
(2020) 11 GAU CK 0030
In the Gauhati High Court
Case No : Writ Petition (C) No. 3766 Of 2020

Deba Charan Das And Anr	Vs	APPELLANT
State Of Assam And Ors		RESPONDENT

Date of Decision : 23-11-2020

Acts Referred:

Citation : (2020) 11 GAU CK 0030

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : J Paul

Final Decision : Disposed Off

Judgement

1. Heard Ms. J Paul, learned counsel for the petitioners, Mr. NJ Khataniar, learned standing counsel for the Elementary Education Department and

Mr. SR Barua, learned counsel for the respondent No.1.

2. The petitioner No.1 Deba Charan Das was appointed as an Assistant Teacher in the Nichilamari ME School as per the resolution of the School

Managing Committee dated 01.08.1990 and since then it is stated that he is working continuously. The petitioner No.2 Sri Madhusudhon Sarkar was

appointed as a Chowkidar of Nichilamari ME School as per the appointment letter issued by the Headmaster of the school on 12.04.1983 although it is

claimed that he has been working since 26.12.1981. Be that as it may, the common grievance of both the petitioners is that although the school

concerned was provincialised, but their services were dropped out and were not provincialised along with other teaching and non-teaching staffs of the school.

3. We have taken note of that the Nichilamari ME School was provincialised by

the order dated 19.05.1998. But a controversy had arisen as two schools appeared bearing the same name of Nichilamari ME School, one headed by Sri Sushil Kumar Sarkar and the other headed by Sri Dilip Kumar Barman. In fact the school headed by Sri Sushil Kumar Sarkar was provincialised by the order of 19.05.1998. The said controversy was laid at rest as per the order of the Division Bench in WA No.108/2000. Subsequently, by the judgment dated 21.01.2014 in WP(C) No.1709/2006 and WP(C) No.1504/2013, the conclusion arrived at by the Division Bench was accepted and it was held that all the teaching and non teaching staffs of the two institutions headed by Sri Sushil Kumar Sarkar and Dilip Kumar Barman will both be entitled to receive salary upon proper verification. The requirement of the order dated 21.01.2014 in WP(C) No.1709/2006 and other writ petitions were given a consideration by the Commissioner and Secretary to the Government of Assam in the order dated 29.03.2014. By the said order, it was provided that the Director of Elementary Education, Assam will release the current salary in respect of the school headed by Sri Sushil Kumar Sarkar.

4. Admittedly the petitioners were appointed in the school headed by Sri Sushil Kumar Sarkar, but in spite of the order dated 29.03.2014, as the salary and allowances of the petitioners had not been released, the petitioners considered themselves that they had been dropped out from the process of provincialisation. When the petitioners approached the authorities for their salary and allowances, the order dated 10.08.2019 was communicated by the Deputy Secretary to the Government of Assam in the Elementary Education Department that the regularization of services of the two petitioners at that stage may not arise as their services were not regularized at the time of provincialisation of their school and they had not approached the competent Court assailing the non regularization of their services. The said conclusion in our view would not comprise of the complete facts and circumstances of the present case. Admittedly, till the order dated 21.01.2014 in WP(C) No.1709/2006 and other writ petitions and the resultant order dated 29.03.2014 of the Commissioner and Secretary, the petitioners would not have been in a position to know as to whether they were regularized or not and whether they would receive salary or not. Only after the order of 29.03.2014, it was clear that their services were not provincialised, meaning

thereby that they would be dropped teachers as per law only after the order dated 29.03.2014. It being so, the general stand taken by the respondent

authorities that the claim of the dropped teachers ought to have been raised at an earlier point of time and not after the process had come to an end,

would not be applicable to the petitioners in the facts and circumstances of the present case.

5. From the said point of view, we interfere with the communication dated 10.06.2019 and remand the matter back to the authorities in the

Government of Assam in the Elementary Education Department to give a fresh consideration to the claim of the petitioners for regularization and

salary as has been paid to the other employees of Nichilamari ME School headed by Sri Sushil Kumar Sarkar as per the order dated 29.03.2014 and

pass a reasoned order thereon. If in spite of such consideration, the petitioners are still not entitled to be provincialised and to receive their salaries,

appropriate reasoned order be passed. But the same reason that they had not approached earlier when the case of the dropped teachers were

considered, should not be reiterated once again.

6. The requirement of passing the reasoned order be done by the Commissioner and Secretary to the Government of Assam in the Elementary

Education Department within a period of two months from the date of receipt of a certified copy of this order.

The writ petition stands disposed of in the above terms.