GAHC010129802024

2026:GAU-AS:15972

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

Case No. : Cont.Cas(C)/353/2024

MISS MALATI BEPARI
D/O LATE NARAYAN CHANDRA BEPARI, R/O VILL- KAIMARI PART-4, P.O.-KAIMARI, P.S.-GOLAKGANJ, DIST-DHUBRI, ASSAM

VERSUS

NARAYN KONWAR, IAS AND ORS.
THE SECRETARY TO THE GOVERNMENT OF ASSAM, ELEMENTARY EDUCATION DEPARTMENT, DISPUR, GUWAHATI-6 (REPRESENTED BY HIGH POWER COMMITTEE)

2:SURANJANA SENAPATI
THE DIRECTOR OF ELEMENTARY EDUCATION DEPARTMENT
KAHILIPARA
GUWAHATI-781019

3:MR. NARAYAN KONWAR
IAS
THE SECRETARY OF HIGH POWER COMMITTEE CUM THE SECRETARY TO THE GOVERNMENT OF ASSAM
SCHOOL EDUCATION DEPARTMENT (EARLIER ELEMENTARY EDUCATION DEPARTMENT) JANATA BHAWAN
DISPUR
GUWAHATI-6.

4:SHRI KAILASH CHAND SAMRIA
IAS
THE CHAIRMAN HIGH POWER COMMITTEE CUM ADDITIONAL CHIEF SECRETARY TO THE GOVERNMENT OF ASSAM
FISHERY DEPTT. JANATA BHAWAN
DISPUR
GUWAHATI-6.

5:MALAVIKA CHOUDHURY
IAS
THE MEMBER OF HIGH POWER COMMITTEE CUM THE SECRETARY TO THE GOVERNMENT OF ASSAM
FINANCE DEPARTMENT
JANATA BHAWAN
DISPUR
GUWAHATI-6

Advocate for the Petitioner : MR I HAQUE,

Advocate for the Respondent : MR. D SAIKIA (R-2), R M BAROOAH (R5),MR A CHALIHA (R5),MR P NAYAK (R5),MR. B GOGOI (R5),MR P SHARMAH(R4),MR. N J KHATANIAR (R-1),MR. N J KHATANIAR(R-2),MR B KAUSHIK(R-2)

BEFORE

HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

02.11.2026

Heard Mr. I. Hoque, learned counsel for the petitioner. Also heard Mr. B. Kaushik, learned counsel for the respondent Nos.1—3, Mr. P. Sarmah, learned counsel for the respondent No.4 and Mr. B. Gogoi, learned counsel for the respondent No.5.

2. This contempt proceeding, under Section 12 of the Contempt of Courts Act, 1971 read with Article 215 of the Constitution of India and Contempt of Courts (Gauhati High Court) Rules, 1977 is initiated by the petitioner, namely, Ms. Malati Bepari, for willful and intentional violation, disrespect and dishonour of this Court's order dated 21.03.2024, passed in WP(C) No.4689/2021.

3. Mr. Hoque, learned counsel for the petitioner submits that the petitioner herein was appointed as teacher of Kaimari M.E. Madrassa, by the Managing

Committee of the said Madrassa on 04.02.1996 and since then she has been performing her duties till date. Mr. Hoque further submits that the said Madrassa was established on 05.02.1971, and recognized on 01.04.1975, headed by one Ramjan Ali Mondal, the founder Headmaster. The school was subsequently provincialized on 23.02.1980, however, the benefit of provincialization was kept in abeyance vide order dated 22.09.1980, due to some dispute amongst the members of the staff and public and members of the Managing Committee of the School. Thereafter, on 04.08.2008, the Commissioner & Secretary to the Govt. of Assam, Education (Elementary) Department, on the basis of detail enquiry report dated 19.09.2003, submitted by the Enquiry Committee, has vacated the abeyance order dated 22.09.1980.

