



GAHC010107762010



IN THE GAUHATI HIGH COURT
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)
PRINCIPAL SEAT AT GUWAHATI

WP(C) No. 6667/2010

1. Shri Debdut Nath,
S/o Late Chinta Haran Nath,
Resident of Village-Bongaigaon, Ward No.8,
PO-Bongaigaon, Dist.-Bongaigaon, Assam,
Working as Assistant Teacher of
Vivekananda Vidyapeth M.E. School,
Bongaigaon.
2. Shri Nadul Chandra Dey,
S/o Late Radha Binod Dey,
Resident of Vill & PO-Bongaigaon, Dist.-Bongaigaon,
Assam,
Working as Assistant Teacher of
New Bongaigaon M.E. School, Bongaigaon.

.....Petitioners.

-Versus-

1. The State of Assam,
Through the Commissioner & Secretary to the
Government of Assam, Education (Elementary) Department,
Dispur, Guwahati-6.
2. The Secretary to the Government of Assam,
Finance Department, Dispur, Guwahati-6.
3. The Director of Elementary Education, Assam,
Kahilipara, Guwahati-19.
4. The District Elementary Education Officer,
Bongaigaon, PO-Bongaigaon,
Dist.-Bongaigaon, Assam.
5. The Treasury Officer,



Bongaigaon, PO-Bongaigaon,
Dist.-Bongaigaon, Assam.

.....Respondents.

**BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN**

For the Petitioner No.1 : Ms. I. Das.Advocate.

For the Respondents : Mr. P.K. Bora, SC. Elem. Edn.

Date of Hearing : 19.06.2025

Date of Judgment : ***28th July, 2025***

JUDGMENT AND ORDER

Heard Ms. I. Das, learned counsel for the petitioner No.1 and also heard Mr. P.K. Bora, learned standing counsel, Education (Elementary) Department, appearing for the respondent Nos.1, 3 and 4.

2. In this petition, under Article 226 of the Constitution of India, two petitioners, namely, Debdt Nath and Nadul Chandra Dey, have prayed for issuing direction to the respondent authorities to adjust/re-adjust the services of the petitioners against the existing vacant posts as shown and proposed in the proposal submitted in SIU(Finance) format vide Annexure-10A by granting necessary approval from the Finance Department, Govt. of Assam without any break of their services by clarifying/holding that the order of restraintment dated 19.01.2009 passed in WP(C) No.5569/2002 and batch, vide Annexure-12, is not binding/applicable in case of the petitioners whose services were



regularized way back in the year 2006 vide order dated 30.01.2006 and also direct the respondent authorities to pay the petitioners their arrear salary w.e.f. June, 1994 till the date and onward current salary regularly and further to grant other service benefits which the petitioners are legally entitled to and also for quashing and setting aside the condition attached to the impugned order dated 30.01.2021 to the effect that the petitioner would get prospective effect from 01.11.2020 only and that he cannot claim any benefit whatsoever in respect of his first service rendered by him prior to 01.11.2020.

3. The background facts leading to filing of the present petition is briefly stated as under:-

"The petitioners were appointed as Assistant Teacher in M.E. School against newly created posts in the time scale of pay vide individual appointment orders dated 28.02.1994, issued by the District Elementary Education Officer (DEEO), Bongaigaon, as per approval of the Advisory Board and on the basis of their performance in the selection process and they used to work as Assistant Teachers since their date of joining till date, continuously. Initially, they have received salary for a period of 3 months i.e. upto May, 1994. But suddenly the salary of all the teachers including the petitioners, who were appointed against the posts created by the Government vide order dated 16.11.1991, were stopped on the ground that their appointments were found to be illegal as per the Monoharan Committee Report. However, their services were not terminated and they continued to be served without any salary. Thereafter, a Cabinet decision was taken in its meeting held on 24.02.2005 to regularize the services of those teachers who were illegally and irregularly appointed as per the



