



GAHC010026322016

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

Case No. : WP(C)/5928/2016

NIJARA DEKA

D/O- SRI SUNASWAR DEKA, VILL.- KHATA DHAMDHAMA, P.O.- BARBARI
KALANG, DIST.- NALBARI, ASSAM, PIN- 781351.

VERSUS

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

2:DIRECTOR
SECONDARY EDUCATION DEPTT.
ASSAM
KAHILIPARA
GHY- 19.

3:JOINT DIRECTOR
SECONDARY EDUCATION DEPTT.
ASSAM
KAHILIPARA
GHY- 19.

4:INSPECTOR OF SCHOOLS
NALBARI DIST. CIRCLE
NALBARI
ASSAM.

5:PRINCIPAL
P.B. DHIRUDUTTA H.S. SCHOOL
P.O.- KP BARKHALA
DIST.- NALBARI
PIN- 781350.



6:JOYMATI KALITA
SUBJECT TEACHER ASSAMESE
P.B. DHIRUDUTTA H.S. SCHOOL
P.O.- KP BARKHALA
DIST.- NALBARI
PIN- 781350.

7:KANAK CHANDRA TALUKDAR
RTD. PRINCIPAL
P.B. DHIRUDUTTA H.S. SCHOOL
R/O VILL.- UTTAR GANAKGARI
P.O. and P.S.- SORBHOG
DIST.- BARPETA
ASSAM
PIN- 781317

Advocate for the Petitioner : MR.L GOGOI

Advocate for the Respondent : SC, SECONDARY EDUCATION

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (CAV)

Date : 30-06-2022

1. Being aggrieved and dissatisfied by the order dated 28.06.2016 passed by the Director of Secondary Education, Assam whereby it was held that the Petitioner joined his service on 10.04.2010 along with Respondent No.6 and the Respondent No. 6's date of birth being 01.03.1970 and the Petitioner's date of birth being 01.03.1974 and as such the Respondent No.6 was senior to the Petitioner, the instant writ petition has been filed under Article 226 of the Constitution of India.
2. The brief facts of the instant case is that the Petitioner was initially appointed as a Computer Teacher in a school namely P.B. Dhirudutta Higher



Secondary School on 04.04.2004 under a Government Scheme. As per the Petitioner, she resigned from her services on 01.04.2010 and thereafter she was appointed by a letter dated 05.04.2010 as a Subject Teacher in Assamese. It is the case of the Petitioner that she joined to the post of Subject Teacher Assamese on 06.04.2010 though she was serving in the School with effect from 02.04.2010. The Petitioner contends in her writ petition that the Principal of the School had asked her to submit one more joining letter on 10.04.2010 with the assurance that submitting the said joining letter on 10.04.2010 would not cause any problem to the Petitioner. The Petitioner accordingly submitted another joining letter on 10.04.2010. But later on, the Petitioner came to learn that the Respondent No.6 was considered senior to the Petitioner as she had joined on 10.04.2010 on the basis of her date of birth. Being aggrieved, the Petitioner initially filed the writ petition before this Court which was registered and numbered as WP(C) No.3231/2013. This Court vide an order dated 13.06.2013 disposed of the said writ petition with a direction to the Director of Elementary Education Assam to determine the inter se seniority of the Petitioner and the Respondent No.6 (Respondent No.5 in the said proceedings) by affording an opportunity to both the contenders. It was further mentioned that upon examination of the relevant documents including the School Attendance Register, a decision should be given on merits within a period of 8 weeks after receipt of the intimation from the Petitioner. Pursuant thereto, on 28.06.2016, the order impugned in the instant proceedings was passed whereby holding that the Petitioner as well as the Respondent No.6 joined on 10.04.2010 and as the date of birth of Respondent No.6 was on 01.03.1970 and the Petitioner's date of birth was on 01.03.1974, the Respondent No.6 was senior to that of the Petitioner.



