



GAHC010217162018

Page No.# 1/32



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

Case No. : WP(C)/6721/2018

AHEDUL HUSSAIN
S/O. LT. ABDUL SAMAD, R/O. VILL. RANGIA WARD NO.2, (KURIARA PATH)
P.O. AND P.S. RANGIA, DIST. KAMRUP (R), ASSAM.

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REP. BY COMMISSIONER AND SECY. EDUCATION (SECONDARY) DEPTT.,
ASSAM, DISPUR, GUWAHATI-06.

2:THE JOINT SECRETARY
TO THE GOVT. OF ASSAM
EDUCATION (SECONDARY) DEPTT.
DISPUR
GHY.-06.

3:THE DIRECTOR OF SECONDARY EDU. ASSAM

KAHILIPARA
GUWAHATI-781019.

4:THE INSPECTOR OF SCHOOLS

NALBARI DISTRICT CIRCLE
NALBARI
ASSAM.

5:MD. ABDUL KADIR

S/O. ISAHAQUE ALI
R/O. VILL. GOGORI
P.O. TINIPUKHURI



DIST. NALBARI
ASSAM-781367.

6:THE HEAD MASTER

PASCHIM BANBHAG ANCHALIK HIGH SCHOOL
VILL. NARAYANGAON
P.O. TINIPUKHURI
DIST. NALBARI
ASSAM-781367.

7:THE DY. COMMISSIONER

NALBARI DISTRICT
NALBARI
ASSAM

Advocate for the Petitioner : MR. D K SARMAH

Advocate for the Respondent : SC, SEC. EDU.

Linked Case : WP(C)/4733/2018

AHEDUL HUSSAIN
S/O LT. ABDUL SAMAD

R/O VILL- RANGIA

WARD NO. 2

(KURIARA PATH)
P.O AND P.S. RANGIA

DIST. KAMRUP (M)
ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REP. BY COMMISSIONER AND SECRETARY EDUCATION
(SECONDARY) DEPARTMENT



ASSAM
DISPUR
GUWAHATI-06.

2:THE JOINT SECRETARY TO THE GOVT. OF ASSAM

EDUCATION (SECONDARY) DEPTT. DISPUR
GUWAHATI-06.

3:THE DIRECTOR OF SECONDARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI - 781019.
4:THE INSPECTOR OF SCHOOLS

NALBARI DISTRICT CIRCLE

NALBARI
ASSAM
5:MD. ABDUL KADIR
S/O ISAHAQUE ALI
R/O VILL- GORGORI
P.O. TINIPUKHURI
DIST. NALBARI
ASSAM

PIN - 781367.
6:THE TREASURY OFFICER

NALBARI
DIST. NALBARI
ASSAM
PIN - 781367.
7:THE HEADMASTER

PASCHIM BANBHAG ANCHALIK HIGH SCHOOL

VILL- NARAYANGAON

P.O. TINIPUKHURI
DIST. NALBARI
ASSAM
PIN - 781367

Advocate for : MR. D K SARMAH
Advocate for : SC
SEC. EDU. appearing for THE STATE OF ASSAM AND 6 ORS.



**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (CAV)

Date : 21-07-2022

1. Heard Ms. A Talukdar, the learned counsel appearing on behalf of the Petitioner and Mr. M. K. Choudhury, the learned Senior counsel assisted by Mr. M. Khan appearing on behalf of the Respondent No.5. I have also heard Mr. U. Sharma, the learned counsel appearing on behalf of the Respondent Nos. 1, 2, 3 and 4 and Mr. K. R. Patgiri, the learned counsel appearing on behalf of Respondent No.6.
2. The dispute between the petitioner and the Respondent No. 5 have undergone various litigations. The present two writ petitions are fall out of the said dispute between the Petitioner and the Respondent No.5. In WP(C) No.4733/2018, the challenge has been made to the order dated 07.05.2018 whereby the Joint Secretary to the Government of Assam (Secondary Education Department) informed the Director of Secondary Education Department, the decision of the Government to allow the Respondent No.5 to draw his salary with effect from March, 2017 in compliance to this Court's order dated 16.02.2018, passed in WP(C) No.4565/2015.
3. Pursuant to the said order being passed, WP(C) No.4733/2018 was filed by the Petitioner herein challenging the said order. This Court vide an order dated 27.07.2018 directed that the operation of the order dated 07.05.2018 shall remain suspended. However, the authorities were directed to release the current salary only i.e. for the month of July, 2018 in favour of the Respondent No.5 which would obviously be subject to further orders that may be passed in



the writ petition. Subsequent thereto, the Respondent No.5 filed an Interlocutory Application being I.A.(Civil) No.3118/2018 seeking vacation/modification of the order dated 27.07.2018 passed in WP(C) No.4733/2018. This Court vide an order dated 03.09.2018 in I.A.(Civil) No.3118/2018 observed that the Commissioner and Secretary, Government of Assam, Secondary Education Department instead of passing a reasoned order, allowed the Joint Secretary in the Department to pass the order dated 07.05.2018 by which the salary and allowances of the Respondent No.5 was paid. It was observed that the action in passing the order dated 07.05.2018 can be construed to be non-compliance to the order of this Court dated 21.07.2017 which have resulted in a complicated situation to which the Respondent No.5 has been paid the salary for which he was not entitled to. Accordingly, this Court directed the Commissioner and Secretary to decide the dispute between the Petitioner and the Respondent No.5 by passing a reasoned order and produce the same before this Court on 24.09.2018. In pursuance to the said order dated 03.09.2018 passed in I.A.(Civil) No.3118/2018, the order dated 14.09.2018 was passed by the Commissioner and Secretary to the Government of Assam, Elementary and Secondary Education Department, whereby the claims of the Petitioner was not accepted; whereas the claim of the Respondent No.5 was found to be genuine. It is under such circumstances that the second writ petition i.e. WP(C) No.6721/2018 was filed challenging the said order dated 14.09.2018. The legality and validity of the orders dated 07.05.2018 and 14.09.2018 is therefore the subject matter of the present two writ petitions. In order to decide the legality and validity of the said impugned orders in both the writ petitions, it is relevant to take note of the brief facts of the case.