3.1. Mr. Hoque further submits that during the period of keeping the provincialization order in abeyance, the petitioner was appointed as Additional Teacher of Kaimari M.E. Madrassa, by an order, dated 04.02.1996, by the Secretary, Managing Committee of the Kaimari M.E. Madrassa as per proposal No.1 of the Managing Committee meeting held on 04.02.1996. Thereafter, vide another order, dated 06.10.2004, her service was approved by the District Elementary Education Officer (DEEO), Dhubri, with other staff of the Madrassa and except the founder Headmaster Ramjan Ali Mondal, all other staffs are appointed during the kept in abeyance period, by the Managing Committee and one Abu Bakkar Siddique (present Headmaster), Abdur Rafique (Assistant Teacher), Abdul Haque (Assistant Teacher), Nabaita Mandal (Hindi Teacher), Esha Hoque (Arabic Teacher), Benojur Ahmed (Chowkidar) were appointed by the Managing Committee vide its resolution dated 08.08.1991, 09.01.1994, 10.01.1991, 29.10.1990, 21.04.1992 and 19.01.1981, respectively.

3.2. Mr. Hoque also submits that the founder Headmaster, namely, Ramjan Ali

Mondal retired on 31.05.2006 and prior to that, vide resolution Nos.3 and 5 of the Managing Committee, in its meeting held on 11.05.2006, Senior Assistant Teacher Abu Bakkar Siddique was appointed as Headmaster of the Madrassa on retirement of the founder Headmaster Ramjan Ali Mondal. Thereafter, the petitioner has submitted a representation on 01.06.2006, before the President of the school for adjustment in the vacant post of Assistant Teacher, namely, Sri Abu Bakkar Siddique, as she has been working in the school since 04.02.1996.

3.3. It is the further submission of Mr. Hoque that the services of 4 teachers and one Grade-IV staff were regularized, however, without the service of the petitioner and she has been dropped without any reason. Thereafter, the Secretary to the Govt. of Assam, Education (Secondary) Department, vide letter dated 13.02.2001, informed the Director of Secondary Education, Assam, that the decision was taken in the task force that genuine dropped teaching and non-teaching staffs of the provincialized School should be considered for regularization by way of adjustment with prospective effect, preferably in the same School and in the event of absence of vacancy, then in another school, where the vacancy lies. Thereafter, vide order dated 13.01.2003, the Commissioner & Secretary, Education Department, specified some procedure of adjustment of dropped Teachers of ME/MEM/MV and High School of various district. And thereafter, the Director of Elementary Education Department, Govt. of Assam, vide letter dated 21.01.2003, requested all the DEEOs and Inspector of Schools to submit the particulars of dropped teachers of ME/MEM/MV schools fulfilling the mentioned criteria for regularization of their services.

3.4. Mr. Hoque further submits that at the time of provincialization, there was no mention of the name of the staff for provincialization of their services along with the name of the School. The names were subsequently forwarded by the

Headmaster excluding or dropping the name of the petitioner with some **mala-fide** intention during abeyance period. Mr. Hoque further submits that this Court vide judgment and order dated 01.09.2003, in C.R. No.1571/1998, and batch **(Jiban Ch. Deka and others vs. State of Assam and others)** directed to constitute a committee to consider the cases of the dropped Teachers and thereafter, many dropped Teachers were regularized in the light of the said order. But, the service of the petitioner was not regularized, in spite of regularization of other staffs appointed by the Managing Committee.

3.5. Further submission of Mr. Hoque is that the departmental authorities have full knowledge about engagement of the petitioner and in the enquiry report her name has been shown at Sl. No.7 along with other staffs and after 14 years of continuous service in the Madrassa, she has legal and valid right for regularization and being deprived of regularization, she had preferred one writ petition, being WP(C) No.4351/2010, and the same was disposed of vide order, dated 24.08.2011, with a direction to consider the case being covered by the judgment and order in **Tapan Chandra Das vs. State of Assam and others,** reported in **(2008) 3 GLT 234** and though the petitioner has placed the certified copy of the said order along with photocopy of the judgment of **Tapan Chandra Das (supra)**, before the state respondent, the State respondents then placed the case of the petitioner before the High Power Committee and the High Power Committee in its meeting, dated 22.12.2014, had rejected her case and the rejection letter, dated 24.03.2015, indicates that her case was rejected with a finding that the School was provincialized in 1980 and the petitioner joined the school in the year 1996.

