



GAHC010025712021

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

Case No. : WP(C)/1334/2021

PH. RUTH JOAN SINGHA
W/O- PH. MANIDHON SINGHA, MAJOR (RETD.), R/O- VILL- LALANG PT-I,
P.O. PAILAPOOL, P.S. LAKHIPUR, DIST.- CACHAR, ASSAM, PIN- 788098

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, DEPTT. OF
EDUCATION (SECONDARY), DISPUR, GHY-6

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

3:THE INSPECTOR OF SCHOOL
SILCHAR

4:URIREI SINGH
PRINCIPAL-SECY.
EMMANUEL ENGLISH H.S. SCHOOL
PAILAPOOL
CACHAR
ASSAM
PIN- 788098
W/O- MR. N. GOBIN SINGH
R/O- VILL- NAYAGRAM
P.O. FULERTAL
P.S. LAKHIPUR
DIST.- CACHAR
ASSA

Advocate for the Petitioner : MR. D CHAKRABARTY



Advocate for the Respondent : SC, SEC. EDU.

**BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA**

Date : 03-03-2021

JUDGMENT & ORDER (ORAL)

Heard Mr. D Chakrabarty, learned counsel for the petitioner, Mr. UK Nair, learned senior counsel for the respondent No.4 and Mr. SMT Chisti, learned counsel for the respondent Nos. 1, 2 and 3.

2. The petitioner, who is an Assistant Teacher in the Emmanuel English HS School, Pailapool in the Cachar district is aggrieved by an order of suspension dated 02.01.2021 of the Principal-Secretary of the Emmanuel English HS School. On a query being made on the maintainability of a writ petition against an order of suspension passed by the Principal-Secretary of a private school, Mr. D Chakrabarty, learned counsel for the petitioner refers to Section 27 of the Assam Non-Government Educational Institutions (Regulation and Management) Act, 2006 (in short Act of 2006), wherein inter-alia it is provided that except as expressly provided in the Act, no decision or order made in exercise of any of the powers conferred by or under the provisions of the Act of 2006 shall be questioned in any Civil Court. On a query being put as to under which provisions of the Act of 2006 the order of suspension was passed, reference is made to the order itself wherein it is provided that the petitioner was suspended under the proviso to Section 15(2) of the Act of 2006 read with Section 17(a) (b)(f) of the Assam Non-Government Educational Institutions (Regulation and Management) Rules, 2007 (in short Rules of 2007).

3. The proviso to Section 15(2) of the Act of 2006 is extracted below:-

“No employee of a non-government educational institution shall be dismissed, removed or reduced in rank or terminated without giving him a reasonable opportunity of being heard and without the matter being referred to the Managing Committee for its consideration and approval.”

The provision of Rule 17(a)(b)(f) of the Rules of 2007 are also extracted as below:-



- “17(a) where a disciplinary proceeding against such employee is contemplated or pending; or*
- (b) where a case against him/her in respect of any criminal offence is under investigation or trial; or*
- (f) where he/she is charged with the breach of any other code of conduct.*

4. A reading of the proviso to Section 15(2) of the Act of 2006 makes it discernible that it is an enabling provision by which the school authority may suspend an employee without prior approval of the Managing Committee. The said proviso is in the nature of an enabling provision giving the power to the school authority to suspend an employee without prior approval of the Managing Committee and the said proviso is not a substantive provision empowering or requiring the school authority to suspend any of its employees. Rule 17(a)(b)(f) of the Rules of 2007 merely provides that subject to the provision of Section 15(1) and 15(2) of the Act of 2006, the Managing Committee may place an employee under suspension in certain circumstances as stated therein. Even if it is construed that the suspension meted out to the petitioner by the order dated 02.01.2021 is an order passed under the Act of 2006 or the Rules of 2007, thereby incurring a bar on the jurisdiction of the Civil Court to entertain the same, the same by itself would not entitle the employee aggrieved to approach this Court under Article 226 of the Constitution of India in view of the Notification No.ELC/WP(C) 2272/2013/403/196 dated 02.06.2016, by which the Government of Assam had constituted Educational Tribunals to adjudicate the disputes of the teaching and non-teaching staffs of the non-government educational institutions.

5. Apparently the creation of the Educational Tribunals was pursuant to a judgment of the Full Bench of this Court in the judgment and order dated 03.12.2015 passed in WP(C) No. 4612/2011 and other writ petitions. In the circumstance above, we are of the view that a writ petition against an order of suspension of an employee of a private school would not be maintainable and the appropriate remedy would be to approach the Educational Tribunal.

6. In such view of the matter, the writ petition stands closed. Liberty is granted to the petitioner to approach the appropriate forum.

JUDGE

Comparing Assistant