4. The Petitioner herein claims to have passed the Madhyama Bisharad



Examination and was issued a Provisional Pass Certificate by the Controller of Examination Kendra Byabashthapak Ka Karjyaloy, Dhamdhama Girls' High School, Dhamdhama, Nalbari. The said Provisional Pass Certificate has been enclosed as Annexure-26 to the writ petition wherein it has been certified that the Petitioner under Roll No.2942 has passed the exam of Madhyama (Bisharad) from Hindi Sahitya Sammelon of Centre Dhamdhama in the year 2001.

5. Pursuant thereto, vide a resolution dated 29.10.2001 of the School Managing Committee of Paschim Banbhag Anchalik High School (for short referred to as "the School") it was resolved to appoint the Petitioner as the Assistant Teacher (Hindi) of the said School. The said document has been enclosed as Annexure A/R-2 to the Affidavit-in-reply against the Affidavit-in-Opposition filed by the Respondent No.6. On the basis of the said resolution adopted on 29.10.2001 by the School Managing Committee, the Headmaster of the said School issued an Office Order appointing the Petitioner as the Hindi Teacher of the said School and the copy of which was sent to various authorities including the Inspector of Schools, Nalbari District Circle, Nalbari. Vide an order dated 09.09.2004, the Inspector of Schools, Nalbari District Circle, Nalbari, approved the appointment of various teaching and non-teaching staff of the School including the appointment of the Petitioner. It may be relevant herein to mention that in the said approval, the date of appointment of the Petitioner was shown as 02.08.2002 and the date of joining was 03.08.2002 and the Managing Committee's resolution number and date was shown as No.2 dated 01.08.2002.

6. Before proceeding further, it may be noted that on 09.08.2002, the final Pass Certificate of the Petitioner was issued whereby the Petitioner was awarded the Degree and the Mark Sheet of the Petitioner was issued on 30.04.2002. It needs to be mentioned herein that the Roll Number mentioned in the Provisional



Pass Certificate issued on 21.10.2001 and the Mark Sheet dated 30.04.2002 was the same i.e. 2942.

7. It is further the case of the Petitioner that the Inspector of Schools, Nalbari District Circle, Nalbari vide a communication dated 19.07.2006, submitted the list of Hindi teachers for an Orientation course to the Regional Director, Central Institute of Hindi, Kahilipara, Guwahati. The names of the Hindi teachers for the Orientation course was in respect to a course conducted by the Central Institute of Hindi, Guwahati at Shiksha Bhawan Chowk Bazar, Nalbari. In the list of the Hindi teachers for orientation, the name of the petitioner duly appears at Serial No.33 and the Petitioner's name was shown against the School. Pursuant to the said training, a completion certificate was issued to the Petitioner certifying that the Petitioner had participated in the course from 24.07.2006 to 12.08.2006 and he was released from the said training on 12.08.2006.

8. The record further reveals that the Respondent No.5 was appointed as a Hindi Teacher of the said school as per Resolution No.1 of the School Managing Committee held on 08.08.2009 and the Respondent No.5 joined on 10.08.2009. The Respondent No.5 thereafter claims to be continuing his service in the said post till date.

9. It further appears from the records that there was a complaint made by the Respondent No.5 to the Additional Deputy Commissioner, Nalbari District on 21.01.2012 for providing protection in discharging his duty. The Respondent in the said communication to the Additional Deputy Commissioner, Nalbari District dated 21.01.2012, had alleged that he went to the School for discharging his duty as per the order of the Additional Deputy Commissioner, Nalbari District dated 19.12.2011 but the husband of Mrs. Shafia Khatun namely Md. Abdul



Halem and father of Mr. Abdul namely Md. Abdul Kadir at the instigation of Md. Musaraf Hussain obstructed him at the time of discharging his duties. The Additional Deputy Commissioner thereafter, directed the O/C, Ghograpar P.S. Ghograpar to take necessary action in pursuance to the communication dated 21.01.2012. The Sub-Inspector of Ghograpar Police Station submitted a report on 22.08.2012 wherein he stated that during the course of investigation after inspection of the place where the incident occurred and after enquiry with the witnesses, it was found that the Respondent No.5 was neither engaged in teaching job nor ever attended the school.

10. It further reveals that the Additional Deputy Commissioner, Nalbari District had submitted an enquiry report. Relevant to mention that he visited the School on 28.05.2012 alongwith one K.C. Sen, A.P.O., Nalbari. The said date however, happens to be a Sunday. Be that as it may, a report was submitted to the effect that the appointment of the Respondent No.5 as Assistant Teacher (Hindi) at the School was formal and genuine and the appointment of other teachers seemed to be not genuine. It was further reported that the Respondent No.5 may be allowed to continue as the Assistant Teacher (Hindi) in the said School. In the writ petition, it has been alleged that there was no such inspection on 28.05.2012 as it was a Sunday and it was the A.D.C. who had called the Respondent No.5 to his Office alongwith two of his favourable witnesses and recorded their statement without going through any of the records pertaining to appointment of the Respondent No.5 and his attendance in the School.

11. The record further reveals that the Respondent No.5 preferred a Writ Petition being WP(C) No.3870/2012 before this Court being aggrieved for not granting him the financial assistance for the year 2010-11 and for not sending his name for provincialisation of his services. This Court vide an order dated



14.08.2012 had directed the Director of Secondary Education, Assam to make an enquiry through the District Scrutiny Committee regarding entitlement of the Respondent No.5 for financial assistance and provincialisation of his services. It was further directed that such verification shall be done on the basis of school records. The record further shows that on 11.04.2013, the Director of Secondary Education, Assam vide an order held that the appointment of the Respondent No.5 was in excess for which the Respondent No.5 was not entitled to get financial assistance.

12. Subsequent thereto, the District Scrutiny Committee upon verification of all the relevant records was pleased to approve the list of eligible teachers of the School and forwarded the same to the Directorate for further steps. The Petitioner's name duly figured as Hindi teacher alongwith one Shafia Khatun, another Hindi teacher of the School. Pursuant thereto, the State Scrutiny Committee approved the names of the eligible employees of the school and uploaded in the website of the department wherein the Petitioner's name alongwith one Shafia Khatun were found eligible alongwith other staff of the school.