3. The Respondent Nos.1 to 5 have not filed their Affidavit-in-Opposition. However, the Respondent No.6 had filed her Affidavit-in-Opposition. In the said Affidavit-in-Opposition, it has been mentioned that she alongwith the Petitioner were appointed on 05.04.2010. On 10.04.2010, the Respondent No.6 joined the school as the Subject Teacher in Assamese. The Petitioner had also joined on the same date as a Subject Teacher in Assamese in the said school. It is further mentioned that the dispute arose as regards the Inter se seniority between the Petitioner and the Respondent No.6 after the submission of the list of teachers for provincialization of their services by the Principal of concerned school on 05.10.2012 whereby the name of the Petitioner was shown below the name of the Respondent No.6 on the basis of materials available on record. The Respondent No.6 filed an RTI Application under the Right to Information Act, before the Central Public Information Officer/State Public Information Officer, Office of the Inspector of School and DC, Nalbari on 09.03.2015 wherein various documents were sought for. The said documents were (i) A photocopy of the individual form submitted by the Petitioner for provincialization, (ii) Joining letter of the Petitioner, (iii) Photocopy of the recommendation of the District Scrutiny Committee, Nalbari containing the list of employees submitted/forwarded to the DSC for provincialization of post and (iv) Photocopy of the format submitted by the Principal for provincialization of the posts. The said documents were furnished to the petitioner by the Principal and Secretary of P.B. Dhirudutta Higher Secondary School on 24.03.2015. Amongst the various documents so furnished, one of such document was the "Individual information to be furnished by each employee". The said document was a document furnished by the Petitioner on 09.02.2011 wherein the Petitioner had against the column No.7 "Date of joining in the school/institution" mentioned the date of joining to



be 10.04.2010. Against the column No.9 of the said document which stipulated the "Period of service in any other Educational institution prior to joining in the present institution and name and address of such institution indicating date of receiving permission/recognition etc. from Govt.", the information so furnished was "In this school as Computer Teacher from 08.04.2004 to 09.04.2010". Further to that a certificate was also furnished and issued by the Principal of P.B. Dhirudutta Higher Secondary School wherein it was certified that the Petitioner rendered her services as Computer Teacher from 08.04.2004 to 09.04.2010 in the School. On the basis of the said documents enclosed to the Affidavit-in-Opposition, it was the stand of the Respondent No.6 that the Petitioner cannot be said to have joined prior to 10.04.2010 in as much as on the basis of the certificate issued by the Principal dated 10.12.2011, it was clearly shown that the Petitioner was working as a Computer Teacher from 08.04.2004 to 09.04.2010. Further to that in the document "Individual information to be furnished by each employee", the Petitioner have entered with her signature thereon that she joined the institution on 10.04.2010. Apart from that, the Petitioner had also admitted in that document that she was a Computer Teacher of the said School from 08.04.2004 to 09.04.2010. As regards the Attendance Register which have been enclosed as Annexure-4 to the writ petition, it has been mentioned that the same on the face of it seems manipulated taking into consideration that while it has been shown that the Petitioner has been putting her signature in the Attendance Register from 02.04.2010 and there were no other Teachers who has put their signatures till 09.04.2010. It was also contended that when the Petitioner has been appointed on 05.04.2010, it is totally inconceivable how the Petitioner would have put her signature on 02.04.2010 unless and ofcourse the Petitioner put her signature as a Computer



Teacher till 09.04.2010.

4. The record further reveals that there was no Affidavit-in-reply to the said Affidavit-in-opposition denying to the contents of the certificate issued dated 10.12.2011 by the Principal of P.B. Dhirudutta Higher Secondary School as well as the document "Individual information to be furnished by the employee".

5. I have heard Mr. U.K. Goswami, the learned counsel for the Petitioner and Mr. U. Sharma, the learned Standing Counsel of the Secondary Education Department. I have also heard Mr. N.N.B. Choudhury, the learned counsel appearing on behalf of the Respondent No.6.

6. In the backdrop of the above, let this Court take into consideration the contentions of the respective parties. Mr. U.K. Goswami the learned counsel for the Petitioner submits that from Annexure-3 to the writ petition, it would be seen that the Petitioner joined her service on 06.04.2010. He submits that on account of cheating being committed by the then Principal, the Petitioner had submitted another joining report on 10.04.2010 which is enclosed as Annexure-3(A) to the writ petition. He submits the Attendance Register would clearly show that the Petitioner had joined on 02.04.2010. The order passed by this Court on 13.06.2013 categorically directed the Director of Secondary Education to determine the Inter se seniority of the Petitioner alongwith the Respondent No.6 herein by affording an opportunity to both the parties and it was specifically mentioned that the School Attendance Register be one of the documents which needs to be taken into consideration. He submits that from a perusal of the order impugned in the instant proceedings, there is no mention whatsoever that the school register in question has been taken into consideration and as such the impugned order dated 28.06.2016 on the face of it is contrary to the directions passed by this Court on 13.06.2013 in WP(C) No.3231/2016.

