

---

**(2015) 02 GAU CK 0022**  
**In the Gauhati High Court**  
**Case No : Case No. WP(C) 4360/2010**

Tridip Buragohain and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

---

**Date of Decision :** 03-02-2015

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2015) 02 GAU CK 0022

**Hon'ble Judges :** Nishitendu Chaudhury, J.

**Bench :** Single Bench

**Advocate :** N. Sarma, SC, Advocates for the Respondent

**Final Decision :** Dismissed

---

## Judgement

Nishitendu Chaudhury, J.—None appears for the petitioners. I have heard Mr. N. Sarma, learned Standing Counsel of Elementary Education Department, Assam.

2. By filing this application under Article 226 of the Constitution of India, two petitioners, namely, Tridip Buragohain and Munin Barua have challenged legality and validity of order dated 18.02.2008 passed by the Director of Elementary Education Department of Assam, the respondent No. 2 herein. By the said order, the claim of the petitioners for getting regularisation of service was rejected by the Director relying on the findings given by the Expert Committee as to validity of appointment of the present petitioners. The conspectus of facts involved in this case is required to be stated in brief. Petitioner No. 2, Sri Munin Barua, was appointed as L.P. Teacher in No. 110 Alimur Chapori Baligaon LP School vice one Muleram Medak, retired. Similarly, petitioner No. 1, Tridip Buragohain, was appointed as LP School Teacher in Chumani Medak Primary School vice retirement of one Lakhyanath Pegu. The petitioners immediately joined and started working in their respective schools. Both the petitioners were appointed at a fixed salary of Rs. 1800/- (Rupees eighteen hundred) per month and as per the appointment order, concerned authorities were required to depute the petitioners to undergo basic training for a period of one year subject to

availability of seats on priority basis and in phased manner. But they were never paid any salary. Situated thus, petitioners approached this Court vide WP(C) No. 2147/2005 and this Court by order dated 03.05.2006 referred the case of the present petitioners along with a batch of similar such persons to the Expert Committee pursuant to another judgment and order dated 06.04.2006 passed by this Court in WP(C) No. 2147/1999.

3. It is the case of the petitioners that Expert Committee considered their appointment and thereupon found that petitioners were irregularly appointed by the then Deputy Inspector of School, Dhakuakhana during the ban period. But even after the Expert Committee classified the case of the petitioners in irregular category, yet the official respondents did not regularise the services of the petitioners and also did not make payment of salaries in any point of time. The petitioners, therefore, have approached this Court for the second time through the present writ petition and pray that the order dated 18.02.2008 whereby the prayer of the petitioners for regularisation was rejected by the Director of Elementary Education be set aside and direction be given for payment of their current as well as arrear salaries.

4. Official respondents have filed an affidavit in this case on 10.11.2014. In paragraph 7 of this application, the answering respondents have taken a plea that the appointments to the petitioners were given against non-existent post. The same affidavit also discloses that the impugned order was solely based on Expert Committee's report and this was done pursuant to earlier order of this Court in WP(C) No. 2147/2005. Paragraph 7 of the affidavit in opposition assumes importance for the purpose of deciding the legality and validity of the impugned order and so it is quoted below:-

"7. That the deponent begs to state that the petitioners were appointed against non-existent posts without following due process of selection. The petitioners were not selected pursuant to any advertisement or selection process. The petitioners have not annexed any documents showing their participation in any selection process such as advertisement/call letter and select list showing their merit position." 5. Along with the affidavit the official respondents have also annexed report of the Expert Committee prepared in meeting held on 05.11.2008 and the relevant part of the report insofar as it relates to the present petitioners is quoted below:-

"(4) WP(C) 2147/2005 Petitioners - Shri Tidip Buragohain and 2 Ors.

Deputy Inspector of Schools, Dhakuakhana has reported that the petitioners Shri Tidip Buragohain, Shri Munin Baruah and Smti. Bibha Senapati were appointed by the then Deputy Inspector of Schools, Dhakuakhana (Shri P.C. Neog) on 12.3.2001 when there was ban on appointment against regular vacancies. As reported the petitioners were appointed against retired vacant posts, but the posts were not in existence at that time. The Deputy Inspector of Schools, Dhakuakhana has also reported that these three petitioners were selected by the

Sub-Divisional Level Advisory Board, Dhakuakhana but the copy of the list which has been submitted by the Deputy Inspector of Schools, Dhakuakhana along with the report is not a select list and it is only a comparative statement of candidates scoring total marks of educational qualification and viva-voice of 5 candidates only. The Deputy Inspector of Schools, Dhakuakhana has also reported that the petitioners are rendering their duties regularly.

The Committee, therefore, recommends (a) rejection of the claim of the petitioner for regularisation of service and (b) to take action against the officer who issued the appointment letter to the petitioner against non-existent post."

Mr. N. Sarma, learned Standing Counsel, submits that the writ petitioners were not appointed against the sanctioned post although in the appointment letter it was mentioned that they were appointed against the existing vacancies vice retirement of regular teachers. But really there was no vacancy as on that date and so these appointments are not irregular but illegal. It is established law that once an appointment is made against non-existent post, a candidate against such appointment can neither claim regularisation nor can he claim payment of salary irrespective of whether he has been working or not. The Expert Committee in this case called for the report from the Deputy Inspector of Schools, Dhakuakhana whereupon a comparative statement of candidates was only produced and there was no select list at all. It is under such circumstances, the Committee recommended that the claim of the petitioners for regularisation be rejected and action be taken against erring officer for issuing such illegal appointment orders against non-existent posts. The Expert Committee report, therefore, is eloquent as to the nature and character of the appointments of the present petitioners as illegal appointment and not as irregular appointment and so the action of the official respondents in issuing the impugned order dated 18.02.2008 rejecting the prayer for regularisation of the petitioners cannot be faulted with.

6. From perusal of the materials available on record including the Expert Committee report and the rival contentions of the parties as discernible from averments in the writ petition as well as that of in affidavit in opposition, this Court is satisfied that the impugned decision by the Director of Elementary Education was based on the Expert Committee report which on turn was submitted pursuant to direction by this Court in the first writ petition, namely, WP(C) No. 2147/2005. Having so found, nothing remains in this writ petition. It is, accordingly, dismissed.

7. No order as to costs.