13. Pursuant thereto, the Respondent No.5 preferred a writ petition being WP(C) No.3186/2013 challenging the order dated 11.04.2013 passed by the Director of Secondary Education, Assam on the ground of a fictitious enquiry report dated 30.09.2011 of the ADC, Nalbari. This Court vide an order dated 10.06.2013 directed not to provincialise one post of Hindi teacher of the school. In view of the said order the services of the said Shafia Khatun was provincialised with effect from 01.01.2013 vide an order dated 24.12.2013. However, the Petitioner's services was not provincialised. It further appears from the records that the Respondent No.5 filed a Complaint Case No.210/2012



before the Court of SDJM, Nalbari wherein various allegations were made against the Headmaster of the School stating inter alia that the Respondent No.5 had not been allowed to join and work in the said School. Vide a judgment dated 11.06.2014, the learned SDJM acquitted the Headmaster including the Petitioner from all charges.

14. Thereafter the record further shows that WP(C) No.3186/2013 was disposed of vide an order dated 21.07.2014, whereby the Respondent No.1 therein was directed to cause an enquiry through the Appointed Committee to resolve the issue and then pass appropriate order as expeditiously as possible preferably within 2 months, giving opportunity of hearing to the parties involved. The interim order dated 10.06.2013 was also vacated.

15. Subsequent thereto, the Inspector of Schools i.e. the Respondent No.4 herein vide a Letter No. IS/NDC/Est-I/WP(C)/3186/2013/4140 dated 18.09.2014 directed the Headmaster of the School to allow the Respondent No.5 to take classes in the School. Pertinent herein to mention that the said letter was issued at a time when the matter was pending before the Respondent No.1 as per the direction of this Court dated 21.07.2014 in WP(C) No.3186/2013.

16. The Petitioner being aggrieved, filed a Contempt Petition being Contempt Case No.658/2014 and this Court was pleased to issue notice. During the pendency of the aforesaid contempt petition, the Inspector of Schools, N.D.C. Nalbari issued a letter vide a Memo No. IS/NDC/Est-I/WP(C)/3186/2013/4165 dated 19.09.2014 by which the Headmaster of the School was asked to appear before him alongwith the Hindi teachers of the School on 20.09.2014 at 11 A.M. Pursuant thereto, the Petitioner alongwith the Headmaster duly appeared in the Office of the Inspector of Schools but the said Inspector of Schools was not present.



17. It further appears from the records that the Respondent No.1 vide Memo No. ELC/WP(C)/3186/2013/511/577-A dated 12.06.2015, held that the post and services of the Petitioner cannot be provincialised and the post and services of the Respondent No.5 would be provincialised. The Director of Secondary Education, Assam was directed to take action to provincialise the post and service of Respondent No.5. This order dated 12.06.2015 was put to challenge vide a Writ Petition bearing No.4132/2015. When the said writ petition was taken up for motion hearing on 22.07.2015, the learned counsel appearing for the Respondent No.5 submitted before this Court that the services of the Respondent No.5 has already been provincialised on 10.07.2015. On coming to know about the said order dated 10.07.2015, the Petitioner preferred another writ petition being WP(C) No.4565/2015 before this Court. This Court vide an order dated 10.08.2015 issued notice and in the interim order directed the Respondents not to give the benefit of provincialisation to the Respondent No.5 in terms of the order dated 10.07.2015. On the very date, a W.T. message dated 10.08.2015 was issued by the Secretary, Secondary Education Department to the Inspector of Schools, Nalbari and the Director of Secondary Education thereby directing the said authority to instruct the petitioner as well as the Respondent No.5 and the Headmaster of the School to appear before the Joint Secretary, Education Department on 12.08.2015.

18. Pursuant thereto, the record further reveals that vide an order dated 06.02.2018 passed in WP(C) No.4565/2015, this Court held that the enquiry so conducted in pursuance to the order dated 21.07.2014 in WP(C) No.3186/2013 was not by the Appointed Committee as directed by the Court. It was further observed that the Appointed Committee is a defined concept under Section 10(7) of the Assam Venture Educational Institution (Provincialisation of Services)



Act 2011. In view of the order dated 21.07.2014, as it was the Appointed Committee who was to resolve the dispute, this Court vide the said order dated 16.12.2018 directed the said committee referred to Section 10(7) of the Act of 2011 to conduct the enquiry as ordered earlier. The Commissioner and Secretary was directed to re-constitute the Appointed Committee as provided in Section 10(7) of the Act of 2011 and cause an enquiry as ordered by this Court in its order dated 21.07.2014. It was further observed that upon the said enquiry being done, the report thereof be placed before the Commissioner and Secretary in the Secondary Education Department for doing the needful as directed in the order dated 21.07.2014. Further to that it was observed that the enquiry to be done by the Appointed committee and the subsequent order of the Commissioner and Secretary be passed thereto shall prevail over all earlier orders that have been passed. In other words, as per the order passed by this Court on 16.02.2018, the order of provincialisation made in favour of the Respondent No.5 was made subject to the enquiry to be done by the Appointed Committee and the subsequent order to be passed by the Commissioner and Secretary. It was further directed that till the said exercise was not completed, the earlier interim order shall continue.

19. The record further reveals that on 06.06.2018 almost after 3 months from the date of the order passed by this Court, a reminder was sent by the petitioner to the Commissioner and Secretary, Secondary Education Department, the Deputy Commissioner, Nalbari District as well as the Inspector of Schools Nalbari District Circle, Nalbari.

20. Subsequent thereto, the Petitioner could come to learn that on 07.05.2018, an order was passed to release the salary of the Respondent No.5 behind the back of the Petitioner that too without giving any notice of hearing.



Under such circumstances the Petitioner issued a legal notice dated 18.06.2018 to the Respondent Nos.1, 3, 4 and 6 as well as the Treasury Officer, Nalbari.

21. The order dated 07.05.2018 issued by the Joint Secretary to the Government of Assam, Secondary Education Department was put to challenge in WP(C) No.4733/2018. This Court vide an order dated 27.07.2018 issued notice and as an interim, stayed the operation of the impugned order dated 07.05.2018. It was however, observed that the authorities may release the current salary only for the month of July, 2018 in favour of the Respondent No.5 which would obviously be subject to further orders that may be passed in the case. Subsequent thereto, an Interlocutory Application was filed by the Respondent No.5 for vacation/modification of the order dated 27.07.2018. The said Interlocutory Application was registered and numbered as I.A.(C) No.3118/2018.

