



GAHC010232162016

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

Case No. : WP(C)/2428/2016

SALEHA BEGAM LASKAR
W/O MD. SAIFUDDIN LASKAR, VILL. / P.O. GANIRGAM, P.S. KATIGORAH,
DIST- CACHAR, ASSAM

VERSUS

THE STATE OF ASSAM AND 7 ORS
REP. BY THE COMMISSIONER and SECY. TO THE GOVT. OF ASSAM,
EDUCATION SECO DEPTT., DISPUR, GHY-6

2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GHY-19

3:THE INSPECTOR OF SCHOOLS
CACHAR DISTRICT CIRCLE
CACHAR
SILCHAR

4:THE CHAIRMAN
DISTRICT SCRUTINY COMMITTEE
REP. BY THE DY. COMMISSIONER
CACHAR
SILCHAR

5:THE MANAGING COMMITTEE
REP. BY THE PRESIDENT
TARINIPUR HIGH SCHOOL
P.O. SIALTECK
DIST- CACHAR
PIN-788802

6:THE SECY.



TARINPUR HIGH SCHOOL
REP. BY ITS HEAD MASTER
TARINIPUR HIGH SCHOOL
P.O. SIALTECK
DIST- CACHAR
PIN-788802

7:ALIM UDDIN LASKAR
HEADMASTER
TARINIPUR HIGH SCHOOL
S/O LT. ASADDAR ALI
VILL. and P.O. GANIRGRAM
DIST- CACHAR
PIN-788025

8:KHUDEJA BEGUM
W/O LT. JALAL UDDIN
VILL. TARINIPUR
P.O. SAILTECH
DIST- CACHAR
ASSAM
PIN-78880

Advocate for the Petitioner : MR.H R A CHOUDHURY

Advocate for the Respondent : MS.R BEGUM R- 5,6and7

Linked Case : WP(C)/1651/2015

SALEHA BEGAM LASKAR
W/O MD. SAIFUDDIN LASKAR VILL P.O. GANIRGAM
P.S. KATIGORAH DIST. CACHAR
ASSAM.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMMISSIONER and SECRETARY
TO THE GOVT. OF ASSAM
EDUCATION SECONDARY DEPARTMENT
DISPUR
GUWAHATI-6.

2:THE DIRECTOR OF SECONDARY EDUCATION

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GUWAHATI-19.
3:THE INSPECTOR OF SCHOOLS

CACHAR DISTRICT CIRCLE
CACHAR
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4:THE TREASURY OFFICER
CACHAR
SILCHAR
DIST. CACHAR.

5:THE HEAD MASTER
TARINIPUR HIGH SCHOOL
P.O. SIALTECK
DIST. CACHAR
PIN - 788802.

6:SMTI. KHUDEJA BEGUM
W/O LT. JALAL UDDIN VILL- TARINIPUR
P.O. SIALTECK
DIST. CACHAR
ASSAM
PIN - 788802.

Advocate for : MR.F U BORBHUIYA

Advocate for : GA

ASSAM appearing for THE STATE OF ASSAM AND 5 ORS

B E F O R E

Hon'ble MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioner : Shri F. U. Borbhuiya, Advocate.

Advocate for respondents : Ms. S. Terangpi, SC,
Secondary Education,
Ms. R. Begum, Advocate, Respondent Nos. 5, 6 & 7,
Shri M. H. Rajbarbhuiyan, Advocate, Respondent No.
8.

Date of hearing : 16.06.2023

Date of judgment : 16.06.2023

JUDGMENT & ORDER

These two writ petitions have been instituted by the same petitioner. While the first writ petition being WP(C) No. 1651/2015 was filed mainly challenging the action of provincialisation of the service of the respondent no. 8 as Junior Assistant in the Tarinipur High School in the district of Cachar, the second writ petition being WP(C) No. 2428/2016 was filed challenging an order of termination of the petitioner from her services.

2. Before going to the issues, which have arisen for consideration, the facts of the case in brief may be stated as follows.

