 6974 of 2015, which was disposed of by Co-Ordinate Bench of this Court by order dated 20.11.2015. From a perusal of the order dated 20.11.2015 the following facts are revealed.

8. The petitioner had filed a writ petition being WP(C)/2980/2013, wherein by an interim order dated 30.05.2013 was passed by co-ordinate Bench directing the respondents not to provincialise one post of regular teacher in Bachimari Girls' M.E Madrassa, ignoring the senior teacher. In the said writ petition Abu Talha Md. Samsuzzuha was also arrayed as respondent No.8. Finally by order dated 15.05.2014, writ petition was disposed of with a direction to the District Scrutiny Committee, Darrang to consider the matter afresh after hearing the parties, namely, the present petitioner and Abu Talha Md. Samsuzzuha, who was arrayed as respondent No.8 and further directed that DEEO, Darrang to make an enquiry into the genuineness of the documents comprising of the service records of both the present petitioner and the respondent No.8 therein, namely, Abu Talha Md. Samsuzzuha. The interim order passed earlier dated 30.05.2013 was to be continued till a decision as directed was arrived by the District Scrutiny Committee, Darrang. The District Scrutiny Committee, Darrang was further directed to forward the verified eligible list of teaching and non-teaching staff to the Directorate of Elementary Education, Assam after such scrutiny is made by them.

9. Thereafter, Abu Talha Md. Samsuzzuha preferred another writ petition

being WP(C)/1951/2015 before this Court praying for his salary with effect from 01.04.2014, which was stopped inspite of his service being provincialised. In the said writ petition the present writ petitioner was not arrayed as a party respondent and it appears that the earlier orders passed by this Court by orders dated 13.05.2013 as well as 15.05.2014 passed in WP(C)/2980/2013 were not placed before the Court by willfully suppressing the said facts. The said writ petition was disposed of by order dated 09.04.2015 directing the authorities of the Elementary Education Department to examine the representation of the writ petitioner therein, namely, Abu Talha Md. Samsuzzuha and to dispose of the same in accordance with law by releasing his salary with effect from 01.04.2014 as well as the current salary. In terms of the said order, the Director Elementary Education by order dated 30.10.2015 directed the DEEO, Darrang to release the salary of the of Abu Talha Md. Samsuzzuha.

10. On the other hand, in terms of the order dated 15.05.2014 passed in WP(C)/2980/2013, the District Scrutiny Committee, Darrang on perusal of the records of the Madrassa in question found that the present writ petitioner was appointed in the year 1993 and his appointment was approved by the DEEO, Darrang and Abu Talha Md. Samsuzzuha had joined much later than the petitioner in the said Madrassa and accordingly, the petitioner was found to be senior to Abu Talha Md. Samsuzzuha. While the matter was pending before the Directorate of Elementary Education, WP(C)/6974/2015 was filed by the present petitioner challenging the order dated 30.10.2015 passed by the Director Elementary Education as regards release of salary in respect of Abu Talha Md. Samsuzzuha.

11. In view of the facts and circumstances as noticed by the co-ordinate Bench while deciding WP(C)/6974/2015, the said writ petition came to be

dismissed on merits as the co-ordinate Bench held that the release of the salary of Abu Talha Md. Samsuzzuha as per his claim as regards the arrear salary was in pursuance to order dated 09.04.2015 passed by this Court in WP(C)/1951/2015. It was held that the present petitioner, although being aware of the said order, chose not to challenge this order by filing any appeal or review. The departmental authorities accordingly, in terms of the directions issued by this Court by order dated 09.04.2015 passed in WP(C)/ 1951/2015, in the writ petition preferred by Abu Talha Md. Samsuzzuha released his salary. Under these facts and circumstances, the writ petition being WP(C)/6974/2015 which was filed by the present petitioner putting to challenge the release of arrear salary in respect of Abu Talha Md. Samsuzzuha by the Director Elementary Education by order dated 30.10.2015, came to be dismissed as being without any merit. However, the co-ordinate Bench, while dismissing the writ petition, observed that the Director Elementary Education will act upon the approved minutes and the recommendation of the District Scrutiny Committee, Darang dated 28.04.2015 and pass necessary orders.