Monoharan Committee Report after screening by the Task Force/District Level Screening Committee, in phase manner and as per the said Cabinet decision and after screening by the Departmental Screening Committee/Task Force, the services of 125 nos. of teachers including the petitioners were regularized with effect from their respective date of joining against the vacant posts as per the list enclosed therein in the scale of pay of Rs.3130-6060/- p.m. plus other admissible allowances, vide order dated 30.01.2006 of the respondent No.3. The name of the petitioner No.1 appeared at Sl.No.36 and his service was proposed to be adjusted at Vivekananda Vidyapeeth M.E. School vide one Ranjit Chakraborty, Assistant Teacher (Retd.) and the name of the petitioner No.2 appeared at Sl.No.79 and his service was proposed to be adjusted at New Bongaigaon M.E. School vide one Gouranga Das, Assistant Teacher (Retd.). Accordingly, both the petitioners joined their new place of posting on 15.02.2006 and 10.02.2006, respectively and the same was informed by the respective Headmaster to the DEEO, Bongaigaon. But the respondent authorities did not pay any response and then the petitioners have filed one application under the Right to Information Act and in response to the same, vide letter dated 22.07.2008 the Director of Elementary Education (DEE), Assam, informed the petitioner No.2 that as their particulars in the proposal submitted by the respondent No.4 are found not correct, the proposal for their adjustment could not be sent to the Government along with other 6 teachers at that time. But subsequently, the correct particulars of the petitioners have been received and the SIU proposal has already been sent to the Government vide DEE, Assam's letter No.EMA.8/2005/Pt./297 dated 02.06.2008 and it was further



informed that for the readjustment of the services of the petitioners against the vacant posts, the proposal of SIU(Finance) format has been sent to the Government for approval and the matter is under consideration of the Government.

Thereafter, the State Information Commissioner, Assam, vide order dated 20.06.2009 has directed the Secretary to the Govt. of Assam, Education Department to expedite the approval for readjustment of the petitioners and pursue the matter with the Finance Department urgently, so that the petitioners get justice quickly. Thereafter, the case of the petitioners for readjustment and for payment of salary has been processed by the Government. But the respondent authorities are not passing any order for readjustment of their services against the vacancies proposed by the respondent No.4 on the plea of the interim order dated 19.01.2009, passed by this Court in WP(C) No.5569/2002 and batch, by which the State respondents were restrained from regularizing illegally and irregularly appointed teachers as reported by the Monoharan Committee, although the services of the petitioners were regularized by the authority way back in the year 2006. But the respondent No.1 verbally told the petitioners that if the Hon'ble Court directs and clarifies that the said order of restraintment is not applicable to their case, then they will consider the readjustment of the services of the petitioners. Being aggrieved, the petitioners have approached this Court by filing the present petition."

4. The respondent No.1, the Secretary to the Govt. of Assam, Department of School Education, filed one affidavit-in-opposition, wherein a stand has been taken that the petitioners failed to substantiate their



claim that they were appointed pursuant to an interview and in fact, the petitioners were appointed without any selection process by the then District Elementary Education Officer, Bongaigaon and they were appointed in excess of posts during the period from 1991 to 30.11.1996 and the same were enquired by the one man enquiry committee headed by Shri S. Manoharan, IAS and that the petitioners as well as many such teachers were appointed across the State without following proper Government procedure against non-existent posts and which came to the notice of the Government when it was detected that the number of incumbents were more than the total sanctioned/budget allotted posts and several illegal/irregularly appointed teachers have filed various writ petitions before this Court and this Court was pleased to direct the Education Department to take a call in the matter of regularization of irregular/illegal teachers and accordingly, in terms of the order dated 02.03.2010 passed by this Court in WP(C) No.1048/2004, the Education Department placed the matter of regularization of illegal/irregular teachers before the Cabinet in its meeting held on 26.02.2011 and thereafter, the Education Department proposed to constitute a screening committee to examine the validity of the appointments of the teachers who are claiming regularization and salary and accordingly, vide O.M. dated 15.11.2011, a screening committee was constituted to examine the cases of the irregularly/illegally appointed teachers so as to take a decision for their regularization and entitlement of salary or otherwise and with a view to examine the selection procedure, the nature of appointment, status of posts, working status, status of salaries, academic qualification etc., the Director of Elementary Education, Assam, had invited applications from these irregularly/illegally appointed teachers during the year 1991-2001 throughout the State by an advertisement dated 01.02.2012 and 04.02.2012 in local newspapers and pursuant to



the said advertisement, the irregularly/illegally appointed teachers throughout the State, have sent their applications and after preliminary examination at Directorate level, total 12085 nos. of applications were found in order and the same were submitted to the Government for final verification. Thereafter, the Elementary Education Department vide notification dated 04.06.2014 had constituted 5 screening committees headed by the Divisional Commissioners concerned and Principal Secretaries of Sixth Schedule area and BTC to examine these applications and the report of the preliminary committees, namely, (i) Upper Assam Division, (ii) Lower Assam Division, (iii) North Assam Division, (iv) Hills & Barak Valley Division and (v) BTC area.

