



GAHC010214192022



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

Case No. : WP(C)/7191/2022

KHUDEJA KHATUN CHAUDHURY
W/O FAKAR UDDIN MIRA, R/O VILL- HAILAKANDI TOWN, WARD NO. 11,
P.O.-R.P ROAD, DIST AND P.S.-HAILAKANDI, ASSAM, PIN-788155

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER TO THE GOVT. OF ASSAM,
EDUCATION ELEMENTARY DEPARTMENT, DISPUR, GUWAHATI-781006

2:THE SECRETARY TO THE GOVT. OF ASSAM
EDUCATION ELEMENTARY DEPARTMENT
DISPUR
GUWAHATI-781006

3:THE DIRECTOR OF ELEMENTARY DEPARTMENT
ASSAM
KAHILIPARA
GUWAHATI-781019

4:THE DEPUTY INSPECTOR OF SCHOOLS
HAILAKANDI
ASSAM

5:THE SECRETARY
FINANCE DEPARTMENT GOVT. OF ASSAM
DISPUR
GUWAHATI-

Advocate for the Petitioner : MR. K A MAZUMDER

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

Date : 06-12-2023

JUDGMENT & ORDER (ORAL)

Heard Mr. K.A Mazumder, learned counsel for the petitioner, Mr. B Gogoi, learned counsel for the respondents in the Finance Department, Government of Assam and Mr. R Mazumdar, learned counsel for the respondents in the School Education Department, Government of Assam.

2. The petitioner participated in a selection process for appointment of LP School Teachers as per the advertisement dated 16.01.1986. As the appointments were not forthcoming and the petitioner along with others who had participated in the said selection process were of the view that they have a legal right to be appointed, had instituted Title Suit No. 55/1990 in the Court of the learned Assistant District Judge, Hailakandi which was decreed by the judgment dated 07.09.1993, by which there was a declaration that the plaintiffs therein are entitled to get appointment against vacant posts on the basis of the panel and the defendants are bound to make the appointments strictly maintaining serial position of the panel prepared by the Elementary Education Advisory Board of Hailakandi. The said judgment and decree in the Title Suit resulted in the communication dated 07.05.1997 of the Director of Elementary Education, Assam, the relevant portion of which is extracted as below:-

“With reference to the above I am to direct you to comply with the orders passed by the court by appointing the following petitioners as L.P School teachers against following available vacancies at your disposal since limitation for filing review application has already expired long back as stated in your letter and the contempt proceeding has been pending in the Hon’ble High Court regarding the same matter. This is also as per advice of Govt. Pleader,

Hailakandi as enclosed with your letter dated 5.5.1997.

Action taken may please be intimated to this office.

1. *Shamsuddin Laskar*
2. *Taimus Uddin Mazumder*
3. *Imdadulla Laskar*
4. *Abdul Rejaque Barbhuiya*
5. *Taj Uddin Laskar*
6. *Khudeja Khatun Choudhury"*

3. A reading of the communication makes it discernible that in execution of the decree in Title Suit No. 55/1990, the authorities had processed the claim for appointment of the petitioner and her name was included along with five other persons as mentioned therein for appointment. But, in a later communication dated 30.03.2001, resulted in the name of the petitioner Khudeja Khatun Choudhury being deleted from Serial No. 6 as reflected in the earlier communication dated 07.05.1997 and the name of another person Ajmat Ali Choudhury was substituted in her place.

4. No material is available as to why the name of Ajmat Ali Choudhury was included although it is the petitioner who was processed for appointment pursuant to the judgment and decree of the civil Court. In the circumstance, the other five persons who were processed along with the petitioner in the communication dated 07.05.1997 and the other person Ajmat Ali Choudhury whose name was included in the communication of 30.03.2001 were appointed.

5. The aforesaid inconsistency ultimately led to Writ Appeal No. 169/2022 instituted by the petitioner Khudeja Khatun Choudhury which was given a final consideration by the order dated 13.05.2022, wherein there was a direction to the State respondents to consider the application of Khudeja Khatun Choudhury for grant of SIU approval as per a letter dated 31.05.2017 as well as based upon the statements made by the State authorities in their affidavit in opposition filed



on 20.11.2020.

