

(2018) 03 GAU CK 0075
In the Gauhati High Court
Case No : WP(C) 5014 of 2012

DEVANANDA NAOHALIA @ DEBENDU NAOHALLA and 2 ORS.	APPELLANT
Vs	
STATE OF ASSAM and ORS	RESPONDENT

Date of Decision : 16-03-2018

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2018) 03 GAU CK 0075

Hon'ble Judges : ACHINTYA MALLA BUJOR BARUA

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Heard Mr. M.U Mahmud, learned counsel for the petitioners and Mr. N. Sarma, learned Standing Counsel for the Elementary Education Department.

2. The petitioners being 03(three) in number, were appointed by the Deputy Inspector of Schools, Tinsukia by the appointment orders dated

05.03.1989, 20.02.1988 and 15.10.1988 respectively. The petitioners have been paid their regular salary and allowances up to March, 2009.

Thereafter, the salary had been stopped. Being aggrieved, the petitioners preferred a writ petition being WP(C) No.3335/2011. During the pendency

of the said writ petition, the order dated 08.08.2012 was passed by the Director of Elementary Education, Assam, which indicates that the salary of

the petitioners would be released. As because of the said order, the writ petition was withdrawn with liberty to approach the Court again. But, in spite

of such order, as no salary was paid to the petitioners and accordingly this writ petition has been preferred.

3. Mr. M U Mahmud, learned counsel for the petitioner refers to an incumbency list of primary school teaching and non-teaching staffs holding the

posts normalized by Government letter dated 27.05.1998 in respect of Dibrugarh district to indicate that the names of the petitioners are included in

such list. The learned counsel for the petitioners also refers to another incumbency list at page-28 of the writ petition to indicate that the names of the

petitioners are also included therein. The learned counsel for the petitioners also submit that all the top level officers in the Education Department had

put their signatures to the aforesaid two lists. Similarly, a lot many other documents are also being relied upon by the petitioners to establish their claim

that they are entitled to receive salary.

4. Mr. N. Sarma, learned Standing Counsel for the Education Department opposes the prayer of the petitioners for salary by taking a stand that the

petitioners were not appointed in service in a legal and valid manner and to that extent, the Deputy Commissioner had conducted an enquiry and the

enquiry reveals that the petitioners were not appointed in accordance with law and some CID case is also pending.

5. The learned counsel for the petitioners on the other hand submits that such enquiries were conducted behind the back of the petitioners.

6. This Court in exercise of its jurisdiction under Article-226 of the Constitution of India would not be the appropriate forum to decide as to whether

the petitioners were legally appointed in their respective posts or not. The incumbency lists by itself cannot be stated to be the conclusive inasmuch as

the same merely depicts that the petitioners were in service, which otherwise is also an admitted position as they were paid their salaries up to the

year 2009.

7. This Court also takes note of an order dated 02.03.2010 of the Division Bench of this Court in WP(C) No.1048/2004, wherein this Court had

provided for constitution of a Committee to examine the claims of such teachers as regards the validity and legality of their appointment. In the

Division Bench order, this Court had provided that in the event, it is found upon screening that the teachers were legally and validly appointed,

appropriate steps for salary to be paid be taken. On the other hand, the Division Bench also provided that the State respondent authorities may take a

policy decision in respect of such teachers, who, upon such screening are found to have been illegally appointed.

8. In view of the above, it is deemed appropriate that as it is the case of the

petitioners for payment of salary and whereas it is the stand of the State respondent authorities that they were not validly appointed, the ends of justice would be met if the case of the petitioners are also examined by the aforesaid Committee constituted by this Court in its order dated 02.03.2010. In doing so, the Committee shall give the petitioners an opportunity of hearing to produce and rely upon the aforesaid two documents annexed in the writ petition and also any other documents that the petitioners may desire to rely upon in order to substantiate that they were legally and validly appointed.

9. Upon such exercise being taken, the Screening Committee shall pass a reasoned order and do the needful. The aforesaid exercise be completed within a period of three months from the date of receipt of a certified copy of this order. The petitioners shall accordingly obtain a certified copy of this order and produce the same before the Commissioner and Secretary to the Government of Assam, Elementary Education Department, who shall do the needful to facilitate the petitioners to appear before the Screening Committee as indicated above.

In terms of the above, this writ petition stands disposed of.