
(2018) 03 GAU CK 0073
In the Gauhati High Court
Case No : WP(C) 1504 of 2018

BINU LATA BORAH

APPELLANT

Vs

STATE OF ASSAM AND 5 ORS

RESPONDENT

Date of Decision : 16-03-2018

Acts Referred:

Citation : (2018) 03 GAU CK 0073

Hon'ble Judges : ACHINTYA MALLA BUJOR BARUA

Bench : Single Bench

Final Decision : Disposed Of

Judgement

1. Heard Mr. K.K. Mahanta, learned counsel for the petitioner. Also heard Mr. N. Sarma, learned standing counsel for the Elementary Education Department.

Considering the nature of order to be passed, notice need not be issued to the respondent No.6 for the present.

2. The petitioner was initially appointed as a Science Graduate Teacher in the Kolongpar Halowagaon M.E. School, Nagaon by the order dated

16.10.1993 of the Inspector of School, Nagaon. Thereafter, as per the order dated 20.10.1993 of the District Elementary Education Officer, the

petitioner was posted at Saidaria M.E. School, Nagaon. The Saidaria, M.E. School is located at a distant of 70 k.m. from the residence of the

petitioner and therefore, she had to cover a distance of 140 k.m in order to attend the school. In the meantime, the petitioner also became the mother

of a child and during that period she had an attack of asthma disease. As her physical condition deteriorated and as she had the problem of allergy due

to dust, the petitioner made a request to the authorities that she be transferred

to a nearby school.

3. Upon such consideration, by the order dated 15.05.2003, the services of the petitioner was attached to the Town Panigaon, M.E. Nagaon allowing

the petitioner to draw her salary from the original school of Saidariya M.E. School.

4. At that stage, the petitioner had preferred a writ petition being WP(C) No.3655/2004 before the Court inter alia praying that she be transferred to

Town Panigaon, M.E. Nagaon. The said writ petition was disposed of by the order dated 31.05.2006, by which the petitioner was required to submit a

representation before the Block Elementary Education Officer, Nagaon praying for a regular post either in Town Panigaon, M.E. Nagaon or any other

school in the proximity of her residence and whenever such representation is filed, the authority to give a due consideration to the same. It was also

provided that till a decision is taken on the representation of the petitioner, the earlier arrangement would continue. It is stated that accordingly, the

petitioner submitted a representation. Consequent to such representation, the District Elementary Education Officer, Nagaon passed an order dated

27.06.2014 allowing the petitioner to continue her work in the Town Panigaon, M.E. Nagaon. In the meantime, the Town Panigaon, M.E. Nagaon was

amalgamated with the Dimaruguri High School, Nagaon as per the scheme undertaken by the State Govt.

5. There is further an order of the District Elementary Education Officer, Nagaon dated 27.10.2017 that all types of attachment orders are cancelled

with immediate effect and the concerned teachers are required to revert back to their parent school.

6. Being aggrieved, this writ petition has been preferred. It is noticed that the order dated 27.10.2017 requiring all types of attachment orders to be

cancelled would apparently be applicable in respect of such attachment orders which are issued by the department from time to time. But in the

present case, after the order of attachment in respect of the petitioner, there is a direction of this Court to consider the case of the petitioner for being

posted either in Town Panigaon M.E. School or any other school in proximity with her residence and pursuant to such direction, the order dated

27.06.2014 was issued, by which the petitioner was allowed to work in Town Panigaon, M.E. Nagaon.

7. In view of the aforesaid difference in the background fact, it cannot be said

that the order dated 27.10.2017 would also be applicable to the petitioner as it is. At the same time, it is also submitted by Mr. N. Sarma, learned standing counsel for the department that after the amalgamation, there is no such posts available for the petitioner in the amalgamated High School. But the original physical ailments of the petitioner because of which she was posted at Town Panigaon, M.E. Nagaon still persist and therefore, there is a necessity for the authority to take a decision as to where the petitioner should serve. It is also stated by Mr. K.K. Mahanta, learned counsel for the petitioner that the petitioner would superannuate from service on 28.02.2019 i.e. less than a year from now.

It is also stated that there is a posts of science teacher vacant in the Dimaruguri High School.

8. In view of the above, it is directed that the Director of Secondary Education shall take a decision on the entitlement of the petitioner to continue to serve in a school which is within the proximity of her residence as provided by this Court in the earlier order dated 31.05.2006 and in doing so, all the aforesaid attending facts and circumstances as indicated including the factor that the petitioner would retire from service within a period of less than one year and secondly there is one post still vacant in Dimaruguri High School shall also be taken into consideration. In doing so, the Director of Secondary Education shall also take up the matter to the Director of Elementary Education inasmuch as, the original appointment of the petitioner is in Saidaria M.E. School, which is under the Director of Elementary Education. It is also provided that the salary of the petitioner be also paid on a regular basis inasmuch as, she is working in either of the school where she is allowed to work.

Writ petition is accordingly disposed of.