6. Accordingly, we understand that as per the writ appellate order dated 13.05.2022, a legal right had accrued to the petitioner for an appointment by considering grant of SIU approval in her favour. As the school Education Department had rejected the claim of the petitioner, being aggrieved, the present writ petition is instituted.

7. Having gone through the materials on record, it is discernible that firstly a legal right to be appointed crystallized in favour of the petitioner as per the judgment and decree in Title Suit No. 55/1990. Then again, when the matter was processed for execution of the said decree of the civil Court, a further right crystallized when the name was included for being processed as per communication dated 07.05.1997. But, however, when her name was substituted by Ajmat Ali Choudhury in the communication of 30.03.2001, her legal right stood violated by the respondent authorities inasmuch as, her name was deleted from the process of being appointed and another person had been substituted in her place.

8. It is this issue of the matter which had not been adequately answered by the respondent authorities when the impugned rejection was made on the claim of the petitioner for appointment. We are not determining any legal right in favour of the petitioner independently in this present writ petition and what we intend to do is recognize the legal right that had already crystallized in favour of the petitioner as per the judgment and decree in Title Suit No. 55/1990 and further as per the communication dated 07.05.1997 wherein her name was included and which ultimately led in favour of appointment in respect of the other five persons whose names were included in the said communication and who were also plaintiffs in the relevant Title Suit No. 55/1990.

9. It is stated that presently the petitioner is aged more than 59 years and she is about to attain her superannuation had otherwise she been appointed.

10. In this respect, as a clear legal right had been crystallized in favour of the petitioner which apparently had been violated by the respondent authorities and had the violation not been there, the petitioner would have been in appointment sometime in the year 2001 itself, we take note of a proposition laid down by the Hon'ble Supreme Court of India in Union of India –vs- Uzair Imran and others, in SLP (Civil) Diary No. 21319/2022, wherein in paragraph 21, it had been provided as extracted:-

“21. Accordingly, it is directed that:

- (i) The third respondent shall be offered appointment, initially on probation, by the appellant on a post of Postal Assistant (for which he was selected) within a month from date;*
- (ii) If no post is vacant, a supernumerary post shall be created;*
- (iii) Subject to satisfactory completion of the period of probation, the third respondent shall be confirmed in service;*
- (iv) Should service rendered during probation be considered not satisfactory, the appellant will be entitled to proceed in accordance with law;*
- (v) Having not actually worked, the third respondent shall neither be entitled to arrears of salary nor shall he be entitled to claim seniority from the date of appointment of other candidates who participated in the recruitment process of 1995;*
- (vi) Since the third respondent, if confirmed after successful period of probationary service, would have less than 10 years' service to his credit and consequently would fall short of qualifying service for pension and other retiral benefits, the appellant shall treat him to have been notionally appointed on the date the last of the selected candidates was appointed pursuant to the process of 1995 only for the purpose of release of such benefits in accordance with law and*
- (vii) In such case, his retiral benefits shall be computed based on the last pay drawn by him while in service.*



(viii) These directions will not be applicable to any respondent, other than the third respondent."

11. The circumstance in which the Hon'ble Supreme Court had directed payment of pensionary benefit to a person who was denied the legal right of being appointed by following due procedure of law by the State authorities and by the time the said right is sought to be implemented the person had already attained the age of superannuation, the relief provided by the Court was that the person concerned be given a notional appointment from the date when the legal right to be appointed was violated without any financial benefit of having been appointed and by doing so, to construe the person to have been appointed at the relevant time itself on a notional basis and thereupon to pay pensionary benefit as may be entitled under the law.

12. In the circumstance of the present case, we also intend to provide the same relief to the petitioner, meaning thereby that the respondents to construe the petitioner to have been appointed sometime in the year 2001 when the other five persons included in the communication dated 07.05.1997 were appointed. But, however, such appointment is to be construed to be a notional appointment without any financial implication or benefit and thereupon from the date when the petitioner would have otherwise attained superannuation to pay the pensionary benefit by deeming it as if the petitioner was appointed on the earlier date and arrive at the qualifying period for pension accordingly.

13. In view of the above, all other orders which are contrary are set aside.

The writ petition is allowed as indicated above.

JUDGE

Comparing Assistant