

GAHC010195872025



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

Case No. : Review.Pet./231/2025

THE STATE OF ASSAM AND 3 ORS
REP. BY THE SECY. TO THE GOVT. OF ASSAM, DEPTT. OF SCHOOL
EDUCATION, DISPUR, GHY 06

2: THE DIRECTOR OF ELEMENTARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI 781019

3: THE DEPUTY INSPECTOR OF SCHOOLS

DHEMAJI
DIST. DHEMAJI
PIN 787057

4: THE DIST. ELEMENTARY EDUCATION OFFICE

DHEMAJI
DIST. DHEMAJI
PIN 78705

VERSUS

NABAMI CHETIA AND 2 ORS
W/O SRI RADHA NATH CHETIA, R/O VILL. LAKHIMPUR DEORIGAON, P.O.
AND P.S. RAITING, DIST. DHEMAJI, ASSAM, PIN 787053

2: THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM

FINANCE DEPTT.
DISPUR
GUWAHATI 06

3:THE TREASURY OFFICER

DHEMAJI
PIN 78705

Advocate for the Petitioner : MR. N J KHATANAR, MS. S CHUTIA

Advocate for the Respondent : MR A K MAHESWARI, SC, FINANCE

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

17.03.2026

Heard Mr. N.J. Khataniar, learned counsel for the petitioners. Also heard Mr. A.K. Maheswari, learned counsel for the respondent No.1.

2. This review petition has been filed by the petitioners against the order dated 07.02.2017 passed in WP(C) No.680/2016. By the said order, the writ petition came to be disposed of with the following directions:

“14. On due consideration, Court is of the view that present petitioner is similarly situated like the petitioners in WP(C) Nos.3956, 3859, 3870 and 3888/20 11 being appointees of the same appointment order.

15. This Court in the common order dated 01.03.2012 passed in the aforesaid writ petitions had recorded a categorical finding that appointment of those teachers had attained finality and could not be reopened and it was held that those petitioners were entitled to receive salary, both current and arrear. This finding of the learned Single Judge has been upheld by the Division Bench in appeals filed by the State, which were dismissed.

16. Upon thorough consideration of the matter, Court is of the considered opinion that present writ petitioner is identically placed like the petitioners of WP(C) Nos.3956, 3859, 3870 and 3888/2011 which fact is acknowledged by the Director of Elementary Education in his order dated 22.06.2015. Therefore, there would be no justification to apply a different yardstick in the case of the petitioner.

17. Accordingly and in the light of the above, it is hereby directed that present petitioner would also be entitled to her salary from August, 2007. Respondents are directed to release the current salary of the petitioner, i.e., salary for the month of February, 2017 within a period of three months from the date of receipt of a certified copy of this order and the arrear salary from August, 2007 to January, 2017 within a period of four months.

18. Writ petition is accordingly allowed.”

3. The review petitioners have preferred the present review petition on the ground that the directions were issued without considering the fact that pursuant to the cabinet decision undertaken a Screening Committee was constituted to examine the cases of all irregular or illegally appointed teachers. The Screening Committee undertook the extensive screening of the teachers including petitioners. The Screening Committee ultimately categorized these teachers into three categories.

4. The learned counsel for the review petitioners submits that the writ petitioner belongs to the third category. Thereafter, the cabinet took a further decision to accommodate the writ petitioner and issued the appropriate appointment orders. Consequently, the writ petitioner is given appointment orders subject to the condition that they shall not claim any arrear of salary or past service benefits. Such undertakings were duly signed by such candidates or such teachers including the writ petitioner and accordingly they were appointed. It is submitted by the learned counsel for the review petitioners that this fact was not brought before the learned Single Judge when the writ petition came to be disposed of on the basis of the undertakings given by the writ petitioner at the time of accepting her subsequent appointment order, therefore, the order dated 07.02.2017 passed in WP(C) No. 680/2016 is required to be recalled and the matter be re-heard on those issues.

5. Per contra, Mr. A.K. Maheshwari, learned counsel for the respondent No.1/writ petitioner disputes the claim of the review petitioners. He submits that no such ground was ever taken before the Writ Court and the contention of the review petitioners that they had issued subsequent appointment orders which were accepted by the respondents No.1/writ petitioner along with an undertaking that he/she will not claim the past salaries and service benefits. It is submitted that no such undertaking was signed by the respondent No.1/writ petitioner and the respondent No.1/writ petitioner has been in service since 1992. The writ petitioner had got her salaries from 1992 to 2007 thereafter, the salaries had not been received. In that context the writ petition had been filed. After rendering her service the writ petitioner superannuated from service in the year 2021.

6. It is the claim of the review petitioners that the salary payable to the writ petitioner with effect from 2007 till the date of her superannuation was the subject matter of the writ petition, and that this issue was accordingly addressed by the Writ Court in paragraph 17 of its order. It is further submitted that the review petitioners have demonstrated an error on the face of the record and therefore, by filing this review petition an attempt is made to rehear the matter which had already been heard and disposed of. The order is otherwise attained finality in view of the fact that no appeal has been filed against the order.

7. Mr. A.K. Maheswari, learned counsel for the respondent No.1/writ petitioner refers to and relies on judgment of *Kamlesh Verma vs. Mayawati and Others* reported in (2013) 8 SCC 320 to support his contentions that this form of

review is very limited and cannot be used as a basis for reopening and rehearing the matters which had already been heard and disposed of.

8. The learned counsel for the parties have been heard and the pleadings available on record have been carefully perused.