5. Thereafter, the Divisional Screening Committees verified all the applications and submitted their reports with recommendations for further action of the Government. But due to complaints from various corner, reverification was conducted and thereafter, reports were submitted with the following categories of teachers:-

1. Category 1 – Recommended and working till date – 136.
2. Category 2 – Recommended but discontinued jobs – 250.
3. Category 3 – Not recommended but working till date – 8470.
4. Category 4 – Not recommended and discontinued jobs – 2900.

Thereafter, a decision was taken to regularize the services of the teachers who fall under the Category 1 and subsequently, their services have been regularized and with regard to the 2nd category of teachers, who were recommended but discontinued their services, the question of their regularization of service and payment of salary does not arise since they are not in service. Similarly, in the case of 4th category of teachers,



since they have discontinued, consideration of their cases for regularization and payment of salary does not arise and in respect of 3rd category of teachers, who were not recommended but still in service, the State respondents had decided to issue individual show-cause notices to all the 8470 candidates and 766 including 752 terminated teachers of Dhemaji and Lakhimpur districts indicating therein to show the reason as to why their appointments are not deemed to be illegal/irregular and as to why they should not be removed from service for being appointed in violation of the existent Rules and thereafter, as per instruction of the Education Minister, the Department had proposed to take a decision to solve the problem of those irregularly/illegally appointed teachers subject to approval of the Cabinet. Accordingly, a departmental committee was formed by the Government to verify salary status and qualification of those Category 3 illegal/irregular appointees. Thereafter, the committee has prepared three lists –

List-1: The teachers who have received salaries at some point of time and having JBT/D.El.Ed. (1574 teachers)

List-2: The teachers who received salaries at some point of time but not having JBT/D.El.Ed. (2960 teachers)

List-3: The teachers who neither received salaries nor qualified the training i.e. JBT/D.El.Ed. (7250 teachers)

And thereafter, a Cabinet Memorandum was prepared for the following reasons–

- (a) Approval was sought for accommodating those teachers who have received salary upto 2007 and have successfully completed the Junior Basic Training/D.El.Ed. course by



certain personal/supernumerary posts with prospective effect from the date of approval of the Cabinet. Those posts will cease to exist as and when the incumbent retires from service (i.e., List-1 as Teachers).

- (b) Approval was sought for those who received salary upto 2007, but have not acquired the professional qualification before 2011, their jobs can only be accommodated as tutor with prospective effect from the date of approval of the Cabinet (i.e., List-2 as Tutors).

And accordingly, the Cabinet gave its approval on 07.10.2020 and that the petitioners fall under the category of illegal/irregular appointees and therefore, they have participated in the screening process by submitting their documents and upon verification, the names of the petitioners find place in Category 3 i.e. not recommended but working till date and as per the aforesaid Cabinet decision, the petitioners, who fulfill the aforesaid conditions, were offered fresh appointment with prospective effect from the date of the Cabinet decision according to their qualification and the names of the petitioners are found in the screening committee's List-2 under Bongaigaon district and that the petitioners being untrained, were accommodated under Tutor category and they accepted the appointment and joined their respective schools. The petitioner No.1, Debdut Nath was accommodated as Tutor in Shantidham Kalibari M.E. School and the petitioner No.2 Nadul Chandra Dey was accommodated as Tutor in Netaji Vidyaniketan M.E. School and the appointment letters were issued with a condition that they were accommodated as Tutor on purely temporary basis in the fixed salary of Rs.10,800/- as per the Assam Education (Provincialization of Services of Teachers and Re-organization of Educational Institutions) Act, 2017 with



