

GAHC010015012014



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

Case No. : WP(C)/4703/2014

MERUNJYOTI BARUAH
S/O- SRI GOPAL CH. SEAL, VILL. and P.O.- BARAJOL, P.S.- GHOGRAPAR,
DIST.- NALBARI, PIN- 781369, ASSAM.

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE COMMISSIONER and SECY. TO THE GOVT. OF ASSAM,
EDUCATION SECONDARY DEPTT., DISPUR, GHY- 6.

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

3:THE INSPECTOR OF SCHOOLS NALBARI DIST. CIRCLE ASSAM

Advocate for the Petitioner : MR.D K SARMAH

Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

ORDER

Date : 06.02.2024

Heard Ms. A. Talukdar, learned counsel for the petitioner. Also heard Mr. Bedanta Kaushik, learned standing counsel, appearing on behalf of all the respondents.

2. The petitioner by way of instituting the present writ petition, has

presented a challenge to an order, dated 22.07.2014, issued by the Secretary to the Government of Assam, Education(Secondary) Department, by which the claim of the petitioner for release of his salaries w.e.f. 01.01.206, came to be rejected.

3. The facts requisite for adjudication of the issues arising in the present proceedings, is noticed as under:

The petitioner contends that he was engaged on honorary basis as an Assistant Teacher in Barajol High School in the year 1998. The petitioner's father who was at the relevant point of time, working as the Headmaster of the said school vide his communication, dated 05.07.2000, requested the jurisdictional Inspector of Schools to appoint the petitioner against the resultant vacancy that would arise in the school on his retirement w.e.f. 30.04.2001. The said request as made by the father of the petitioner was so made with reference to a Notification, dated 23.07.1999, by which, 10 percent quota in all vacancies in L.P. schools were kept reserved for sons or unmarried daughters of retired teachers from Primary to Secondary level.

The petitioner not having been favoured with an appointment in terms of the said Notification, dated 23.07.1999, he approached this Court by instituting a writ petition being WP(c)3924/2001. This Court, vide order, dated 04.06.2001, was pleased to dispose of the said writ petition by directing the respondents to consider and dispose of the representation submitted by the petitioner in accordance with law and by considering the cases of similarly situated

candidates of same category. It is seen that in pursuance of the above directions passed by this Court; the jurisdictional Inspector of Schools vide order, dated 22.05.2003, proceeded to allow the petitioner to draw his monthly salaries against a vacant post available in Barbelbari High School. It is to be mentioned that at the relevant point of time, the petitioner continued to serve at Barajol High School. Thereafter, the jurisdictional Inspector of Schools vide order, dated 03.08.2005, proceeded to adjust and regularize the services of the petitioner against a post arising in Namati Mouza High School due to retirement of an incumbent therein. The said post for the said purpose, was withdrawn and placed at Barajol High School. The salaries of the petitioner not having been released against his said purported regularization of his services, led to institution of a writ petition being WP(c)1860/2007 before this Court by the petitioner. This Court, vide order, dated 11.04.2007, was pleased to dispose of the said writ petition requiring the authorities to place the case of the petitioner before the Expert Committee as constituted as per the directions passed by this Court, vide order, dated, 14.08.2003, in WP(c)2844/1999, and the judgment & order, 06.04.2006, passed in WP(c)2147/1999.

In terms of the said directions passed by this Court, the case of the petitioner came to be placed before the Expert Committee. The Expert Committee, on consideration of the claim of the petitioner, proceeded to reject his such claim for salaries holding that he was not eligible to get his salaries in-as-much as he was appointed on honorary basis in a provincialized school. It was further noted by the said Committee that the Inspector of Schools did not have the authority to withdraw any post from a particular school and place the same in any other school. On the said grounds, the case of the petitioner was

rejected. The Secretary to the Government of Assam, Education(Secondary) Department, vide order, dated 22.07.2014, proceeded to communicate to all concerned, the decision as arrived at by the Expert Committee as in the case of the present petitioner. It is the decision as contained in the order, dated 22.07.2014, that is under challenge in the present proceedings.

4. The present writ petition was taken-up for final consideration by this Court, vide order, dated 16.09.2014, and this writ petition was dismissed as not maintainable on the ground of laches. The petitioner, accordingly, assailed the said order, dated 16.09.2014, before a Division Bench of this Court by instituting a writ appeal being W.A. No. 228/2014. The appellate Court, vide order, dated 18.05.2016, on consideration of the matter, interfered with the order, dated 16.09.2014, and remanded the matter to the writ Court for a decision on its own merit. Accordingly, the present writ petition is taken up for final consideration.