9. The grounds for review in the review petition are as under:

“A. For that the petitioner was appointed against non-existence post without any selection process dehors the Assam Elementary Education (Provincialization) Act 1977. Moreover, it was the pleaded case of the review petitioner that the write petitioner was not a party in the previous round of litigation following which appointed order dated 05.11.1992 came to be issued.

B. For that the issue of illegal/ irregular teachers appointed during the year 1989-1991 was dealt with by this Hon'ble court in several proceedings and this Hon'ble Court was pleased to direct the Government in the Education Department to resolve this issue by taking a concrete decision in respect of all those illegal/ irregular teachers. Complying with such direction, a Screening Committee was constituted to decide the fate of illegal/irregular teachers and the petitioners participated in the said screening process, she being appointed against non-existing post and was terminated in the year 1992. The Screening Committee finally submitted a report regarding appointment and continuation of services of those illegal/irregular teachers. On the basis of the report of the Screening Committee, the Cabinet has taken decision to accommodate those illegal/irregular teachers with prospective effect instead of terminating them on humanitarian ground. As per the said Cabinet decision, the illegal/irregular teachers have been accommodated as Teachers/ Tutors as per their qualification with prospective effect and no such incumbents have been given the benefit of past service in any manner whatsoever. Since the petitioner is also similarly situated with those illegal/irregular teachers, therefore, she is also treated equally with them and no benefit of past service were given to her. It is a well settled principles of law that equal should be treated equally and therefore there is no reason to treat the petitioner differently from the similarly situated illegal/irregular teachers. These aspects of the matter could not be brought to this Hon'ble Court at the time of hearing of the writ petition and hence an error apparent on the face of the record has been crept into warranting interference at the hands of this Hon'ble Court.

C. For that, the Hon'ble Single Judge failed to appreciate the fact that petitioner was illegally appointed by the then Deputy Inspector of School without any selection process against non-existent post dehors the Rules. Rule 3 of the Assam Elementary Education (Provincialisation) Rules, 1977 provides the method of recruitment, which provides for a

public participatory selection process by issuance of advertisement. The select list so prepared by the Selection Board under Rule 3(i)(b) after completion of the interview of the shortlisted candidates was required to be authenticated by the Director before publication of the same. However, in the instant case no such selection was held as per Rule 3 of the Rules of 1977. Admittedly, appointment of the petitioner in the instant case were made without any sanctioned post, without any advertisement giving opportunity to all eligible candidates to apply and seek public employment and without any method of recruitment. Be it stated herein that appointments without following procedure prescribed under the Rules and without advertisement amounts to breach of Article 14 and 16 of the Constitution of India. It is no more res integra that the right to salary, pension and other service benefits are entirely statutory in nature in public service and therefore these rights, including the right to salary, spring from a valid and legal appointment to the post. Since the very appointment of the petitioner is illegal and non-est in the eye of law, therefore, the petitioner is not entitled for the relief as prayed for in the writ petition.

D. For that the any view of the matter, the impugned Order dated 07.02.2017 is liable to be reviewed/modified.”

10. Only on these grounds this review petition has been filed. The entire case of the review petition is hinged on the submissions made that pursuant to a decision taken at the highest level in the State, a Screening Committee was constituted and the Screening Committee undertook an extensive verification of the candidates against whom the allegations of irregular or illegal appointments were made. The writ petitioner had also appeared before the Screening Committee and the Screening Committee had categorized these candidates into three categories. The writ petitioner was categorized as No.3. Pursuant thereto the writ petitioner was given fresh appointment orders on the ground that she will have to sign an undertaking that she will forego her claims of salary and service benefits.

11 During the course of the hearing, it transpires that the order which was issued to the writ petitioner pursuant to the Screening Committee's findings and the undertakings which were signed by the writ petitioner are not part of the pleadings. It is also submitted that although such orders were passed, the writ

petitioner did not join. The records on the basis of which the review petition has been filed, more particularly, the findings of the Screening Committee, in so far as the writ petitioner is concerned and the consequential orders of appointment as also the undertaking given and signed by the writ petitioner is not the part of the pleadings. Therefore, on 10.03.2026 an opportunity was granted to the learned counsel for the review petitioners to complete his instructions in the matter and place the relevant records before the Court upon being the submissions made by the learned counsel for the review petitioners that these records would be available or be placed before the Court on the next date and the matter was fixed for today and it was also directed that if the records are not placed before the Court, the matter will be heard and decided finally. It may also be mentioned that there is a contempt petition being Cont.Cas(C) No.424 of 2017 which has been filed by the review petitioners which is pending before the Court.

12. The learned counsel for the respondent/writ petitioner submits that the sole purpose of filing the review petition is to delay the implementation of the order passed by the learned Single Judge and to obstruct the expeditious adjudication and enforcement of orders in the pending contempt proceedings.

13. Having heard the learned counsel for the parties and upon perusal of the pleadings available on record it is seen that the records on the basis of which the order is sought to be reviewed are not available before the Court. Therefore, opportunity was granted to the review petitioners to complete his instructions and place the relevant records before the Court.

14. Today the learned counsel for the review petitioners submits that although the records were sought for by him but the same were not produced to him. The learned counsel for the review petitioners had communicated with the department but no response has been received. As a consequence thereof, he is unable to place the relevant records before the Court. Considering this fact that the very basis for which review petition has been filed, the relevant records are not produced before the Court, therefore, it is not possible to examine as to whether there was any error apparent in the face of the records of the order dated 07.02.2017 passed in WP(C) No.680/2016 which requires for review.

15. For all the reasons as discussed above this Court does not find any ground to review and recall the order dated 07.02.2017 passed in WP(C) No.680/2016.

16. In terms of the above, this review petition stands dismissed.

17. No order as to cost.

JUDGE

Comparing Assistant