prospective effect from 01.11.2020 only and he/she cannot claim any benefit whatsoever in respect of past services rendered by him/her prior to 01.11.2020 and both the petitioners have accepted the accommodation order and the terms and conditions stated therein and joined as Tutor in their respective schools and the petitioner No.1 joined on 05.08.2021 and the petitioner No.2 joined on 01.02.2021 and they have been receiving salaries since then and the petitioner No.2, Nadul Chandra Dey has retired from service on 28.02.2022 and as the petitioners were accommodated as Tutor in fixed pay of Rs.10,800/- under illegal/irregular category, there is no provision of pension or other pensionary benefits to fixed pay employees as per Government rules and procedures. Under such circumstances, it is contended that there is no merit in this petition and the same may be dismissed.

6. The petitioner No.1, namely, Debmut Nath had filed his reply to the affidavit-in-opposition filed by the respondent No.1, wherein he stated that there is neither any categorical statement or averment either disputing or accepting the contentions of the petitioner in regard to the Cabinet decision dated 24.02.2005, where decision was taken to regularize the services of the illegally and irregularly appointed teachers after screening in phased manner and accordingly, 125 nos. of teachers were regularized on 30.01.2006, where the present petitioner was also regularized and his name reflected under Sl.No.36 in the published list and accordingly, joined service and nor there is any statement clarifying their stand on the allegations contained in the writ petition in that regard and that there is not even a single substantial or specific reply to any of the grievances against the official respondents set forth in the writ petition and hence, the same may be construed to have been admitted by the respondent authority and from the affidavit-in-opposition of the



respondent No.1 and having not been traversed, the contention of the petitioners as set forth in the writ petition, following facts deemed to have been admitted:-

- (i) The Monoharan Committee was constituted much earlier to look into the matter of appointed teachers which submitted its report and the petitioner was one of the teachers who was appointed in excess of the posts during the period from 01.03.1991 to 30.11.1996.
- (ii) The Cabinet had taken a decision on 24.02.2005 to regular the services of 125 ME/MEM/MV working teachers of Bongaigaon district with effect from the date of joining against the vacant posts in the scale of pay of Rs.3130-6600/- p.m. plus other allowances as admissible under the rules and that the teachers concerned to be eligible for salary from the date of joining after regularization in the vacant posts.
- (iii) Pursuant to the said Cabinet decision, the Director of Elementary Education passed an order in that respect on 30.01.2006 along with the list of 125 teachers so regularized, the petitioner's name being in the list of 125 teachers under Sl.No.36.
- (iv) The petitioner No.1 was posted in Vivekananda Vidyapeeth M.E. School but when he joined there, he found a teacher was already working and this is how the question of adjustment arose and therefore, on 15.07.2009, the District Elementary Education Officer, Bongaigaon, submitted SIU for fresh proposal for readjustment of the petitioner in the Shantidham Kalibari M.E. School, Bongaigaon against the post of Shishu Ranjan Kar, Assistant Teacher (Retd.) and the same was sent to the Director of Elementary Education.



- (v) The Director of Elementary Education regretted the passing of any order in pursuance thereof on the plea of an interim order dated 19.01.2009 that was passed in WP(C) No.5569/2002, however, in 2012 the said writ petition, wherein the interim order was passed has been disposed of, but even then the petitioner was not given any posting as per the fresh proposal dated 15.07.2009.

And that the claim of the petitioner is a genuine one and the same has been neglected by the respondents concerned for a long period of time and therefore, it is contended to allow this petition.

7. Ms. Das, learned counsel for the petitioner submits that though the petitioner was preferred by two petitioners, yet she has the instruction to appear for the petitioner No.1 only. Ms. Das, vehemently submits that the order dated 19.01.2009 passed by this Court in WP(C) No.5569/2002 would not stand in the way as the services of the petitioners were already regularized. The case of the petitioner is only for readjustment as his service which had already been regularized and that though the petitioner was subsequently appointed as Tutor and he had accepted the same on account of the necessity and on account of absence of bargaining power, yet, in fact the petitioner is entitled to the benefit of the salary and other service benefits since the time of his adjustment and regularization. Further, Ms. Das pointed out that the statement and averment made by the petitioner in the writ petition, deemed to have been admitted, as the same were not specifically traversed in the affidavit-in-opposition and under such circumstance also, the petitioner is entitled to readjustment of his service and his salary and therefore, Ms. Das has contended to allow this petition.