3.6. Thereafter, the petitioner had preferred another writ petition, being WP(C)

No.4612/2015, challenging the said rejection order and during the pendency of the said case, another order dated 15.12.2015, was issued by the Commissioner & Secretary to the Govt. of Assam, Education (Elementary) Department, with instruction to the DEEO, Dhubri, to terminate the service of the petitioner with immediate effect. The said order was challenged by the petitioner in WP(C) No.290/2016 and thereafter, both the petitions were tagged together and both the orders, dated 24.03.2015 and 15.12.2015, were set aside by this Court, vide order dated 15.11.2019, whereby the High Power Committee was directed to review the earlier decision in rejecting the case of the petitioner for provincialization of her service within a period of 4 (four) months and the petitioner was directed to submit a detail representation with supporting documents before the High Power Committee and thereafter, the petitioner has submitted a representation before the High Power Committee and prayed for issuance of requisite order towards provincialization of her service and the said representation was disposed of vide order, dated 18.01.2021, whereby the High Power Committee again rejected the claim of the petitioner for regularization of her service on the ground that she was appointed as an Additional Teacher.

3.7. Then being aggrieved, by the order, dated 18.01.2021, of the High Power Committee, the petitioner had filed another writ petition, being WP(C) No.4689/2021, whereby this Court was pleased to set aside the said order dated 18.01.2021, vide judgment and order dated 21.03.2024, the matter was remanded back to the Director, Elementary Education Department, Assam, with a direction to place the case of the petitioner again before the High Powered Committee (HPC) and/or any other committee presently in existence for considering the case of the petitioner for provincialization in accordance with the decisions of this Court relating to provincialization/regularization services of

dropped teachers as well as the policy as contained in the Office Memorandum, dated 13.01.2003. The High Powered Committee (HPC) was also directed to strictly consider the case of the petitioner in terms of the Office Memorandum, dated 13.01.2003, and the decision of this Court rendered in the case of **Tapan Chandra Das (supra).**

3.8. Thereafter, the petitioner had obtained the certified copy of the judgment and order dated 21.03.2024, and submitted the same along with representation, dated 05.04.2024, before the contemnor No.2, but the dealing officials refused to furnish the acknowledgment receipt. Therefore, copy of the said representation along with the order was again submitted on 22.04.2024, and also sent the said copy of representation dated 05.04.2024, to the alleged contemnor No.2 through speed post and the same was received on 24.04.2024 and in spite of that the contemnor has not been implementing the aforementioned direction of this Court, dated 21.03.2024, and sleeping over the matter. And being aggrieved, she has approached this Court by filing the present contempt petition.

3.9. Mr. Hoque, also submits that the High Power Committee in its meeting dated 12.03.2025, has rejected the claim of the petitioner on the same grounds which was earlier set aside by this Court in the judgment and order dated 21.03.2024, and that the petitioner has rendered her service throughout her life and she has already retired from service and she returned home with empty hands and rejection of her claim by the High Power Committee on the same ground which was earlier set aside by this Court, amounts to contempt and therefore, he has contended to allow this petition by imposing punishment upon the respondents.

4. Per contra, Mr. Kaushik, learned counsel for the Contemnor Nos.1 and 2, referring to the affidavits filed by them, submits that in the judgment and order dated 21.03.2024 of this Court, there was no positive direction to regularize the service of the petitioner. The direction was only to consider the case and accordingly, the High Power Committee had considered the case of the petitioner and that there is no willful disobedience, as such and as alleged in this petition and under such circumstances, it is contended to dismiss the petition.

5. Mr. P. Sarmah, learned counsel for the contemnor No.4 also reiterated the stand taken in the affidavit and additional affidavit, that there has been no willful or deliberate disobedience on his part in implementing the judgment and order dated 21.03.2024, passed in WP(C) No.4689/2021. It is stated that in the said judgment and order this Court was pleased to direct the High Power Committee to consider the case of the petitioner in terms of the Office Memorandum, dated 13.01.2003, and the decision of the Court rendered in the case of **Tapan Chandra Das (supra)**, and in the event of the High Power Committee recommend the name of the petitioner for provincialization of her service on consideration of her case strictly by appreciating the factual position available with regard to the service rendered by the petitioner in the said school, such provincialization shall be effected with effect from the date of other similarly situated dropped Teachers came to be regularized in their services in pursuance of the Office Memorandum dated 13.01.2003 and that this Court was also pleased to remand the matter back to the Director of Elementary Education, Assam, who shall place the case of the petitioner again before the High Power Committee and/or any other Committee presently in existence for considering the case of the petitioner for provincialization in accordance with the