3. The Tarinipur High School (hereinafter the School) was established in the year 1959 and had got recognition on 01.01.1990. The petitioner claims that he was possessing all the requisite qualifications and was appointed as LDA in the School vide an order dated 28.02.1996 issued by the Managing Committee after the resolution. Pursuant to the said order, the petitioner claims to have joined the School as LDA (Junior Assistant) on 01.03.1996 which was also approved by the Inspector of Schools, Cachar on 31.03.1997. The School, it may be mentioned was at a venture stage at that time.

4. The petitioner has stated that one Jalal Uddin was working from prior point of time as an LDA and to assist him that the petitioner was appointed. However, the said Jalal Uddin had passed away on 26.12.2007 whereafter the respondent No. 8, who was the wife of Jalal Uddin was appointed on 04.02.2008 vide a resolution. The petitioner claims that the respondent No. 8 was more than 41 years of age at that time and was only a Matriculate.



5. It is the case of the petitioner that after the enactment of the ***Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011***, on 03.10.2012, the Head Master of the School had sent the particulars of various teaching and non-teaching staff to get the benefit of provincialisation. The said chart also contained the name of the respondent No. 8 which itself records that she was 47 years of age and had joined the School on 04.02.2008 with qualification as HSLC. Since the name of the petitioner was left out, on the same date i.e. 03.10.2012, another proposal of excess employees was forwarded by the Head Master containing the name of the petitioner whose details were also given. The petitioner was shown to be working as Junior Assistant-II. Though in the qualification column, the petitioner has been stated to be an HSLC passed candidate, the learned counsel for the petitioner has submitted that the same entry is apparently an inadvertent error inasmuch as the petitioner has passed her Higher Secondary Examination, the testimony of which is also annexed with the writ petition.

6. It is the case of the petitioner that since the Government website did not figure her name, she submitted representations for review. However, in the impugned order of provincialisation dated 20.08.2013, the name of the petitioner was not present whereas the same contained the name of the respondent No. 8 as Junior Assistant. The petitioner claims to have submitted representations including one dated 11.02.2015 whereafter the first writ petition WP(C) No. 1651/2015 was filed.

7. In the first writ petition, WP(C) No. 1651/2015, notice of motion was issued by this Court on 25.03.2015 whereafter a joint affidavit has been filed by the Head Master, School Management Committee and the respondent No. 8 wherein it has been stated that the service of the petitioner was terminated in the year 1999 itself, to be precise on 31.10.1999. The petitioner had accordingly filed the second writ petition i.e. WP(C) No. 2428/2016 against such termination order by contending that the same is a manufactured document as she was all along working till the filing of the writ



petition only whereafter she was debarred from discharging her duties.

8. I have heard Shri F. U. Borbhuiya, learned counsel for the petitioner. I have also heard Ms. S. Terangpi, learned Standing Counsel, Secondary Education Department, Ms. R. Begum, learned counsel has appeared for the School Management Committee, namely, respondent Nos. 5, 6 & 7 whereas Shri M. H. Rajborbhuiya has appeared for the respondent No. 8.

9. Ms. Terangpi, the learned Standing Counsel of the Department has also placed before this Court the records obtained by the Directorate from the concerned School and the Office of the Inspector of Schools, Cachar.

10. Shri Barbhuiya, the learned counsel for the petitioner submits that the impugned action is vitiated only to deprive the petitioner and to give benefit to the respondent No. 8. He submits that there may not be any doubt that the petitioner was in service as which would be reflected from the list of access employees which was forwarded on 03.12.2010 containing the name of the petitioner. That apart, he also submits that in the format-B, which was also forwarded by the Head Master in the year 2013 would show that the petitioner was in service.

11. With Regard to the eligibility criteria, the learned counsel has drawn the attention of this Court to the ***Assam Secondary Education (Provincialised) Service Rules, 2003*** and has referred to Rules 4 (b) and (c). Rule 4 (b) stipulates that the qualification for holding the post of Junior Assistant should be Higher Secondary and as per Rule 4 (c), the age has been stipulated to be 18-36 at the time of entry into the service. Reliance has also been placed on the ***Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011***, and reference has been made to Section 4 pertaining to employees of Government Schools. He submits that under Section 4 (3) the conditions for provincialisation has been laid down wherein it has been stated that the candidates should possess the



requisite qualification at the time of initial appoint. Section 5 has also been pressed into service which lays down the terms and conditions as per which, all Rules are required to be followed. The Schedule of the said Act has also been referred to wherein, so far as Junior Assistant is concerned, only one Junior Assistant is prescribed. It is submitted that it is only for this reason that the petitioner has been deprived to give undue benefit to the respondent No. 8, who is otherwise unqualified.