5. At the outset, it is to be noted that the claim of the petitioner is based on the Notification, dated 23.07.1999, issued by the Secretary to the Government of Assam, Education(Secondary) Department, entitling the sons and unmarried daughters of retired Teachers to a reserved 10% quota with regard to vacancies arising in the Lower Primary schools. The right of a person to be considered for appointment against the said 10% quota is no longer any *res integra* and a Division Bench of this Court, in the case of ***Shahejul Hussain Saikia v. State of Assam & ors.***, reported in **2005 (2) GLT 241**, had considered the right of a person for being considered against the said 10% quota Scheme. On consideration of the provisions of the said Scheme, this Court concluded that

the wards of retired Primary to Secondary level teachers are entitled to be considered against 10% quota vacancies reserved for them only on assessment of their merit. It was further held that the appointment under the said Scheme mandates a selection, in other words, the provision made for reservation of the wards of retired Primary to Secondary level teachers would come into effect only after the wards have participated in a due selection process wherein, their merits are to be assessed.

6. From the pleadings available on record, it is clear that the petitioner had not participated in any selection process, wherein, his merit was assessed and thereon, he was recommended for appointment in terms of the provisions of the said Notification, dated 23.07.1999. Accordingly, the petitioner is not entitled to automatic appointment under the 10% quota Scheme without any selection.

7. The materials available on record, would reveal that the petitioner was never appointed as an Assistant Teacher at any point of time by the departmental authorities. It is also a settled position of law that a Managing Committee of a provincialized school has no authority to appoint any person on honorary basis after the school has been provincialized(refer ***Jahangir Alam v. State of Assam & ors.***, reported in **2003(3) GLT 544**). Accordingly, the initial appointment of the petitioner on honorary basis is clearly *non-est* in the eye of law. The petitioner not being appointed by the departmental authorities; the order, dated 03.08.2005, issued by the jurisdictional Inspector of Schools regularizing the services of the petitioner is to be construed to be one issued without there being an order of appointment preceding it. The said order, dated 03.08.2005, in fact, has the effect of regularizing an illegal engagement of the

petitioner and the same is impermissible. The Inspector of Schools had no jurisdiction to effect such regularization of services without the approval of the higher authorities of the Department and in violation of the Service Rules governing the post against the petitioner was so adjusted or regularized.

8. The initial appointment of the petitioner on honorary basis in a provincialized school being not sustainable, the subsequent regularization of such invalid appointment is also of no consequence and in that view of the matter, the petitioner is not entitled for any direction for continuation in his services. The petitioner is further not entitled to any direction for release of his salaries in-as-much as the appointment of the petitioner and his regularization by the Inspector of Schools are both *non-est* in the eye of law.

9. It is to be noted here that the petitioner in his pleadings has not brought on record any material to indicate that he was appointed in terms of the Notification, dated 23.07.1999, after he had been selected as an Assistant Teacher in a process of selection. The orders of regularization of the petitioner also does not disclose that such orders were so issued on the basis of a selection of the petitioner in a process initiated and concluded in the manner known to law. Accordingly, the order, dated 22.07.2014, and the conclusions of the Expert Committee as reflected therein, does not call for any interference of this Court.

10. At this stage, it is to be noted that the Government of Assam in the Secondary Education Department, vide Notification, dated 04.07.2016, had

withdrawn the Notifications/Circulars issued providing for a 10% reservation quota against the vacancies in Lower Primary Schools for sons and unmarried daughters of retired teachers of Primary to Secondary level.

11. In view of the decision of this Court in the case of ***Shahejul Hussain Saikia***(supra), the petitioner not having been selected in a due process initiated for filling up the post in the High School, his claim for appointment against 10% reserved quota, cannot be acceded to. Further, after 04.07.2016, the very Scheme against which the appointment is sought for by the petitioner having been withdrawn; the right of the petitioner for a direction to be considered for appointment under the said Scheme no longer exists.

12. In view of the said position; the writ petition is held to be devoid of merit and the same accordingly stands dismissed. However, there shall be no order as to costs.

JUDGE

Comparing Assistant