

GAHC010194652022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/6262/2022

MD. AHEDUL HUSSAIN
S/O- LATE ABDUL SAMAD,
R/O- VILL. RANGIA WARD NO. 2, (KURIARA PATH),
P.O. AND P.S. RANGIA,
DISTRICT- KAMRUP(R), ASSAM.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY COMMISSIONER AND SECRETARY,
EDUCATION (SECONDARY) DEPARTMENT/ DEPARTMENT OF SCHOOL
EDUCATION, ASSAM,
DISPUR, GUWAHATI-6.

2:THE DIRECTOR OF SECONDARY EDUCATION
ASSAM
KAHILIPARA
GUWAHATI- 781019.

3:THE INSPECTOR OF SCHOOLS
NALBARI DISTRICT CIRCLE
NALBARI
ASSAM.

4:MD. ABDUL KADIR
S/O- ISAHAQUE ALI

R/O- VILL. GORGORI

P.O.- TINIPUKHURI

DISTRICT- NALBARI

ASSAM
PIN- 781367.

5:THE HEADMASTER
PASCHIM BANBHAG ANCHALIK HIGH SCHOOL
VILL.- NARAYANGAON

P.O.- TINIPUKHURI

DISTRICT- NALBARI

ASSAM
PIN- 781367.

6:JAYANTA THAKURIA
AES
INSPECTOR OF SCHOOLS
NALBARI DISTRICT CIRCLE

NALBARI
ASSAM

PIN- 781335

Advocate for the Petitioner : MS. A TALUKDAR

Advocate for the Respondent : SC, SEC. EDU.

**BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO**

ORDER

23.09.2022

Heard Mr. S. Chakraborty, learned counsel for the petitioner, who submits that the matter relates to provincialisation of service claimed by both the petitioner and the respondent no.4. They were both appointed as Hindi Teacher at Paschim Banbhag Anchalik High School, Nalbari.

The learned counsel submits that dispute has undergone as series of litigations. Finally, vide the common judgment and order dated 21.07.2022

passed by this Court in WP(C) No.6721/2018 and WP(C) No.4733/2018, the matter was decided by setting aside two orders dated 07.05.2018 and 14.09.2018, by which the salary was ordered to be released in favour of the respondent no.4 and his claim for provincialisation of service was accepted respectively. This Court thereafter directed the Commissioner & Secretary to the Government of Assam, Secondary Education Department to re-consider the petitioner and the respondent no.4 in the light of the observations made in the judgment within a time frame of 60 days on receipt of a certified copy of the order and that the provincialisation of the respondent no.4 and any benefit which accrues out of the same would abide by the decision to be taken by the Commissioner & Secretary.

The learned counsel submits that despite the said direction, the Inspector of Schools, NDC, Nalbari, vide order dated 20.08.2022 in terms of the order dated 14.09.2018 which was already set aside by this Court allowed the respondent no.4 to draw his monthly salary w.e.f. 01.08.2018. When it was brought to his notice that the order dated 14.09.2018 had already been set aside by this Court, he passed another order on 13.09.2022 allowing the respondent no.4 to draw his monthly salary w.e.f. 01.08.2018, by quoting the order passed by the Commissioner & Secretary to the Government of Assam, Education Department (S), vide No. ASE.655/2018/WP(C) 4733/2018/130-A dated 16.08.2022.

The learned counsel submits that when the petitioner enquired about the said order dated 16.08.2022 from the office of the Commissioner & Secretary, Education Department, he was informed that no such order existed and in fact there was no Commissioner & Secretary at the relevant time and it was the Secretary who was functioning in the said post till 30.08.2022. As such, the said

order has been passed with malafide intention by the concerned Inspector of Schools and therefore, appropriate direction should be issued against him.

At this stage, Mr. R. Mazumdar, learned counsel submits that as per the instructions received by him today, the Inspector of Schools concerned has cancelled the order dated 13.09.2022. He further submits that as per the instructions received by him, it was the private respondent no.4, who approached the Inspector of Schools (respondent no.6) along with the order dated 16.08.2022 requesting the later to release his salary.

Considering the above projection, the matter would require appropriate examination at the relevant time.

Issue Notice of Motion returnable by 4 (four) weeks.

Mr. R. Mazumdar, learned counsel appears and accepts notice on behalf of the respondent nos.1, 2 & 3.

Petitioner to take steps for service of notice upon the remaining respondents by Registered Post with AD within 4 (four) days.

List the matter again on 09.11.2022.

Pendency of the writ petition will not be a bar the respondent authority concerned in complying with the judgment and order dated 21.07.2022 passed in WP(C) No.6721/2018 and WP(C) No.4733/2018.

JUDGE

Comparing Assistant