13. As regards the second writ petition wherein the order of termination is challenged, the learned counsel for the petitioner has submitted that such information was received for the first time only from the affidavit-in-opposition filed by the respondents in WP(C) No. 1651/2015. He submits that the affidavit was a common one filed by the School Authorities as well as by the beneficiary, respondent No. 8 and that by itself would establish the connivance.

14. By referring to the averments made in paragraphs 14 and 21 of WP(C) No. 2428/2016, the learned counsel has submitted that at no prior point of time, the notice of termination was ever issued to the petitioner and the same was received for the first time along with the affidavit filed by the respondents in the earlier writ petition. The learned counsel has also submitted that specific averments have been made that the petitioner has been debarred from attending her work after filing of the case.

15. Shri Borbhuiya, the learned counsel for the petitioner submits that apart from the fact that the termination order was never served upon her till the same was brought to her notice by way of an affidavit, as stated above, the same is otherwise not legally sustainable as the same was not preceded by the due process of law. No enquiry of any nature was conducted and no opportunity was granted to the petitioner before such termination order was issued. This submission has been made without prejudice to the earlier submission that the said termination order is a manufactured

one and therefore *non est* the law.

16. In this connection, the learned counsel has also relied upon an order dated 08.03.2017 passed by this Court in the case of ***Musstt. Amina Khatoon Vs State of Assam & Ors.*** in WP(C) No. 4800/2011 wherein in similar circumstances, this Court had interfered with order of termination.

17. *Per contra*, Ms. Terangpi, the learned Standing Counsel, Secondary Education Department has submitted that as per the Attendance Register received from the Office of the Inspector of Schools, Cachar which were, in turn procured from the School, the name of the petitioner does not exist since August, 1998 and therefore, it could be presumed that the petitioner was not in continuous service. It however appears that no affidavit has been filed by the Department in either of the two cases.

18. Ms. R. Begum, learned counsel appearing for the School Authorities, namely, the respondent Nos. 5, 6 & 7 has submitted that since 01.07.1997, the petitioner was unauthorisedly absent and accordingly, her services were terminated after issuing notice. She further submits that though the services were terminated on 03.10.1999, there was no challenge to the same until filing of the second writ petition in the year 2016 and on the ground of inordinate delay itself, the writ petitions are liable to be dismissed.

19. By referring to the affidavit-in-opposition filed by the respondent Nos. 5, 6 & 7, the learned counsel has submitted that the earlier incumbent holding the post of LDA, one Shri Jalal Uddin was unwell and therefore the respondent No. 8 who was his wife was allowed to assist in discharging the duties by making a temporary appointment on 31.12.1999 on honorary basis. She submits that in the year 2007, the earlier LDA passed away and subsequently vide an order dated 02.02.2008, the respondent No. 8



was formally appointed. By referring to the averments made in paragraph-6 of the affidavit, the learned counsel has submitted that specific plea of delay has been taken.

20. Defending the impugned action, Shri M. H. Rajbarbhuiyan, learned counsel for the respondent no. 8 has submitted that the resolution for termination of the services of the petitioner was in the year 1999 which has been put to challenge only in the year 2016 and on the ground of delay itself the second writ petition ought to be dismissed. He further submits that since the petitioner was not in service from 1999, the question of considering her case from provincialisation would not arise at all.

21. The learned counsel for the respondent no. 8 submits that after termination of the services of the petitioner on 31.10.1999, there was a need to assist the existing LDA who was unwell and accordingly his client was inducted in the services to assist in the work of the LDA by the School Managing Committee vide a Resolution dated 31.12.1999.

22. So far as the qualification is concerned, the learned counsel submits that the respondent no. 8 was an existing staff and therefore the qualification which has been prescribed in the Act which came later into operation may not be applicable. He otherwise submits that his client is a Matriculate and is having the experience to handle the work of a Junior Assistant.

