



GAHC010199222022

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

Case No. : WP(C)/6562/2022

SALEHA KHATUN TALUKDAR
W/O- JOSIM UDDIN TALUKDAR, R/O- VILL- CHOTO BASHJANI, P.O.
CHAGAL-CHARA, P.S. DHUBRI, DIST.- DHUBRI, ASSAM, PIN- 783324

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY COMM. AND SECY. TO THE GOVT. OF ASSAM, ELEMENTARY
EDUCATION DEPTT., SACHIVALAYA, DISPUR, ASSAM- 781006

2:THE DIRECTOR
ELEMENTARY EDUCATION DEPTT.
KAHILIPARA
GHY-06

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER
DHUBRI
DIST.- DHUBRI
ASSAM

4:THE BLOCK ELEMENTARY EDUCATION OFFICER
GAURIPUR
DIST.- DHUBRI
ASSAM

5:THE DY. COMMISSIONER
DHUBRI
DIST.- DHUBRI
ASSAM

6:THE INQUIRY OFFICER AND ADDL. DISTRICT MAGISTRATE
DHUBRI



C/O- DY. COMMISSIONER
DHUBRI
DIST.- DHUBRI
ASSA

Advocate for the Petitioner : MR S BORTHAKUR

Advocate for the Respondent : SC, ELEM. EDU

Linked Case : WP(C)/5529/2022

SALEHA KHATUN TALUKDAR
W/O. JOSIM UDDIN TALUKDAR
VILL. CHOTO BASHIJANI
P.O. CHAGAL CHARA
P.S. DHUBRI
DIST. DHUBRI
ASSAM
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SACHIVALAYA
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ASSAM.

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GAURIPUR
DIST. DHUBRI
ASSAM.

5:THE DEPUTY COMMISSIONER



DHUBRI
DIST. DHUBRI
ASSAM.
6:THE INQUIRY OFFICER AND ADDL. DIST. MAGISTRATE

DHUBRI
C/O. DEPUTY COMMISSIONER
DHUBRI
DIST. DHUBRI
ASSAM.

Advocate for : MR S BORTHAKUR
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 5 ORS

Linked Case : WP(C)/1015/2021

SALEHA KHATUN TALUKDAR
W/O. JOSIM UDDIN TALUKDAR
VILL. CHOTO BASHJANI
P.O. CHAGAI CHARA
P.S. DHUBRI
DIST. DHUBRI
ASSAM
PIN-783324.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM
ELEMENTARY EDUCATION DEPTT.
SACHIVALAYA
DISPUR
ASSAM-781006.

2:THE DIRECTOR

ELEMENTARY EDUCATION DEPTT.
KAHILIPARA
GUWAHATI-781006.

3:THE DISTRICT ELEMENTARY EDUCATION OFFICER

DHUBRI
DIST. DHUBRI



ASSAM.
4:THE BLOCK ELEMENTARY EDUCATION OFFICER

GAURIPUR
DIST. DHUBRI
ASSAM.

Advocate for : MR S BORTHAKUR
Advocate for : SC
ELEM. EDU appearing for THE STATE OF ASSAM AND 3 ORS

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

JUDGMENT

Date : 15-06-2023

Heard Mr. S Borthakur, learned counsel for the petitioner. Also heard Mr. P.N. Sarma, learned standing counsel appearing on behalf of all the respondents.

2. As agreed to by the learned counsels for both the parties, these three writ petitions are taken up together for final disposal. Though no affidavit has been filed in WP(C) No.5529/2022, Mr. P.N. Sarma, learned standing counsel, Elementary Education Department submits that the affidavit filed in WP(C) 6562/2022 as well as in WP(C) 1015/2021 shall cover the stand of the respondent authorities.

WP(C) 1015/2021

3. WP(C) 1015/2021 was filed on the background fact that the petitioner was appointed as Arabic Teacher in Mowlana Bhassani Memorial M.E. Madrassa under Gauripur Block (hereinafter referred to as School), in the year 1985, her service was regularised by the government on 06.02.1993 and though she has been discharging her duties since then, however, her

salary has been stopped from the month of February, 2020.

4. The respondent employer in the aforesaid writ petition, took a stand that one Juran Ali Akand lodged a complaint against the writ petitioner alleging that the writ petitioner obtained a certificate by unfair means from Majechar High Madrassa by recording her date of birth as 24.04.1965 and on the basis of such certificate the date of birth of the petitioner was recorded in subsequent certificates issued by the authorities. But the petitioner's date of birth ought to have been 31.01.1957 based on the admit card issued by SEBA. It was the further stand of the respondent that on verbal instruction of District Magistrate, Dhubri, the Additional District Magistrate conducted an enquiry into the matter and thereafter submitted an enquiry report on 02.01.2020 (Annexure – F) before the District Elementary Education Officer (DEEO). According to the respondent, such enquiry report reveals that the certificate issued by the Superintendent of Majechar High Madrassa in favour of the writ petitioner is not genuine at all. On the basis of such report, the DEEO directed the jurisdictional Block Elementary Education Officer (BEEO) not to release salary to the petitioner. Accordingly a direction was also issued to lodge an FIR against the petitioner and the FIR was lodged on 31.11.2020.