12. Pursuant to the order dated 20.11.2015 passed in WP(C)/6974/2015 and on the basis of the report of the DEEO, Darrang vide letter No.DESE/HC/Recg./Pt.-I/30414/1476 dated 23.06.2016, the Provincialisation order of Abu Talha Md. Samsuzzuha, Assistant Teacher of Bechimari Girls' MEM stood cancelled. On the same date by order No. EPD/H/2/2016/80-A dated 18.07.2016 the petitioner was provincialised in place of Abu Talha Md. Samsuzzuha, as per recommendation of the District Scrutiny Committee. The writ petitioner, thereafter has been receiving his salary with effect from March, 2018.

13. By this writ petition the petitioner has urged before this court that

notwithstanding the order of his provincialisation of services was issued on 18.07.2016, by operation of Section 4(1) of the Provincialisation Act 2011, read with Section 10(2) of the said Act of 2011, the petitioner is required to be deemed to be provincialised with effect from the date on which Abu Talha Md. Samsuzzuha was wrongly provincialised. It is the contention of the petitioner that since his provincialisation has to be given effect to with effect from 16.05.2013 by operation of the provisions of the erstwhile Provincialisation Act of 2011, he is entitled to receive his provincialised scale of pay as he was illegally deprived of his lawful claim of being provincialised by Abu Talha Md. Samsuzzuha and for which the petitioner is not at fault as would be evident from the various orders passed by this Court in the several litigations that ensued pursuant to the illegal provincialisation of Abu Talha Md. Samsuzzuha.

14. It is the contention of the petitioner that although subsequently under orders of this Court and on the recommendation of the District Scrutiny Committee, Darrang, the Abu Talha Md. Samsuzzuha provincialization was cancelled on 18.07.2017 and in his place the petitioner was provincialized, by virtue of the provisions of the Act of 2011, the provincialization of the petitioner is to be reckoned with effect from the date Abu Talha Md. Samsuzzuha was wrongly provincialized.

15. Upon careful perusal of the pleadings and the orders passed by co-ordinate Benches of this Court, what is evident is that the order No. EPD/H/2/2016/80-A dated 18.07.2016 although cancelled the earlier provincialization of Abu Talha Md. Samsuzzuha and in his place by order No. EPD/H/2/2016/81-A also dated 18.07.2016 the present petitioner was provincialised, there is no order or reference with regard to any claim of arrear salary in the provincialised scale of the writ petitioner. That apart as is evident

from the recital of the order dated 20.11.2015 passed in WP(C)/6974/2015, Abu Talha Md. Samsuzzuha had filed a writ petition being WP(C)/1951/2015 and by order dated 09.04.2015, the respondents were directed to examine the representation of Abu Talha Md. Samsuzzuha and to release his salary to him with effect from 01.04.2014 as well as the current salary. In pursuance to the said direction, the Director Elementary Education had released the arrear salary along with the current salary to Abu Talha Md. Samsuzzuha by order dated 30.10.2015. The order dated 09.04.2015 passed in WP(C)/1951/2015 was not been put to challenge as has been correctly noticed by co-ordinate Bench in its order dated 20.11.2015 passed in WP(C)/ 6974/2015.

16. What is evident from these facts narrated above is that the provincialized scale of pay granted to Abu Talha Md. Samsuzzuha for his services rendered, was never recovered from him. There is no order by the department or by the Court directing the department to recover the same as on date. No order to the effect has been placed by the writ petitioner before this Court. Under such circumstances for the period, the provincialisd scale of pay having been paid to Abu Talha Md. Samsuzzuha, under an order of this Court, another set of pay cannot be permitted to be released to the present petitioner unless the amount which was released to Abu Talha Md. Samsuzzuha under orders of the Court is recovered by due process of law. There is no dispute that at present the petitioner is receiving his present scale of pay. Under such circumstances, the claim of the writ petitioner for release of arrear pay with effect from 01.01.2013 till the date Abu Talha Md. Samsuzzuha's provincialisation stood cancelled cannot be permitted. However, the petitioner is entitled to receive the provincialized scale of pay pursuant to the order dated 18.07.2016 from the date he joined in his services, subject to such verifications being carried out by

the department.

17. Under such circumstances, the writ petition stands disposed of, directing the respondent authorities to verify the claims of the petitioner for grant of arrear scale of pay only pursuant to the order by which he was provincialized, namely order No. EPD/H/2/2016/80-A dated 18.07.2016 and subject to the verification that the petitioner had rendered his services as a provincialized teacher in Bachimari Girls' M.E. Madrassa.

18. Writ petition stands disposed of in terms of the above. No order as to cost.

JUDGE

Comparing Assistant