23. The reference has been made to the definition of "employee" appearing in Section 2 (h) of the Act of 2011 and also the Rules of 2003 wherein qualification has been laid down. He submits that such qualification came into existence only in the year 2003 whereas the respondent no. 8 was working since 31.12.1999 and therefore there may not be any strict requirement of the qualification prescribed subsequently. He further submits that the records would reveal that the petitioner was not continuing in her service. He also submits that the statutory Rules prescribe for



preferring of an appeal which has not been done and therefore on this count also the writ petitions are not maintainable and liable to be dismissed.

24. Rejoining his submission, Shri F. U. Borbhuiya, learned counsel for the petitioner contends that apart from the fact that the crucial averments made in the writ petition have not been denied, the petitioner has also filed reply affidavit in both the writ petitions.

25. The rival submissions made by the learned counsel for the parties have been duly considered and the materials placed before this Court including the records presented by the Department have been carefully perused.

26. Though writ petition WP(C) No. 2428/2016 has been filed in later point of time, since the same is on the subject of termination of service of the petitioner, the adjudication of which would have a material effect on the subject matter of the first writ petition, the same is taken up first.

27. The petitioner has challenged the order of termination of service which had passed in the year 1999. Such challenge had to be instituted after coming to know about the said order from an affidavit filed jointly by the School Authorities and the respondent no. 8 in the earlier writ petition i.e. WP(C) No. 1651/2015 which was *qua* the provincialisation of the services of the respondent no. 8 by depriving the petitioner. The petitioner has made a categorical statement in paragraph 14 of the writ petition wherein it has been stated that at no prior point of time, she was aware or was issued a copy of the termination order dated 31.10.1999 and it was only from the affidavit filed by the respondents in WP(C) No. 1651/2015 that she, for the first time came to know about such termination order.

28. For ready reference, the averments made in paragraph 14 of the WP(C) No.



2428/2016 is extracted herein below:-

14. *That the petitioner begs to state that she was all along attending the school and was discharging the duties by putting signatures in the Attendance Register even after filing of the writ petition(c) No. 1651/2015. However, the Respondent Nos. 6/7 and 8 on receipt of notice in the above mentioned writ petition, the petitioner was debarred from entering into the school and she was not allowed to put her signature in the Attendance Register. The petitioner states that on receipt of the affidavit-in-opposition filed by Respondent Nos. 6/7 and 8 in the above mentioned case, the petitioner came to learn that she was terminated from service way back on 31.10.1999. The petitioner further states that she was never absent from duty and neither she received any notice from the School Managing Committee nor she received termination letter dated 31.10.2009, it has only come to her knowledge when she received the affidavit-in-opposition filed by respondent nos. 6/7 and 8 in the above mentioned writ petition. To substantiate the proof of regularly attending the school and discharging her duties as LDA, the petitioner is annexing herewith a copy of the working certificate dated 28.1.2015 issued by Respondent No.6/7 is annexed hereto as Annexure-17 to this petition.*

29. The aforesaid averments have not been denied by the Department as no affidavit has been filed by the Department in either of the cases which has already been recorded above. In the affidavit filed by the private respondent, the averments of paragraph- 14 has been replied in paragraph-6 of the affidavit-in-opposition, which has extracted herein below:-

“that the contention in paragraph 14 of the petition are categorically denied being not at all true & correct. It may stoutly be stated that the writ petitioner though was appointed as honorary basis in on 01.03.1996, she did not continue particularly since 01.07.1997 for the reasons best known to her. She even did not at all respond to the repeated notices ultimately her services were terminated as per law by the resolution dated 31.01.1999 of which she was well

aware of but she did never challenge nor protested. It is very unfortunate to state that after the provincialisation of the services of the staff of the institution along with that of the petitioner, the writ petitioner with an ulterior motive of harassing and causing loss to the deponent started her foul play. She more cleverly mislead the outgoing Head Master of the School seeking an experience certificate for herself for applying for a job of Anganwadi Worker (as told by the outgoing Head Master) who casually on humanitarian consideration gave such a certificate dated 28.01.2015 to her, which is no doubt long after the provincialisation of the services of the staff of the school along with the deponent. Thus thereafter taking the alleged certificate as an weapon for her foul play the writ petitioner has been filing case after case for harassing and causing loss to the petitioner. It is therefore respectfully prayed that the petition of the writ petitioner which is based on no lawful basis at all for her such grievance, is liable to be dismissed in limine and with costs to the humble deponent."