decision of this Court relating to provincialization/regularization of services of dropped Teachers as well as the policy contained in the Office Memorandum, dated 13.01.2003, and that the direction in paragraph Nos.20 and 24 were not addressed personally to the respondent No.4 and that the High Power Committee has taken up the matter of the petitioner on 12.03.2025, and that this Court vide order, dated 24.09.2025, passed in the present proceeding observed that rejection of the petitioner's claim by the minutes dated 12.03.2025, on the same ground could not be accepted as compliance of the judgment and order dated 21.03.2024 and granted a last opportunity to comply with the earlier direction and thereafter, again the matter was placed before the High Power Committee in its meeting held on 24.10.2025, for fresh consideration and that the Committee had directed the Director of Elementary Education, Assam, to submit a detailed report on whether the petitioner fulfilled the criteria laid down in the office memorandum dated 13.01.2003. Then the Committee was specifically required examination of whether the School was, in fact, provincialized in 2008 and it also required examination of whether the petitioner had rendered at least two years of continuous service immediately preceding the taking over by the Government. The Committee further required examination of whether her appointment was commensurate with the student enrollment in the school and it was also sought verification of whether the school wise norms regarding sanctioned posts had been maintained and finally the Committee required verification of whether any sanctioned post was available for regularization or provincialization in the concerned district and the Directorate had submitted a detailed report on 07.11.2025, before the High Power Committee and thereafter, the High Power Committee again met on 07.11.2025 and thereafter thoroughly examined the report of the Director of

Elementary Education, Assam, in the light of the Office Memorandum, dated 13.01.2003, opined that the petitioner did not fulfill the conditions laid down in the Office Memorandum and was therefore, not eligible for provincialization and that the decision dated 07.11.2025, is a collective decision of the High Power Committee and there is no willful disobedience and therefore, it is contended to dismiss the same.

6. Notably, the other members of the High Power Committee also filed their affidavit taking a stand that there was no positive direction instead the direction was to consider the case and the Committee has considered the case in the light of the direction issued by this Court in the order dated 21.03.2024 and as such, there is no willful disobedience on their part.

7. Mr. Gogoi, learned counsel for the respondent No.5 also subscribed the submission of the rest of the contemnors and contended to dismiss the contempt petition as there is no willful disobedience of the judgment and order of this Court since there was no positive direction to provincialise the service of the petitioner.

8. Having heard the submission of learned counsel for both the parties, this Court has carefully gone through the petition and the documents placed on record and also perused the judgment and order of this Court dated 21.03.2024 in WP(C) No.4689/2021 and also the minutes of the High Power Committee dated 12.03.2025 and 07.11.2025.

9. It is to be noted here that in the judgment and order, dated 21.03.2024, in paragraph Nos.20 and 21, this Court has directed as under:-

> "**20. In view of the fact that the order, dated 18.01.2021, has been interfered with by this Court, on**

arriving at a conclusion that the grounds as assigned for rejecting the case of the petitioner therein, are clearly not sustainable; the matter now stands remanded back to the Director, Elementary Education Department, Assam, who would now place the case of the petitioner again before the High Powered Committee (HPC) and/or any other committee presently in existence for considering the case of the petitioner for provincialization in accordance with the decisions of this Court relating to provincialization/regularization services of dropped teachers as well as the policy as contained in the Office Memorandum, dated 13.01.2003.

21. The High Powered Committee (HPC) shall strictly consider the case of the petitioner in terms of the said Office Memorandum, dated 13.01.2003, and the decision of this Court rendered in the case of *Tapan Chandra Das (supra).*"

10. From the latest Minute of the Meeting of the High Power Committee, by which the case of the petitioner was again rejected on 07.11.2025, the High Power Committee observed as under:-

"**The Committee has thoroughly examined the report of DEE, Assam and it is observed that, although the petitioner is found to have been rendering continuous services in the school for two (02) years immediately preceding the taking over by Govt., given the fact that the School was provincialized in 2008, however, appointment of the petitioner by the Managing Committee does not commensurate with the enrollment of the students in the school at the time of provincialization. The petitioner was appointed as Additional Teacher, and she was not promoted to the post of Assistant Teacher. Considering**

the low enrollment in the School at that time, no additional post was required to be created.

