

GAHC010029372024



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

Case No. : WP(C)/730/2024

BABUL ANCHARI AND 9 ORS.
S/O- MD. JALAL ANCHARI, VILL.- DHANIA BHETI, P.O. BATADRAVA, DIST.
NAGAON, ASSAM, PIN- 782122.

2: MD. NOBI HUSSAIN
S/O- LATE USMAN ALI
P.O. DHUPAGURI PATHER
P.S. DHING
DIST. NAGAON
ASSAM
PIN- 782123.

3: MAJIBUR RAHMAN
S/O- LATE MD. ABDUL KADIR
VILL.- DHANIA BHETI
P.O. DHANIA BHETI
P.S. BATADRAVA
DIST. NAGAON
ASSAM
PIN- 782122.

4: ZIAUR RAHMAN
S/O- MD. SHAMSHER ALI
VILL.- KANDAMONI PATHAR
P.O. KANDAMONI
P.S. BATADRAVA
DIST. NAGAON
ASSAM
PIN- 782122.

5: HASEN ALI
S/O- HAZRAT ALI
VILL.- HAIDUBI
P.O. KANDAMONI

P.S. BATADRAVA
DIST. NAGAON
ASSAM
PIN- 782122.

6: ANUWARA AHMED
D/O- MD. HAFIZ UDDIN
VILL.- AMLOKHI
P.S. BATADRAVA
DIST. NAGAON
ASSAM
PIN- 782122.

7: MD. HIFJUR RAHMAN
S/O- MD. JINNAT ALI
VILL.- SALONABORI
P.O. AMLOKHI
P.S. BATADRAVA
DIST. NAGAON
ASSAM
PIN- 782122.

8: NARGISH AHMED
W/O- BABUL AHMED
VILL.- BECHAMARI
P.O. BECHAMARI
P.S. DHING
DIST. NAGAON
ASSAM
PIN- 782123.

9: SALMA BEGUM HAZARIKA
D/O- SAHIDUL ISLAM HAZARIKA
VILL.- KADAMONI PATHER
P.O. KADAMONI
P.S. BATADRAVA
DIST. NAGAON
ASSAM
PIN- 782122.

10: HABIBUR RAHMAN
S/O- HAFIZ UDDIN
VILL.- KUBAI KATA
P.O. DHANIA BHETI
P.S. BATADRAVA
DIST. NAGAON
ASSAM
PIN- 782122

VERSUS

THE STATE OF ASSAM AND 2 ORS
TO BE REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVT. OF ASSAM, EDUCATION ELEMENTARY DEPARTMENT, DISPUR,
GUWAHATI-6, ASSAM

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

3:THE MISSION DIRECTOR

SARBA SHIKSHA ABHIYAN MISSION
ASSAM
KAHILIPARA
GHY-19

Advocate for the Petitioner : MR. K A MAZUMDER

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 15.02.2024

Heard Mr. E. Ahmed, learned counsel for the petitioners. Also heard Mr. B. Talukdar, learned standing counsel, Education (Elementary) Department, representing the respondent Nos.1 & 2 and Mr. B. Choudhury, learned counsel representing the respondent No.3.

2. The petitioners claim that the issue raised in this writ petition would be covered by the order dated 23.06.2023 passed in WP(C) No.3667/2023 and

similar order may be passed. The order dated 23.06.2023 in WP(C)/3667/2023 is extracted as below:

"Heard Mr. A.R. Bhuyan, learned counsel for the petitioners. Also heard Ms. N. Phukan, learned standing counsel, Elementary Education for the respondent Nos. 1 and 2 and Mr. S. Bora, learned standing counsel, SSA for the respondent No.3.

2. The petitioners before this Court were serving as Education Volunteers (EV) under different Education Guarantee Scheme (EGS) Centers, which were established for implementation of provisions of the Right to Free and Compulsory Education Act, 2009. The appointment of the petitioners as Education Volunteers were made after a selection process.

3. The EGS Centers have been shut down due exhaustion of funds and the petitioners presently are without any job. They also do not possess the Teacher Eligibility Test (TET) qualifications. As such, they are unable to apply for the job of Teachers.

4. Therefore, being aggrieved, the petitioners had made a representation before the Minister of Education, Government of Assam by representation dated 02.06.2022, praying for relaxing from passing out the mandatory TET qualification in respect of the petitioners and permit them to apply for any teacher post.

5. After hearing the learned counsel for the parties, it appears that the representation dated 02.06.2022 is made to the Minister of Education, Government of Assam and not before the appropriate authority. Accordingly, this writ petition is disposed of directing the petitioners to file a fresh representation before the Secretary, School Education Department, Govt. of Assam within a period of 2(two) weeks from today. Thereafter, on receipt of the representation, the Secretary, School Education Department shall consider and dispose of the same by a speaking order in accordance with law within a period of 2(two) months from the date of receipt of the representation.

6. With the aforesaid observations and directions, the writ petition is disposed of."

3. Mr. B. Choudhury, learned standing counsel for the SSA, Assam submits that the petitioners in the present proceedings have not disclosed the date from which they were so terminated on closure of the scheme involved. Mr. Choudhury, also submits that the petitioners although being provided with reasonable opportunities by the State to acquire the required qualifications, they have failed to acquire such qualifications and

accordingly, the petitioners are not entitled to be considered for recruitment as teachers/tutors in primary schools of the State. The petitioners not having the requisite qualifications as mandated by National Council of Teachers Education (NCTE), they are ineligible under the provisions of Right to Children to Free and Compulsory Education Act, 2009(For short RTE, Act 2009) to be appointed as teachers/tutors in the primary schools of the State.

4. In view of the above position and as provided in the order dated 23.06.2023, passed in WP(C)/3667/2023, the petitioners may also submit a representation before the Secretary to the Government of Assam, Secondary Education Department. The petitioners in their representation shall specifically disclose the date on which they were terminated from the engagements made in their individual cases in various EGS Centers.

5. The petitioners shall also highlight in the said representation that they do not possess the requisite qualifications under the NCTE, and also disclose as to why they had not availed the opportunities provided to them by the Government in this connection.

6. The Secretary to the Government of Assam, Secondary Education Department on receipt of such a representation shall give its due consideration on merit and shall also take into account the submissions of Mr. B. Choudhury, learned standing counsel for the SSA, Assam as noticed hereinabove as well as the explanations provided by the petitioners for the delay in approaching the authorities raising their grievances after the termination of their such engagement.

7. The Secretary to the Government of Assam, Secondary Education

Department shall thereafter pass a reasoned speaking order covering all the above aspects of the matter. The order that would be so passed be communicated to the petitioners.

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

JUDGE

Comparing Assistant