30. A reading of the said reply would show that there is no denial of this fact and in fact, the said issue has not even been dealt with. Therefore, this Court is left with no other alternative but to come to a conclusion that termination order dated 31.10.1999, if any was never served upon the petitioner.

31. It is a settled law that orders, until and unless it is communicated will not take effect. The Hon'ble Supreme Court in the case of ***Bachhittar Singh v. State of Punjab, reported in AIR 1963 SC 395*** had laid down that

"...Merely writing something on the file does not amount to an order..."

32. Further in the instant case, the contemporaneous materials would rather show that all along, the petitioner was continuing her service. In this regard, there is no denial from any of the respondents regarding forwarding of the name of the petitioner on 03.10.2012 for the purpose of provincialisation of her services. Though an



objection has been raised with regard to the Certificate produced by the petitioner that such Certificate was issued on the request of the petitioner for some other purpose, even ignoring the said Certificate, the materials on record establishes that the petitioner was in service.

32. Though Shri F. U. Borbhuiya, the learned counsel for the petitioner has also assailed the termination order dated 31.01.1999 on merits with the submission that the same was not preceded by the due process of law, the said aspect of the matter need not be gone into in view of the findings arrived at by this Court that the impugned order of termination is otherwise not sustainable.

33. This Court however would observe at this stage that no semblance of any prescribed procedure is seen to have been followed before issuing the termination order dated 31.10.1999 and the same appears to have been done without any enquiry or giving adequate opportunity.

34. Therefore, this Court is of the unhesitant opinion that the termination order dated 31.10.1999 cannot be stand the test of judicial scrutiny and is therefore set aside.

35. The question which now arises for adjudication is the action of provincialisation of the services of the respondent no. 8 by depriving the petitioner. Admittedly, the respondent no. 8 is junior in service to the petitioner and does not possess the requisite qualification of Higher Secondary. The respondent no. 8 also appears to be disqualified so far as age is concerned as the prescribed age for entry into the service between 18-36 and the respondent no. 8 was 41 years while she has entered the said service.

36. Shri Rajborbhuiya, learned counsel for the respondent no. 8 has tried to

convince this Court that the induction of the respondent no. 8 should be taken from the year 1999 when a resolution was adopted to allow her to work. However, on a close perusal of the said resolution, it appears that the resolution was only allowing the respondent no. 8 to assist her husband who was holding the post of LDA and was unwell. This Court is also unable to accept the proposition advanced on behalf of the respondent no. 8 that she being an existing staff, the qualifications laid down of Higher Secondary may not be essential. This Court is of the opinion that when the statute prescribes a minimum qualification, the same has to be followed.

37. The records which has been produced by Ms. Terangpi, the learned Standing Counsel for the Department is the records forwarded by the School Authorities through the Office of the Inspector of Schools, Cachar. The very act of filing a common affidavit-in-opposition by the School Authorities along with the respondent no. 8 in the first writ petition i.e. WP(C) No. 1651/2015 would *prima facie* demonstrate that the stand of the School Authorities cannot be stated to be a neutral one as apparently the School Authorities have taken the side of the respondent no. 8. Of course, the School Authorities would have all the rights to defend his action but while doing so, the School Authorities have merged their stand with that of the respondent no. 8 by filing a common affidavit which itself creates a serious doubt on the neutral conduct of the School Authorities. Juxtaposed, there is no doubt regarding the qualification and eligibility of the petitioner for consideration of provincialisation of her service.

39. In that view of the matter, this Court is of the view that the order of provincialisation of the respondent no. 8 is not backed by the sanction of law and is accordingly set aside. Consequently, it is directed that the case of the petitioner be considered afresh in accordance with the Rules and the process be finalized expeditiously and preferably within a period of 2 (two) months from the date of



receipt of the certified copy.

41. Both the writ petitions accordingly stand allowed.

42. The records are handed over back to Ms. Terangpi, the learned Departmental Counsel.

JUDGE

Comparing Assistant