
(2021) 11 GAU CK 0009

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 6319 Of 2019

Anowara Begum

APPELLANT

Vs

State Of Assam And 3 Ors.

RESPONDENT

Date of Decision : 09-11-2021

Acts Referred:

Citation : (2021) 11 GAU CK 0009

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : I H Saikia

Final Decision : Disposed Of

Judgement

1. Heard

Mr. I H Saikia, learned counsel for the petitioner. Also heard Mr. R Mazumdar, learned counsel for the respondents no. 1, 2 and 3 being the authorities under the Secondary Education Department, Government of Assam.

2. Although the respondent no. 4 had entered appearance through a learned counsel Mr. M Ali and an affidavit-in-opposition has been filed but when the matter is taken up for hearing, Mr. M Ali chooses not to appear before the Court. None appearance for respondent no. 4 being the Managing Committee of Peradhara Higher Secondary School cannot detain the Court in giving a final consideration to the writ petition in view of the urgency expressed by the petitioner for such hearing, and further the respondent no. 4 would not be prejudiced by any order that may be passed.

3. The petitioner who has the qualification of BA (Major in Education), MA in Education and was appointed as a subject teacher in the subject education in the Peradhara Higher Secondary School in the Nalbari district as per the resolution dated 09.08.2005 of the Managing Committee of the School. It is stated that the services of the teaching staff of the school were provincialised much earlier to

the appointment of the petitioner. It is also stated that when the petitioner was appointed, no sanctioned post in the subject education was available in the school concerned although there was a necessity for a teacher in the subject education considering the number of students and their demands.

4. The Inspector of Schools, Nalbari by a communication dated 19.07.2006 had forwarded a proposal to the Director of Secondary Education for sanctioning a post of subject teacher in education which was made by the Principal of the School. The Principal of the School had made another proposal dated 20.06.2015 before the Director of Secondary Education, Assam for sanctioning of a post of subject teacher of education in the school. In spite of such proposal being sent, no further action had been taken and in the resultant situation, the petitioner was discharging her duties as a subject teacher in the Peradhar Higher Secondary School in the subject education without payment of salary. Being aggrieved this writ petition is instituted with a prayer that a direction be issued to the respondent authorities for payment of salary to the petitioner.

5. Mr. R Mazumdar, learned counsel for the respondents in the Secondary Education has raised an objection to such prayer by stating that the nature of appointment of the petitioner would be that of an honorary appointment in a provincialised school which is impermissible under the law. The second objection by Mr. R Mazumdar, learned counsel for the respondents is that there is no sanctioned post, therefore, the state authorities would not be in a position to pay the salary to the petitioner.

6. Mr. I H Saikia, learned counsel for the petitioner on the other hand refers to an order of this Court dated 15.12.2020 in WP(C)/5032/2018 wherein in the case of an honorary teacher appointed by the Managing Committee in a provincialised school, a conclusion was arrived that there was a legitimate expectation on the part of such teachers for payment of salary and therefore, a similar order be also passed in this writ petition.

7. Upon perusal of the order dated 15.12.2020, we find that the direction issued therein was for the Director to pass a reasoned order in the facts and circumstances of that case. Considering the nature of the direction in the other order, we are also inclined to pass a direction to the Director of Secondary Education also in this writ petition to pass a reasoned order on the claim of the petitioner.

8. As it is the contention of the respondent authorities that the petitioner is not being paid the salary as because there is no sanctioned post of subject teacher in education in the Peradhara Higher Secondary School and further that there are proposal from Principal of the School for sanctioning of such post, we are of the view that it would be appropriate for the Principal Secretary to the Government of Assam in the Education Department to decide the aspect and pass a reasoned order in the facts and circumstance as regards the necessity of sanctioning a post in subject teacher in education in the Peradhara Higher Secondary School.

Once the post of subject teacher in education in Peradhar Higher Secondary School is sanctioned, the Principal Secretary to call for the original records from the Peradhara Higher Secondary School and find as to in what manner the petitioner was appointed. If the petitioner was appointed by following due procedure as prescribed under the rule there would be an entitlement of the petitioner for regularization against such sanctioned post. In the event, the petitioner was not appointed by following due procedure of law, the post so sanctioned may be filled up by the appropriate recruitment procedure under the rules and in such recruitment procedure, the petitioner shall also mandatorily be allowed to participate. In doing so, the Principal Secretary shall also take a decision as to what appropriate weightage would be given to the petitioner considering the long years of service she had rendered in the school since the year 2005, the quality and merit of such service that the petitioner may have rendered as well as also take into consideration the legitimate expectation that the petitioner may have had in continuing with her service in the circumstance in which she was required to accept the appointment at the request of the students as well as the authorities of the Peradhara Higher Secondary School and that in doing so, she had forgone the other beneficial opportunity of occupation that she may have had.

9. The necessary weightage can also be given in the form of experience that the petitioner may have had in the very specific post for which the recruitment may take place.

10. The reasoned order be passed regarding the sanction of post by the Principal Secretary within a period of two months from the date of receipt of certified copy of the order and the subsequent requirement be done within a period of another three months thereafter.

11. Writ petition stands disposed of in the above terms.