22. This Court vide an order dated 03.09.2018 directed the Commissioner and Secretary to decide the dispute between the Petitioner and the Respondent No.5 by passing a reasoned order and produced the same before this Court on the next date i.e. 24.09.2018. Pertinent herein to take note the observations made by this Court in the said order dated 03.09.2018, the relevant portion of which is quoted hereinbelow:

“By the order dated 27.02.2018, the Commissioner and Secretary to the Government of Assam was directed to reconstitute the appointed committee as required Under Section 10(7) of the Assam Venture Educational Institution (Provincialisation of Services) Act, 2011 and cause an enquiry as ordered by this Court, in its earlier order dated 21.07.2017. It is stated that the said order had not been complied and the Commissioner and Secretary neither had reconstituted the committee nor had passed a reasoned order on the claims between the petitioner and the respondent No.5.



It is taken note of that instead of passing a reasoned order, the Commissioner and Secretary allowed to Joint Secretary in the Department to pass the order dated 07.05.2018 by which the salary and allowances of the respondent No.5 was paid. If the salary and allowances are allowed to be paid without passing a reasoned order as required, the same can be construed be a non-compliance of the order of this Court dated 21.07.2017 resulting in a willful and deliberate violation. Because of non-passing a reasoned order, a complicated situation had arisen wherein, respondent No.5 may have been paid the salary to which he was not entitled.

Before the next date fixed the Commissioner and Secretary shall decide the dispute between the petitioner and the respondent by passing a reasoned order and produce the same before the Court.

If no such order is passed, the Commissioner and Secretary shall remain personally present on 24.09.2018."

23. It is in pursuance to the aforementioned order, that the impugned order dated 14.09.2018 was passed by the Commissioner and Secretary to the Government of Assam, Elementary and Secondary Education Department. Vide the impugned order dated 14.09.2018, the Commissioner and Secretary observed that there were inconsistencies in the claim of the Petitioner in respect to his first date of appointment as 30.10.2001 to the post of Hindi teacher in the School. It was further observed that on account of multiple date of appointments recorded in different official records, it leads to a questionable authenticity to the actual fact of appointment of the Petitioner. Further to that, it was also observed that the date of acquiring the qualification of Madhyama (Bisharad) as indicated in the Pass Certificate as on 30.04.2002 and Mark Sheet of the same year shows that appointment appears to have been given effect prior to acquiring of the degree in Madhyama (Bisharad) and actual production of the Pass Certificate for which the claim of the Petitioner cannot be accepted. However, as regards, the Respondent No.5, it was observed that the procedure

adopted in the selection and appointment of the Respondent No.5 by the School authorities during its venture stage is found to be proper and his date of appointment and joining recorded as on 10.08.2009 to the post of Hindi teacher in the school was found to be genuine. On the basis of that, it was held that the Respondent No.5 has been serving as a Hindi Teacher of the School till date. It was against the said order that the instant writ petition has been filed challenging the same on various grounds.

24. This Court vide an order dated 12.08.2018 issued notice returnable by 4 weeks. Subsequent thereto, the Respondent Nos. 5 and 6 have separately filed their Affidavit-in-Opposition to which Affidavit-in-Reply have also been filed by the Petitioner. The Secondary Education Department have not filed their Affidavit-in-Opposition.

25. In the Affidavit-in-Opposition filed by the Respondent No.5, the maintainability of the writ petition has been raised on the ground that vide a notification dated 03.12.2015, the Government of Assam was pleased to designate the Court of the District Judges and Additional District Judges of each District to function as Educational Tribunals to adjudicate disputes relating to the teaching and non-teaching staff of the Non-Government Educational Institution as well as disputes concerning disciplinary action and claim for provincialisation in respect of teaching and non-teaching staff of venture educational institutions within their respective territorial jurisdictions, from the date of issue of the said notification. It was also contended that the writ petitioner has not challenged the provincialization order dated 10.07.2015 of the Respondent No.5 and as such without a challenge to the said order of provincialization, this Court may not interfere with the matter restraining the drawing of the salary. It was further contended in the Affidavit-in-Opposition



that the Assam Venture Educational Institution (Provincialisation of Services) Act, 2011 was struck down by this Court and the claim of the Petitioner ought not to be entertained as the Petitioner is claiming for provincialisation of service under the said Act which no longer exists.

26. On merits, it was stated that the Respondent No.5 was appointed as the Hindi Teacher of the School as per Resolution No.1 of the School Management Committee meeting held on 08.08.2009 by following the due recruitment procedure. Accordingly, the Respondent No.5 joined his post on 10.08.2009 and since then he has been continuing his service in the said post till date. It was further mentioned that the Respondent No.5's name was not included in the teaching staff as Hindi Teacher for the share of financial assistance by the then Headmaster of School with a mala fide intention and the same was intended to disburse in favour of one Syeda Saima Begum by incorporating her name as Hindi Teacher. Thereafter various complaints were lodged before the competent authority and an enquiry was conducted by the Circle Officer and a report was submitted on 30.09.2011. In the said report, it was reflected that the appointment of the Respondent No.5 was genuine and the same in turn submitted before the Inspector of Schools, Nalbari on 19.12.2011 with a request to include the name of the Respondent No.5 as Hindi Teacher in the list of teaching staffs and to disburse the financial assistance to the Respondent No.5. However, in spite of the aforesaid direction, as the then Headmaster of the School did not release the share of financial assistance in favour of the Respondent No.5, a writ petition i.e. WP(C) No.3870/2012 was filed for a direction to the Respondents to release the share of financial assistance in favour of the Respondent No.5. The said case was disposed of vide an order dated 14.08.2012 thereby directing the Director of Secondary Education, Assam

to make an enquiry. The Director of Secondary Education, Assam vide an order dated 11.04.2013 declined the claim of the Respondent No.5 on the plea that the post held by him was in excess. The Respondent No.5 thereafter, challenged the said order dated 11.04.2013 in WP(C) No.3186/2013. The remaining facts pursuant thereto, have already been stated in the above noted paragraph of the instant judgment which led to the passing of the order dated 07.05.2018 as well 14.09.2018 and for the sake of brevity, the same are not repeated.