8. In support of her submission, Ms. Das has referred the following decisions:-

- (i) **Hindustan Times & Ors. v. State of U.P. & Anr.**, reported in (2003) 1 SCC 591;
- (ii) **Central Inland Water Transport Corporation Limited & Anr. v. Brojo Nath Ganguly & Anr.**, reported in (1986) 3 SCC 156;
- (iii) **Nur Jamal Mazumder & Anr. v. State of Assam & Ors.** [WP(C) No.4791/2014, decided on 30.01.2024];
- (iv) **Bimal Ch. Mondal & Ors. v. State of Assam & Ors.** [WP(C) No.5236/2010, decided on 15.02.2017]; and
- (v) **Bishnu Ranjan Kalita & Ors. v. State of Assam & Ors.** [WP(C) No.6681/2010, decided on 04.05.2017].

9. Per contra, Mr. Bora, learned standing counsel, Education (Elementary) Department, appearing for the respondent Nos.1, 3 and 4 submits that the petitioners were illegally and irregularly appointed teachers without following any procedure prescribed under the law and therefore, they have appeared in the screening committee and thereby they have forfeited their rights for readjustment and that a Cabinet Memorandum was prepared to regularize the irregularly appointed teachers and that the petitioners have not undergone the Basic Training courses for which they have been appointed as Tutors and that the petitioner No.2 has already retired from service and under such circumstances, there is no merit in this petition and therefore, Mr. Bora has contended to dismiss the same.

10. Having heard the submission of learned counsel for both the parties, I have carefully gone through the petition and the documents placed on record and also perused the Cabinet decision dated 24.02.2005



and also gone through the interim order dated 19.01.2009 passed in WP(C) No.5569/2002.

11. As discussed herein above, the contention made in the writ petition by the petitioners have not specifically traversed by the respondent authority in its affidavit-in-opposition and as such, the contention so made in the writ petition deemed to have been admitted by the State respondents, in view of catena of decisions of Hon'ble Supreme Court. Reliance on the judgment to apply the doctrine of non-traverse is made to the case of (1) Controller of Court of Ward, Kolhapur & Anr. V. G.N. Gharpade reported in AIR 1973 Supreme Court page 627, and also on a decision passed by (2) Gobinda Chandra Das v. State of West Bengal reported in 1989 (2) CAL LT (HC) 63. Again in the case of Sushil Kumar v. Rakesh Kumar reported in (2003) 8 SCC 673, Hon'ble Supreme has highlighted the obligations under Order VIII Rules 3 and 5 regarding admissions and denials, holding that vague denials could constitute admissions. From the contention made in the writ petition and also from the submission of Ms. Das, learned counsel for the petitioner No.1, following facts emerged, which remained non-traversed by the State respondents:-

- (i) The Monoharan Committee was constituted much earlier to look into the matter of appointed teachers which submitted its report and the petitioner was one of the teachers who was appointed in excess of the posts during the period from 01.03.1991 to 30.11.1996.
- (ii) The Cabinet had taken a decision on 24.02.2005 to regularize the services of 125 ME/MEM/MV working teachers of Bongaigaon district with effect from the date of joining against the vacant posts



in the scale of pay of Rs.3130-6600/- p.m. plus other allowances as admissible under the rules and that the teachers concerned to be eligible for salary from the date of joining after regularization in the vacant posts.

- (iii) Pursuant to the said Cabinet decision, the Director of Elementary Education passed an order in that respect on 30.01.2006 along with the list of 125 teachers so regularized, the petitioner's name being in the list of 125 teachers under Sl.No.36.
- (iv) The petitioner No.1 was posted in Vivekananda Vidyapeeth M.E. School but when he joined there, he found a teacher was already working and this is how the question of adjustment arose and therefore, on 15.07.2009, the District Elementary Education Officer, Bongaigaon, submitted SIU for fresh proposal for readjustment of the petitioner No.1 in the Shantidham Kalibari M.E. School, Bongaigaon against the post of Shishu Ranjan Kar, Assistant Teacher (Retd.) and the same was sent to the Director of Elementary Education.
- (v) The Director of Elementary Education regretted the passing of any order in pursuance thereof on the plea of an interim order dated 19.01.2009 that was passed in WP(C) No.5569/2002, however, in 2012 the said writ petition, wherein the interim order was passed has been disposed of, but even then the petitioner was not given any posting as per the fresh proposal dated 15.07.2009.
- (vi) The order of the Director of Elementary Education, dated 30.01.2006, by which 125 teachers of Bongaigaon district were regularized, including petitioner No.1- Shri Debdut Nath, whose name figured in Sl. No. 36, is still in force.



