

GAHC010012992017



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

**Case No. : I.A.(Civil)/457/2017
In WA No.2800050/2016 (Filing Number)**

THE STATE OF ASSAM and ANR
REPRESENTED BY THE COMMISSIONER and SECY. TO THE GOVT. OF
ASSAM, EDUCATION ELEMENTARY DEPTT., DISPUR, GUWAHATI 781006

VERSUS

SHYAMLAL SARKAR and 22 ORS,
ASSTT. TEACHER OF PUB BARALIMARI LP SCHOOL,
R/O VILL. BARALIMARI, P.O. BARALAMARI, DIST. MORIGAON.

For the Applicant(s) : Mr. R. Mazumdar, Advocate.

For the Respondent(s) : Mr. A.K. Gupta, Advocate for respondent Nos.1, 2, 3, 8, 9,
10, 11, 14, 15, 17, 21 & 22.

- BEFORE -
HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE SUMAN SHYAM

19.04.2024

(Vijay Bishnoi, CJ)

The matter comes up for consideration of I.A.(Civil) No.457/2017 filed by the applicants under Section 5 of the Limitation Act, 1963 with a prayer to condone the delay of 1186 days occasioned in preferring the connected writ appeal.

Mr. R. Mazumdar, learned counsel appearing for the applicants has submitted that the learned Single Judge, vide judgment dated 05.04.2013, passed in WP(C)

No.6666/2010 and other connected writ petitions including WP(C) No.6842/2010 has issued a direction to the State to consider the cases of the writ petitioners for provincialisation of their services by invoking the power under Rule 7 of the Assam Elementary Education (Provincialisation) Rules, 1977 [hereinafter referred as the 'Rules, 1977'] by the State Government at par with the 130 dropped teachers in whose cases the provision of Rule 5(3) of the Rules, 1977 was relaxed.

It is contended that Review Petition No.148/2013 and other two connected review petitions, were filed on behalf of the State before the learned Single Judge which came to be dismissed vide order dated 30.09.2015 on the ground that if the plea of the review petitioners was considered at that stage that would amount to rehearing of the writ petitions, which is not the scope and object of review jurisdiction.

It is contended that after dismissal of the aforesaid review petitions, the connected writ appeal is preferred with a delay of around 210 days. It is also contended that the Division Bench of this Court in Writ Appeal No.228/2014 [Baknaitho Bargoyari & Anr. Vs. The State of Assam and Ors.], decided on 20.06.2014 has clearly held that an incumbent who has not completed 2(two) years of service is not entitled for provincialisation and the cases of the writ petitioners is squarely covered by the aforesaid decision of the Division Bench.

Learned counsel appearing for the applicants has further submitted that the delay in filing the connected writ appeal is occurred due to administrative reasons and the applicants have no intention to file the writ appeal with such delay.

Mr. A.K. Gupta, learned counsel appearing for the respondent Nos. 1, 2, 3, 8, 9, 10, 11, 14, 15, 17, 21 and 22 has opposed the application for condonation of delay and has submitted that the State has failed to explain the day-to-day delay in filing the connected writ appeal and therefore, the delay is not liable to be condoned.

Heard learned counsel appearing for the parties.

It is true that the connected writ appeal is filed with a great delay of 1186 days.

However, it cannot be ignored that the Division Bench has ruled otherwise in a writ appeal relating to similar situated employees and in such circumstances, we deem it appropriate to hear the connected writ appeal and dispose of the same on merits. Hence, the delay of 1186 days occasioned in preferring the connected writ appeal is liable to be condoned.

The instant interlocutory application is, therefore, allowed.

The delay of 1186 days is accordingly condoned.

Registry is directed to number the connected writ appeal and list the same for admission after 2(two) weeks.

Respondents in the connected writ appeal may file their response by the next date of listing of the same.

The I.A.(C) No.457/2017 is disposed of.

JUDGE

CHIEF JUSTICE

Comparing Assistant