27. As regards, the claim of the petitioner, it was sought to be refuted by the Respondent No.5 stating inter alia at Paragraph No.10 of the Affidavit-in-Opposition that the record shows that the Petitioner passed the Madhyama Bisharad Examination in the year 2002 which is the minimum requisite qualification for a Hindi Teacher and passed B.A. Examination in the year 2004. It was further stated that the record shows that the Petitioner was appointed on different dates i.e. appointment order dated 22.08.2001 in pursuance to the S.M.C. resolution dated 21.08.2001; appointment order dated 30.01.2001 in pursuance to the S.M.C. resolution dated 29.10.2001 and similarly joined in services on different dates i.e. on 30.10.2001, 31.10.2001 and 22.08.2001 respectively. Further to that, the post approval order of the Inspector of Schools, Nalbari dated 09.09.2004 indicates the Petitioner's date of appointment on 02.08.2002 pursuant to the Managing Committee Resolution No.2 dated 01.08.2002 and the date of joining was on 03.08.2002 indicating his qualification as H.S. passed and Madhyama Bisharad. Further to that, the Headmaster while submitting the particulars of teaching and non-teaching staffs had indicated the Petitioner's date of appointment on 09.09.2002 as Assistant Teacher. It was alleged that the appointment of the Petitioner was a clear case of manipulation as made by the then Headmaster of the School just to

accommodate his brother i.e. the writ petitioner for an undue benefit. The said paragraph have been verified as true to the knowledge of the Respondent No.5.

28. In Paragraph No.14 of the said Affidavit-in-Opposition of the Respondent No.5, he had categorically mentioned that the Joint Secretary to the Government of Assam, Education Secondary Department issued a letter dated 17.07.2018 whereby the payment of arrear salary amounting to Rs.5,66,304/- for the period from 01.01.2013 to 28.02.2015 has been sanctioned in favour of the Respondent No.5 and the Respondent No.5 had duly received the said amount. Further to that, the Respondent No.5 had also received his arrear dues for the period from March, 2017 till February, 2018 and then receiving the current salary from March, 2018.

29. The Respondent No.6 in his Affidavit-in-Opposition have stated that though the Petitioner had claimed to be appointed as Hindi Teacher on 30.10.2001, but there is no records in the school pertaining to his appointment as Hindi Teacher except some photo copies of his appointment order on different dates. He further stated that at the time of the handing over the charge of Headmaster, the earlier Headmaster did not hand over all the records in original despite repeated request made to him. The said Respondent No.6 has handed over some Xerox copies of Attendance Register of teaching and non-teaching staffs wherein the name of the writ petitioner has not been found for the year 2001, 2002 and 2003. Apart from that, it was also mentioned that there was no vacant post for Hindi Teacher at that relevant point of time inasmuch as initially the school was of three classes and as such one Sabina Choudhury was appointed as Hindi Teacher on 11.07.1990 and after introduction of six classes High School, another Hindi Teacher namely Sufia Khatun was appointed on 19.09.2001 as Assistant Teacher which was subsequently



converted to the post of Hindi Teacher by the S.M.C. meeting Resolution No.1 dated 10.02.2004. On the basis thereof, the said Sufia Khatun was serving as Hindi Teacher. Thereafter, in the year, 2009, Mrs. Sabina Choudhury was released from the Post of Hindi Teacher and as she has been absorbed in another High School, the said post was lying vacant w.e.f. 24.06.2009. Thereafter, the S.M.C. of the school invited application to fill up the said vacant post and accordingly the Respondent No.5 has been appointed as Hindi Teacher of the said School as per Resolution No.1 of the School Management Committee (S.M.C.) meeting dated 08.08.2009.

30. It was further mentioned that the Respondent No.5 had joined his services on 10.08.2009 and has been serving in the said post till date. Further to that, it has been mentioned that although the Respondent No.5 was discharging his duty from 10.08.2009 but he was not allowed to sign in the Attendance Register by the then Headmaster of School for a particular period from January, 2012 to August, 2014. However, with the intervention of the Inspector of School, Nalbari, the Respondent No.5 was allowed to put his signature from September, 2014. It has been further mentioned that the photo copies of the Attendance Register of 2009, 2010, 2011 handed over by the earlier Headmaster, reflects the name of the Respondent No.5. In Paragraph No.11 of the said Affidavit-in-Opposition filed by the Respondent No.6, he repeated the same as was done by the Respondent No.5 in his Affidavit as regards the various appointment letters of the Petitioner and as regards when the Petitioner had passed his examination.

31. To the said Affidavit-in-Opposition filed by the Respondent No.5, the Petitioner had filed his Affidavit-in-Reply. In the said Affidavit-in-Reply, the Petitioner had submitted that the question of bar created by the notification



dated 03.12.2015 would not apply to the facts of the instant case, inasmuch as the adjudication of the instant case is under the provisions of Assam Venture Educational Institution (Provincialisation of Services) Act, 2011 wherein there is no provision for Constitution of an Educational Tribunal and furthermore, there is no absolute bar when the fundamental rights of the Petitioner has been duly affected. As regards the question of not having challenged the provincialisation order dated 10.07.2015, it was mentioned that the said order was duly put to challenge in WP(C) No.4565/2015 and this Court vide the order dated 16.02.2018 had nullified all orders including the order of provincialisation dated 10.07.2015. Further to that, as regards the preliminary objection raised pertaining to the claim of the Petitioner under the Act of 2011, in spite of the said Act having been held to be ultra vires, it was contended that subsequent declaration of the Act of 2011 to be ultra vires does not dilute the requirement of the earlier order of this Court. On facts, it was mentioned that a perusal of the appointment letter dated 08.08.2009 enclosed to the Affidavit-in-Opposition would show that the decision of the Managing Committee was taken on 10.08.2009 which clearly shows that the appointment order of the Respondent No.5 and the Resolution dated 10.08.2009 are both manipulated. Further to that, it was mentioned that as the Petitioner was working in the School since 2001 as a Hindi Teacher, therefore his name was included in the list of teaching staffs of School for provincialisation of their services. The Respondent No.5 had never attended the school and therefore was held to be an excess teacher which was reflected in the order dated 11.04.2013 by the Director of Secondary Education. Further to that, it was mentioned that the Petitioner has passed Madhyama Bisharad Examination on 21.10.2001 as would be apparent from the provisional certificate issued. The Final Certificate and the Mark Sheet have