7. Mr. N.N.B. Choudhury, the learned counsel appearing on behalf of the Respondent No.6 submits that the Petitioner was appointed on 05.04.2010 but strangely in the Attendance Register so produced as Annexure-4 to the writ petition would show that the Petitioner had put her signatures since 02.04.2010 that to prior to her appointment which cannot be conceived of unless and until the certificate issued by the Principal of the School dated 10.12.2011 is taken into consideration. He submits that a perusal of the certificate dated 10.12.2011 would show that the Principal of the said School had certified that the Petitioner was rendering service as a Computer Teacher from 08.04.2004 to 09.04.2010. He further submits that the documents "Individual information to be furnished by each employee" a document which was submitted by the Petitioner before the concerned authority under her signature on 09.02.2011. In the said document, the Petitioner had categorically mentioned that she had joined the School on 10.04.2010 and prior thereto she worked from 08.04.2004 to 09.04.2010 as Computer Teacher. The non-mentioning of the said document by the Petitioner in her writ petition amounts to suppression of the material facts. Further to that, he submits that even by way of an Affidavit-in-reply, the Petitioner have not explained why the said document was not brought on record or have denied the existence of the said document. This is therefore a simple case of suppression of material facts in order to mislead this Court for which the Petitioner is not entitled to any relief under the equitable jurisdiction of this Court. He therefore submits that there is no infirmity in the order impugned in the instant proceedings dated 28.06.2016 and consequently the instant writ petition is liable to be dismissed.

8. Mr. U. Sharma, the learned Standing Counsel for the Secondary Education Department submits that that a perusal of the impugned order would clearly

show that the said impugned order was passed upon perusal of an enquiry report after conducting a hearing. It would also show that in the "Individual information to be furnished by each employee" at the time of provincialization at Annexure-II, the Petitioner herself declared that she joined on 10.04.2010. The relevant aspects of the matter having been taken into consideration by the Director of Secondary Education, Assam in passing the order dated 28.06.2016, this Court therefore ought not to interfere with the said order dated 28.06.2016.

9. After hearing the parties at length and upon perusal of materials on record, it appears that the writ Petitioner though have stated in her writ petition that the joining report dated 10.04.2010 was submitted by the Petitioner on the ground that the Principal of the School had misled and misrepresented her, but there is no mention or explanation anywhere in the writ petition that the Petitioner had submitted the document "Individual information to be furnished by each employee" wherein she had joined on 10.04.2010 and prior thereto from 08.04.2004 to 09.04.2010 the Petitioner was serving as a Computer Teacher in the said School. This non-mentioning of the said document and therebeing no explanation thereafter by filing an Affidavit-in-reply as to why the Petitioner did not mention about the said document in the writ petition as well as, challenging the authenticity of the said document clearly shows that the Petitioner had suppressed material facts before this Court. From the documents i.e. "Individual information to be furnished by each employee" as well as the certificate issued by the Principal on 10.12.2011, it categorically goes to show that the Petitioner had joined on 10.04.2010. A perusal of the impugned order dated 28.06.2016 also shows that a due enquiry was conducted and on the basis of which the order dated 28.06.2016 was passed.

10. In view of the above, taking into consideration that the fact finding



authority had already come to a conclusion in its order dated 28.06.2016 that the Petitioner joined on 10.04.2010 alongwith the Respondent No.6 as a Subject Teacher in Assamese and there is no perversity in the said finding which could be shown before this Court, this Court is not inclined to interfere with the order dated 28.06.2016. Further to that the Petitioner having suppressed material facts which goes to the root of the matter is also not entitled to any equitable relief in exercise of the jurisdiction under Article 226 of the Constitution of India. Consequently, the instant writ petition stands dismissed.

JUDGE

Comparing Assistant