WP(C) 5529/2022

5. On disclosure of the aforesaid fact in the affidavit filed by the respondent employer, the petitioner preferred the second writ petition i.e., WP(C) 5529/2022 assailing the enquiry report submitted by the Additional District Magistrate.

WP(C) 6562/2022

6. While such writ petitions were pending, by an order dated 08.09.2022, the DEEO directed the jurisdictional BEEO to take action and

lodge a fresh FIR against the petitioner for misleading and submitting fake school certificate and also to recover the entire overdrawn amount during the period of overstay with effect from 01.02.2007 to 28.02.2020. Accordingly, such order was challenged in WP(C) No.6562/2022

7. Mr. S Borthakur, learned counsel for the petitioner assailing the enquiry report submits that the enquiry was conducted on the basis of allegations made by third party inasmuch as the enquiry officer is not competent to do such enquiry and such enquiry cannot be a basis of punitive action as same was not made by the employer of the petitioner. Therefore, such action on the part of the District Magistrate or the Additional District Magistrate and on the part of the employer is without jurisdiction.

8. It is also the contention of Mr. Borthakur that an enquiry was conducted and a conclusion was drawn that the transfer certificate in question was a fake one however, such enquiry was done behind the back of the petitioner and a reading of the enquiry itself shall show that there is no material before the enquiry officer to make such a conclusion. Accordingly, Mr. Borthakur submits that in view of the aforesaid, the entire enquiry report is liable to set aside and quashed.

9. The learned counsel further contends that once the enquiry report is set aside, the impugned order dated 08.09.2022 assailed in WP(C) No.6562/2022 shall also fall inasmuch as, the said order is based on the enquiry report of the Additional District Magistrate and in the aforesaid backdrop, the petitioner shall be entitled for the salary as claimed in WP(C) No.1015/2021.

10. It is also contended by Mr. Borthakur that the petitioner has been wrongly deprived from her service and salary and therefore, she is liable to reinstated with the back wages.

11. Per contra, Mr. P.N. Sarma, learned counsel representing the Elementary Education Department contends that when an allegation of fraud is brought to the notice of a District Magistrate, it is bounden duty of the Deputy Commissioner to make an enquiry and on a fact finding enquiry it was established that the transfer certificate issued in favour of the petitioner was infact fake and subsequently the certificate obtained from Board of Secondary Education, Assam clearly establishes that the date of birth of the petitioner is 31.01.1957 and therefore, such certificate corroborates the enquiry finding and no fault can be attributed to the employer in issuing the impugned order dated 08.09.2022.

12. Countering such argument, Mr. Borthakur submits that the employer has obtained two certificates. One from the Madrassa Education Board and other from the SEBA. The certificate issued by the Madrassa Board is actually the certificate of the petitioner which tallies with her actual date of birth inasmuch as, the certificate obtained by the employer from the SEBA does not relate to the petitioner and therefore, they ought not to have relied on such certificate. It is the specific case of the petitioner that her date of birth was entered in the service book on the basis of the certificate issued by the Madrassa Education Board and such certificate has been admitted to be genuine by the employer and also for the reasons that the certificate issued in the name of Saleha Khatun does not belong to the petitioner and that said Saleha Khatun is somebody else

13. Mr. Borthakur further contends that if the petitioner would have been given a chance before taking the impugned action, she could have clarified her position but however, such chance has not been given to her and therefore the entire exercise carried out by the respondent authorities are liable to set aside and quashed.

14. This court has given thoughtful considerations to the arguments advanced by the learned counsel for the parties and also perused the material available on record.

15. In the case in hand, there are certain undisputed facts. Firstly, some individual lodged a complaint before the jurisdictional District Magistrate alleging that the transfer certificate given by the primary school to the petitioner based on which the date of birth of the petitioner was recorded subsequently on different school certificates itself was fake thus the allegation was that the basis on which the date of birth was recorded itself was a fake document. On the basis of such document the District Magistrate entrusted upon its Additional District Magistrate. The enquiry report of the District Magistrate reveals that the Additional District Magistrate obtained information from the jurisdictional DEEO that the school where the petitioner stated to have been studied is not in existence on the date of enquiry. Though the school existed earlier, as the earlier headmaster of the school stated before the enquiry officer that he did not issue the certificate.