been issued by the competent authority subsequently. It was mentioned that the resolution was adopted by the S.M.C. on 29.10.2001 regarding his appointment as Hindi Teacher and he was appointed as a Hindi Teacher of the School on 30.10.2001. The said appointment of the Petitioner as Hindi Teacher was duly approved by the Inspector of Schools, Nalbari on 09.09.2004. It was mentioned that although the Respondent No.5 asserted that there were different dates with regard to the appointment of the Petitioner but the fact that he had been working continuously in the School since 2001 cannot be nullified by any means. It is being an admitted case that the Respondent No.5 claims to be appointed in the year 2009, the Petitioner is much senior to the Respondent No.5. As regards the appointment letter dated 22.08.2001 enclosed to the Affidavit-in-Opposition by the Respondent No.5, it was stated that the said appointment letter was never received by the Petitioner and the joining report dated 31.10.2001 seems to be manufactured document. For the sake of brevity, it is relevant to mention that this Court is not dealing with each of the paragraphs in the Affidavit-in-Reply filed by the Petitioner but it is pertinent to mention that the statements made in the Affidavit-in-Opposition filed by the Respondent No.5 were duly denied and explained.

32. As regards the Affidavit-in-Opposition filed by the Respondent No.6, the Petitioner had filed his Affidavit-in-Reply. In Paragraph No.5 of the Affidavit-in-Reply, it was mentioned that the Petitioner was appointed pursuant to the S.M.C. resolution dated 29.10.2001 vide an appointment letter dated 30.10.2001. The Respondent No.6 was a signatory to the resolution dated 29.10.2001, that apart, a copy of the said resolution dated 29.10.2001 was certified by the Respondent No.6 and furnished to the Petitioner. Further to that, the Respondent No.6 had also furnished the copy of the Attendance Register for



the year 2001, 2002 and 2003 certified by himself wherein the names and signatures of the Petitioner was very much there. As regards Sabina Choudhury, who is the wife of the Respondent No.5, it was averred that her case is totally different as because she was getting salary from the Government although working in the Venture School but subsequently, adjusted in a provincialised School by transferring to Nalbari Girls High School vide an order dated 24.06.2009. It was mentioned that the Respondent No.5 was never appointed as a Hindi Teacher nor worked in the school at any point of time. The resolution dated 08.08.2009 and the appointment letter dated 10.08.2009 were only draft copies and have not been acted upon. As regards the name of the Respondent No.5 in the Attendance Register dated 2009, 2010 and 2011 it was mentioned that in the copy of the Attendance Register certified by the Respondent No.6 to the Petitioner, the name of the Respondent No.5 is not reflected. It was mentioned that the Respondent No.6 in connivance with the Respondent No.5 may create some photo copies by pasting the name of the Respondent No.5 in the Attendance Register for which the original copy of the Attendance Register may be directed to be placed before this Court.

33. Further to that, it was mentioned that the Respondent No.6 who is the present Headmaster had furnished the copy of the resolution dated 29.10.2001, appointment letter dated 30.10.2001, joining report dated 30.10.2001 which were certified by Respondent No.6 himself. The Petitioner had enclosed to his Affidavit-in-Reply the minutes of the meeting of the School Managing Committee dated 29.10.2001, the Office Order dated 30.10.2001 as well as his joining report dated 30.10.2001 which were certified by Respondent No.6. Further to that, it has also been mentioned that on 24.02.2015, the Respondent No.6 had received all the documents from the earlier Headmaster which includes the



Attendance Register from 2000 to 2015 and the appointment file and the question of not having the original records in his custody does not arise. To that effect, the acknowledgement of the Respondent No.6 to the various documents received on 24.02.2015 have been enclosed as Annexure- A/R-5 to the Affidavit-in-Reply.

34. Further to that, it is also relevant to mention that the Respondent No.6 has filed another Affidavit-in-Reply to the Affidavit-in-Reply filed by the writ petitioner denying the signatures in the document enclosed as Annexure- A/R-2. Further raising question on the authenticity of the said S.M.C. resolution dated 29.10.2001 stated inter alia that the persons namely Birdutta Kalita and Shabitri Kalita whose names appeared at Serial No.5 and 7 have denied that they were members of the School Managing Committee. In so far as the Attendance Register of 2001, 2002, 2003, 2005, 2010 and 2011 and S.M.C. resolution dated 29.10.2001, appointment letter dated 30.10.2001 and the joining report dated 30.10.2001, it was mentioned that at the time of handing over of the charge of Headmaster by the earlier Headmaster, the Respondent No.6 was given only a set of photo copies of the Attendance Register from 2000 to 2015 and some other documents including S.M.C. resolution, appointment order and the joining report of the writ petitioner by the earlier Headmaster and another set was retained with him. However, after few days the earlier Headmaster asked the Respondent No.6 to meet at his residence and accordingly, he went to the house of the earlier Headmaster wherein he was asked to certify the photo copies of the said set of documents retained by him. The Respondent No.6 had mentioned that he had signed therein with good faith being working with the earlier Headmaster since the last 25 years. The Respondent No.6 further stated in his Affidavit-in-Reply that the set which was given to him did not contain the



signature of the writ petitioner for the period 2001, 2002 and 2003 and accordingly, he had made the statement on oath that the name of the writ petitioner does not reflect in the Attendance Register of 2001, 2002 and 2003. Similarly, the photo copies of the Attendance Register of 2009, 2010 and 2011 as available with the Respondent No.6 reflects the signature of the Respondent No.5. It was mentioned that the Attendance Register which the writ petitioner is trying to show would be the Attendance Register retained by the earlier Headmaster which might have been tampered by the Petitioner in connivance with his elder brother wherein the Respondent No.6 had certified and put his signature on good faith having good relation with the earlier Headmaster.

35. Further to that, it was mentioned that the earlier Headmaster have not handed over the original records till date despite repeated request made by the Respondent No.6. To that effect, the Respondent No.6 claimed to have intimated the matter to the Inspector of Schools, NDC Nalbari by a communication dated 27.05.2015 with a request to take necessary steps to hand over the records indicated therein. It was further mentioned that since no action was taken by the Inspector of Schools, the Respondent No.6 again issued another communication dated 22.11.2017 requesting to make necessary arrangement to hand over those documents. Further to that, it was also mentioned that on 24.02.2015, the earlier Headmaster had handed over the charge of the Headmaster of the School and he had given the photo copies of the various documents mentioned in Paragraphs 4A to 4G, however the other documents were given to him in original.