Hence, taking into account all the above points and elaborate explanation of the points as laid in the Notification dated 13.01.2003, the Committee opines that the incumbent Malati Bepari does not fulfill the conditions laid in the said notification and hence not eligible for provincialization."

11. Thus, it is apparent that in the judgment and order, dated 21.03.2024, especially in paragraph Nos.20 and 21, this Court has directed the High Power Committee to consider the case of the petitioner and accordingly, the High Power Committee has considered the case and adopted the Minutes of the meeting, dated 12.03.2025, and also dated 07.11.2025. As submitted by the learned counsel for the contemnors there was no positive direction to provincialise the service of the petitioner. The direction was to consider the claim of the petitioner in the light of the Office Memorandum, dated 13.01.2003, and the decision of this Court rendered in the case of **Tapan Chandra Das (supra).** And it appears that the contemnors had complied with the said direction, although in negative way.

12. It is to be noted here that the merit of the said decision cannot be decided in a Contempt proceeding, as held by Hon'ble Supreme Court in the case of **J.S. Parihar v. Ganpat Duggar**, reported in **(1996) 6 SCC 291,** that once an order is passed pursuant to the direction of the Court, a fresh cause of action arises and the legality or correctness of the order so passed pursuant to the order of the Court, cannot be adjudicated in contempt proceeding.

12.1. Relevant paragraph of the said decision is extracted herein below for ready

reference:-

> "**6. The question then is whether the Division Bench was right in setting aside the direction issued by the learned Single Judge to redraw the seniority list. It is contended by Mr. S.K. Jain, the learned counsel appearing for the appellant, that unless the learned Judge goes into the correctness of the decision taken by the Government in preparation of the seniority list in the light of the law laid down by three Benches, the learned Judge cannot come to a conclusion whether or not the respondent had willfully or deliberately disobeyed the orders of the Court as defined under Section 2(*b*) of the Act. Therefore, the learned Single Judge of the High Court necessarily has to go into the merits of that question. We do not find that the contention is well founded. It is seen that, admittedly, the respondents had prepared the seniority list on 2-7-1991. Subsequently promotions came to be made. The question is whether seniority list is open to review in the contempt proceedings to find out whether it is in conformity with the directions issued by the earlier Benches. It is seen that once there is an order passed by the Government on the basis of the directions issued by the court, there arises a fresh cause of action to seek redressal in an appropriate forum. The preparation of the seniority list may be wrong or may be right or may or may not be in conformity with the directions. But that would be a fresh cause of action for the aggrieved party to avail of the opportunity of judicial review. But that cannot be considered to be the willful violation of the order. After re-exercising the judicial review in contempt proceedings, a fresh direction by the learned Single Judge cannot be given to redraw the seniority list. In other words, the**

learned Judge was exercising the jurisdiction to consider the matter on merits in the contempt proceedings. It would not be permissible under Section 12 of the Act. Therefore, the Division Bench has exercised the power under Section 18 of the Rajasthan High Court Ordinance being a judgment or order of the Single Judge; the Division Bench corrected the mistake committed by the learned Single Judge. Therefore, it may not be necessary for the State to file an appeal in this Court against the judgment of the learned Single Judge when the matter was already seized of the Division Bench."

12.2. In view of the aforesaid facts and circumstances, this Court is of the considered opinion that in view of the direction being passed and consequent adoption of Minutes of the meeting of the High Power Committee, dated 12.03.2025, and also dated 07.11.2025, by the contemnors, this Court is afraid that the merit of such Minutes cannot be examined in this contempt proceeding. It would not be permissible under Section 12 of the Contempt of Court Act. As held by Hon'ble Supreme Court in the case of **J.S. Parihar (supra),** the decision taken in the Minutes of the Meeting may not be in conformity with the directions issued by this Court, but that would be a fresh cause of action for the petitioner herein to avail of the opportunity of judicial review.

13. It worth mentioning in this context that the Minutes of the Meeting of the High Power Committee, dated 07.11.2025, is already being challenged by the petitioner by filing a writ petition, being WP(C) No.4689/2021, which is tagged with the present petition.

14. Under the given factual and legal matrix, this Court finds this contempt

proceeding not maintainable, and accordingly, the same closed, leaving the parties to bear their own costs.

15. Now, the Registry shall list the WP(C) No.4960/2025, before the Court as per roster.

JUDGE

Comparing Assistant