16. A conclusion was drawn that the certificate was not genuine. Accordingly, all subsequent impugned actions have been taken including withholding of salary, lodging of FIR.

17. SR 8(6) and the note appended thereto empower the Commissioner and the Heads of Department to alter the recorded date of birth in case of Non-Gazetted Government Servant, subject to his satisfaction to be derived. The note to SR 8(c) mandates that the Head of Department should record the date of birth in the service book of a Non –Gazetted Government Servant on his initial appointment with reference to the matriculation or equivalent certificate and shall also record a remark to this effect in the

service book. When such certificates are not available, the Head of Office is to verify the date with reference to the birth certificate to be produced by a Government servant and record a note to that effect in service book.

18. The principles of natural justice mandates that a reasonable opportunity must be given to a person before taking any action against him. The adjudicating authority must disclose all the material placed before it and must give reasonable opportunity to the affected to submit his case. A fair hearing means that a person against whom an adverse order is passed should be informed of the charges against him giving him an opportunity to submit his explanation to the charges and the person is also have a right to know the material on the basis of which the allegation is proposed to be decide.

19. In the case of ***Maneka Gandhi Vs. Union of India*** reported in ***AIR 1978 SC 597***, the Hon'ble Apex Court observed that even when there is no specific provision for showing cause, yet in a proposed action which affects the right of an individual, it is the duty of the authority to give reasonable opportunity to be heard. Such duty of the authority is implied by nature of function to be performed by the authority having power to take punitive or damaging action.

20. In the aforesaid settled proposition of law, even this court assumes that the District Magistrate or the Additional District Magistrate, as the case may be was within its power and competence to make an enquiry. In the given facts of the present case, it was its bounden duty to give a reasonable opportunity of hearing to the petitioner, more so, when punitive action was taken against the petitioner. Therefore, the respondent authorities, even if this Court assumes that the enquiry report is a fact finding enquiry and therefore, no principles of natural justice is required to be adhered, no

action could have been taken on the basis of such report without giving a reasonable opportunity to the petitioner including furnishing of a enquiry report. Therefore, the course of action adopted by the respondent authorities including the employer and the District Magistrate cannot be permitted under law and under an administrative system which is governed by constitution and Rule of law.

21. The fact also remains that the Commissioner and the Head of the Department as discussed hereinabove are empowered to alter the recorded date of birth in case of Non-Gazetted Officer, provided such Commissioner and the Head of the Department are satisfied after enquiry that previous date was incorrect. Therefore, a power has been vested upon the Commissioner and head of the Department of the employer not upon the District Magistrate nor the enquiry was conducted on the direction of the Head of the Department or the Commissioner in view of the settled proposition of law as discussed herein above, regarding adherence of principles of natural justice even while doing an enquiry by the head of the department or commissioner under FR 8(c), the principles of natural justice is to be followed. Therefore, the enquiry conducted cannot be relied to come to a conclusion that the certificate was illegal and the recorded date of birth of the petitioner who is a non gazetted servant is not permissible. On this count also the impugned action is liable to be set aside and quashed. Accordingly the impugned order dated 08.09.2022 in WP(C) No.6562/2022 is set aside and quashed.

22. The stand of the respondents filed on affidavit in WP(C) 1015/2021 reflect that the salary of the petitioner was withheld with effect from February 2020 on the basis of the finding of such enquiry. As this Court had held that no punitive action can be taken on the basis of such enquiry, the impugned action of the respondents in not giving salary to the petitioner is

also interfered with. Accordingly, it is directed that the petitioner be paid her arrears of salary. The fact remains that subsequent to the impugned order dated 08.09.2022, the petitioner is out of service.

23. This Court in the given facts of the present case is not inclined to accept the argument of the respondent that principle of no work no pay shall be applied, more particularly, for the reason that the punitive action taken against the petitioner was an absolute illegality for more than one reason, firstly, the enquiry was conducted by an authority having no jurisdiction, secondly, the enquiry was conducted without giving any opportunity to the petitioner, thirdly, punitive action taken on the basis of such enquiry was also not preceded by adhering any kind of principles of natural justice. Even a notice was not given to the petitioner as why on the basis of such enquiry, the action proposed shall not be taken. Therefore, the petitioner was out of service not on her own volition but for the aforesaid illegality of the respondents and therefore, the petitioner shall be entitled for the arrears of salary on her reinstatement. Accordingly, it is provided that in view of the interference with the impugned order the petitioner be allowed to continue with her service.

24. This order shall not preclude the Commissioner and the Head of the Department to proceed to make an enquiry permitted under law. So far relating to the determination of date of birth of the petitioner by giving an opportunity of hearing to the petitioner.

25. In view of the aforesaid terms, these three writ petitions stands disposed of. No costs.

JUDGE

Comparing Assistant