36. I have heard the learned counsels for the parties and have perused the materials on record. Although, there has been various allegations and counter allegations made by the Petitioner as well as the Respondent Nos. 5 and 6, the



official Respondents whose orders have been put to challenge, have not cared to file their Affidavit-in-Opposition or made their stand clear. From the materials on record what transpires from the admitted facts is that the Petitioner was issued a provisional Pass Certificate on 21.10.2001 wherein it has been mentioned that the Petitioner under Roll No.2942 had passed the exam of Madhyama (Bisharad) from Hindi Sahitya Sammelon of center Dhamdhama in the year 2001. There is no challenge to the said provisional certificate. It further appears that subsequent thereto, on 30.04.2002, the Mark Sheet of the Petitioner was issued bearing the same Roll Number being 2942 and further to that on 09.08.2002, the final Pass Certificate was issued. All these certificates are not subject matter of dispute. It may not be out of place to mention that it is a practice followed of issuing a Provisional Pass Certificate followed by the Mark Sheet as well as the Final Certificate. The Respondents have not been able to show any other practice followed or have denied the said practice. The late issuance of the Final Pass Certificate as well as the Mark Sheet cannot be a reason to nullify the Provisional Pass Certificate dated 21.10.2001. Therefore, as on 21.10.2001 the Petitioner had duly passed the Madhyama (Bisharad) from Hindi Sahitya Sammelon of Centre Dhamdhama in the year 2001.

37. Now, the question arises as regards the Petitioner's date of appointment. While the Petitioner claims that the School Managing Committee in its resolution dated 29.10.2001 had adopted a resolution to appoint him as a Hindi Teacher and subsequently on 30.10.2001, the Office Order was issued appointing him as a Hindi Teacher and on the basis of the Office Order, the Petitioner has joined on 30.10.2001, the Respondent Nos.5 and 6 had disputed the said aspect of the matter. The Respondent No.5 was not there in the scene in the year 2001 and therefore, obviously he could not have the knowledge of the same and neither

he could be privy to any of the records. But the Respondent No.6 in his Affidavit-in-Opposition duly claims that he was appointed as Assistant Teacher of the School on 01.01.1990 and he has been holding the charge of Headmaster w.e.f. 01.02.2015 and he has been appointed as the regular Headmaster on 08.08.2017. In Paragraph No.11 of his Affidavit-in-Opposition, he categorically stated as follows:

“The records available with the deponent shows that he was appointed on various date i.e., appointment order dated 22.08.2001 in terms of the S.M.C. resolution dated 21.08.2001 and appointment order dated 30.10.2001 in terms of the S.M.C. resolution dated 29.10.2001. Similarly his joining reports also shows different dates i.e., on 30.10.2001, 31.10.2001 and 22.08.2001 respectively. Further, the post approval order of the Inspector of Schools, NDC, Nalbari dated 09.09.2004 indicates his date of appointment on 02.08.2002 pursuant to the S.M.C. resolution dated 01.08.2002 indicating his date of joining on 03.08.2002 with qualification H.S. passed and Madhama Bisharad.”

38. The above quoted portion of his Affidavit clearly shows that the Headmaster of the School i.e. the Respondent No.6 had an appointment order dated 30.10.2001 in terms with the S.M.C. resolution dated 29.10.2001 amongst others. It also cannot be overlooked in the post approval order of Inspector of Schools, NDC Nalbari dated 09.09.2004, that the appointment of the Petitioner to the School was provisionally approved by the Inspector of Schools, NDC Nalbari. Now, the question arises as to whether the wrong quoting of the appointment dates in the order of provisional approval or for that matter the Petitioner therebeing two appointment orders dated 22.08.2001 and 30.10.2001 would disentitle the Petitioner to his rights for provincialisation of his services. The documents enclosed to the Affidavit-in-Reply by the Petitioner which are



certified copies of the resolution dated 29.10.2001, the Office Order dated 30.10.2001 and the joining report dated 30.10.2001, all certified by the Respondent No.6 would be pointer to the fact that the Petitioner was appointed on the basis of the resolution adopted on 29.10.2001 and thereafter, his appointment order was issued on 30.10.2001 and consequently, the Petitioner joined on 30.10.2001. It is also relevant to take note of that in the Affidavit-in-Reply filed by the Respondent No.6 to the Affidavit-in-Reply of the Petitioner, he has not denied the certification being given to those documents enclosed as Annexure- A/R-2, Annexure- A/R-3 and Annexure- A/R-4 but gives an explanation to the fact that due to good relation with the earlier Headmaster, he had certified the said documents. This prima facie appears to be an afterthought inasmuch as the said stand was not taken in the Affidavit-in-Opposition filed by the Respondent No.6 initially but was taken in the Affidavit-in-Reply by the Respondent No.6 to the Affidavit-in-Reply filed by the Petitioner. It is also relevant to take note of that not only the Inspector of Schools, NDC Nalbari had provisionally approved the appointment of the Petitioner in its order dated 09.09.2004, the Inspector of Schools had also vide a communication dated 19.07.2006 forwarded the names of various Hindi Teacher Orientation Course conducted by the Central Institute of Hindi, Guwahati to be held at Shiksha Bhawan, Chowk Bazar, Nalbari and the Petitioner's name duly appeared at Serial No.33.