12. Further, it appears that the petitioner No.1, Debdut Nath was appointed as Assistant Teacher against the newly created post vide Government order dated 16.11.1991 on 28.04.1994 and the petitioner has received salary for 3 months and his salary was stopped as per report of Monoharan Committee in the month of June 1994. But, subsequently, the Cabinet had taken a decision to regularize the services of illegally appointed teachers after screening in phased manner on 24.02.2005 and pursuant to said Cabinet decision, 125 nos. of teachers were regularized in which the name of the petitioner No.1 find mentioned at Sl. No.36 and were adjusted in Vivekananda Vidyapeeth M.E. School and the petitioner accordingly joined on 15.02.2006 and he found another person in the said post and thereafter, he filed representation for readjustment against existing vacant post and further, it appears that vide letter dated 05.04.2007, the respondent No.3 communicated the respondent No.4 that his service has already been regularized. Thereafter, fresh proposal was sent by the DEEO, Bongaigaon for readjustment of the petitioner No.1 in Shantidham Kalibari M.E. School.

13. But, said proposal was not taken into account in view of the order passed in WP(C) No.5569/2002 on 19.01.2009. Notably, the order dated 19.01.2009, by which the State-Respondents of the said petition were from regularization of service of illegally and irregularly appointed teachers would not be applicable in the case of the petitioner Debdut Nath, in as much as much before the said order came to be passed on 30.01.2006, the service of the petitioner No.1 was regularized by the Director Secondary Education, Assam.

14. That being so, denial of readjustment on the ground of the order being passed by this Court in WP(C) No.5569/2002 vide order dated 19.01.2009, wherein the present petitioner was not a party also, is illegal



and arbitrary and all subsequent act of the respondent authorities, compelling the petitioner again to participate in the regularization process of illegally/irregularly appointed teachers, and his subsequent appointment as Tutor is also illegal and arbitrary.

15. I have carefully gone through the decisions referred by Ms. Das, learned counsel for the petitioner No.1 and I find sufficient cause in her submission and the proposition of law laid down in the aforementioned cases also strengthened her submission.

16. In the result, I find sufficient merit in this petition and accordingly, the same stands allowed. By a mandamus of this Court, the respondent authorities are directed to readjust the services of the petitioner No.1, against the existing vacant post without any break in their services and to pay his salary w.e.f. June 1994 till date.

17. Consequent upon readjustment of the petitioner No.1, all consequential service benefits, which the petitioner No.1 is legally entitled to, shall be extended to him.

18. The condition attached to the impugned order dated 30.01.2021 to the effect that the petitioner would get prospective effect from 01.11.2020, only and that he cannot claim any benefit whatsoever in respect of past services rendered by him prior to 01.11.2020 stands set-aside and quashed for being unjust and in view of violation of equality doctrine contained in Article 14 of the Constitution of India. It is now well settled that every executive action which operates to the prejudice of any person must have the sanction of law. The executive cannot interfere with the rights and liabilities of any person unless the legality thereof is supportable in any court of law. [See - **Hindustan Times (supra)**]. The petitioner had no choice, but to accept the said condition as part of



his employment. There is gross disparity between the State Respondents and the petitioner. The said conditions are wholly unconscionable. It has been entered into between parties between whom there is gross inequality of bargaining power and consequently it is against public good and being opposed to public policy; and as such void, arbitrary and illegal. [see **Brojo Nath Ganguly, (supra)** and **Hindustan Times and Another (supra)**].

19. The aforementioned exercise shall be carried out within a period of 3(three) months from the date of receipt of certified copy of this order. The petitioners shall obtain a certified copy of this order and place the same before the respondent authorities within a period of one week from today.

Sd/- Robin Phukan
JUDGE

Comparing Assistant

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