39. Further to that, on 12.08.2006 the Academic Register of the Central Institute of Hindi, Guwahati had certified the participation of the Petitioner in the said course and he was released on 12.08.2006 from the aforesaid course. These documents would clearly show that the Petitioner was a Hindi Teacher of the School in question prior to the appointment of the Respondent No.5 on



10.08.2009 as claimed by the Respondents. At this stage, it may not also be out of place to mention that the Petitioner had denied the receipt of the appointment letter dated 22.08.2001 and the joining report as Hindi Teacher on 31.10.2001. It further reveals that the Office Order dated 30.10.2001 enclosed as Annexure-11 to the Affidavit-in-Opposition filed by the Respondent No.5 is completely different from the Office Order dated 30.10.2001 enclosed as Annexure- A/R-3. It is not known how the Respondent No.5 had access to Annexure-11 to his Affidavit-in-Opposition. The difference can be seen from the fact that the document enclosed as Annexure-11 is a document in the letterhead of Office of the Headmaster cum Secretary Pashchim Banbhag Anchalik High School, whereas the document as Annexure- A/R-3 is the document in the letterhead of Office of Paschim Banbhag Anchalik High School. The contents of Annexure-11 and Annexure- A/R-3 are also different, inasmuch as in Annexure-11, it was mentioned that the petitioner may be terminated from his service at any time without assigning any reasons thereof but the said sentence is not seen in Annexure- A/R-3. But it has to be taken into account that Annexure-A/R-3 had been admittedly certified by the Respondent No.6.

40. The next aspect of the matter which also needs to be taken into consideration is the Attendance Register. While the Petitioner claims that in the Attendance Register which have been certified by the Respondent No.6, clearly shows that his signature was duly recorded in the year 2001, 2002 and 2003, whereas the Respondents have produced an Attendance Register wherein there is no signature of the Petitioner but there are signatures of Respondent No.5 for the period from 2009 onwards.

41. Now, let this Court take into consideration the impugned order in both the writ petitions. In WP(C) No.4733/2018, the order dated 07.05.2018 has been



put to challenge. The order dated 03.09.2018 passed in I.A.(Civil) No.3118/2018, the relevant portion of which have been quoted hereinabove would clearly show that the order dated 07.05.2018 has been passed in complete violation to the orders passed by this Court for which the said order on the face of it is nullity. In pursuance to the order being passed on 03.09.2018 by this Court, the impugned order dated 14.09.2018 was passed.

42. From a perusal of the impugned order dated 14.09.2018, it would show that the Commissioner and Secretary on the basis of the inconsistencies as regards the multiple dates of appointment recorded in the different official records had rejected the claim of the Petitioner. Another reason why the claim of the Petitioner was rejected is that the Petitioner was appointed prior to acquiring a Degree in Madhyama Bisharad and actual production of Pass Certificate. This Court is of the opinion that the Commissioner and Secretary while passing the impugned order have completely failed to take into account that there was a Provisional Pass Certificate issued on 21.10.2001 clearly indicating that the Petitioner had passed the examination in question. It is not known on what basis the Commissioner and Secretary had come to the conclusion that on the basis of Provisional Pass Certificate the appointment was illegal. More so, when the said Provisional Pass Certificate is backed by the Final Certificate issued as well as the Mark Sheet issued which clearly show the authenticity of the Provisional Pass Certificate. These conclusions so reached by the Commissioner and Secretary in coming to the finding that the Petitioner was given appointment even prior to actual production of the Pass Certificate was not at all germane to the issues involved. More so, when the Provisional Pass Certificate as stated hereinabove was backed by the Final Certificate and the Mark Sheet which as per the normal practice was issued later on.

43. The other ground taken for rejecting the contention of the Petitioner by the Commissioner and Secretary was that there were multiple dates of appointment recorded in the different official records. But surprisingly, the Commissioner and Secretary did not take into consideration that the Inspector of Schools has given a provisional approval to the Petitioner's appointment on 09.09.2004, which clearly shows that the Petitioner's appointment was provisionally approved in the official records as on 09.09.2004. It would have been understandable if the Respondent No.5's appointment was prior to 02.08.2002 and the question of the various dates of appointments would have been germane. But admittedly till 2009, the Respondent No.5 was nowhere in the scene. Further to that, the Commissioner and Secretary failed to take into consideration that on 19.07.2006, the Inspector of Schools, NDC, Nalbari has forwarded the names of the various teachers for orientation course and the Petitioner's name duly appeared at Serial No.33 wherein it has been shown that the Petitioner was a Hindi Teacher in respect to the School in question. The completion certificate was issued on 12.08.2006. There were clear materials on records that the Petitioner was duly appointed in the School as a Hindi Teacher prior to the Respondent No.5.

44. Merely finding that the procedure adopted in the selection and appointment of the Respondent No.5 during the venture stage to be proper and the Respondent No.5's date of appointment and joining recorded on 10.08.2009 to be genuine, the Commissioner and Secretary held that the Respondent No.5 has been serving as a Hindi Teacher at the School till date. It is not known what is the basis on which the Commissioner and Secretary had come to the finding except the statement of the Respondent No.6 who seems to have supported the Respondent No.5.



45. In view of the above, this Court is of the opinion that the order dated 14.09.2018 has been passed without taking into account various material facts which are germane to the issue and rather had taken into account certain irrelevant materials as discussed hereinabove for which the impugned order dated 14.09.2018 is set aside and quashed.

46. At this stage, it may also be relevant to take note of that one of the preliminary objections taken to the effect that Petitioner's provincialisation order dated 10.07.2015 has not been put to challenge. The order dated 16.02.2018 passed in WP(C) No.4565/2015 (the writ petition wherein the order dated 10.07.2015 was put to challenge) would show that all earlier orders including the order of provincialisation was made subject to the enquiry to be done by the appointed committee and the subsequent orders of the Commissioner and Secretary passed thereto. Therefore, the said order dated 10.07.2015 had already been made subject to the outcome of the said proceedings and the fall out of the said proceedings in the order dated 14.09.2018 which have been set aside and quashed by this Court.

47. In view of the above, this Court therefore disposes of the instant writ petitions with the following observations and directions.

(I) The orders dated 07.05.2018 and 14.09.2018 are set aside and quashed.

(ii) The Commissioner and Secretary to the Government of Assam, Secondary Education Department is directed to reconsider the case of the Petitioner and the Respondent No.5 in the light of the observations made hereinabove and the same should be done within a period of 60 days from the date of certified copy of the instant judgment is served upon the Commissioner and Secretary to the Government of Assam, Secondary



Education Department.

(iii) The order of the provincialisation of the Respondent No.5 and the various benefits accrued therefrom to the Respondent No.5 shall be subject to the orders to be passed by the Commissioner and Secretary in terms with directions made in Serial No. (ii) hereinabove.

48. With above observations and directions, both the instant writ petitions stands disposed of.

JUDGE

Comparing Assistant