



THE GAUHATI HIGH COURT AT GUWAHATI

(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

Principal Seat at Guwahati

WP(C) No. 7058/2015

Solim Uddin, S/O- Late Muzafer Ali,
Village- Matraghola, P.O. Kritanpara
P.S- Abhayapuri, Dist. - Bongaigaon, Assam,
PIN- 788151.

.....*Petitioner*

-Versus-

1. The State of Assam,
Represented by the Commissioner and Secretary
to the Govt. of Assam, Education (Elementary)
Department, Dispur, Guwahati- 781006.
2. Commissioner and Secretary, Govt. of Assam,
Finance (B) Dept., Dispur, Ghy-6.
3. The Director of Elementary Education,
Assam, Kahilipara, Ghy-19.
4. The District Elementary Education Officer,
Bongaigaon, Assam.
5. The Block Elementary Education Officer, Srijangram, Dist-
Bongaigaon, Assam.

.....*Respondents*

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

Advocate for the petitioner : - Mr. M. U. Mahmud
Advocate for the respondents : - Mr. B. Kaushik, (R-1,3,4,5)
Mr. A. Chaliha (R- 2)

Date of Hearing : - 01.12.2025

Date on which judgment is reserved : - 01.12.2025

Date of Judgment : - 05.01.2026

Whether the pronouncement is of
the operative part of the judgment? : - N/A

Whether the full judgment has been
pronounced? : - Yes

JUDGEMENT & ORDER (CAV)

Heard Mr. M. U. Mahmud, learned counsel for the petitioner. Also heard Mr. B. Kaushik, learned standing counsel for the Elementary Education Department, being respondent Nos. 1, 3, 4 and 5; and Mr. A. Chaliha, learned standing counsel for the Finance Department, being respondent No. 2.

2. In this petition, under Article 226 of the Constitution of India, the petitioner has challenged the order, dated 20.12.2014, (**Annexure - 12**), passed by the Secretary to the Government of Assam, Education Elementary Department and also to direct the

respondent No. 2, 3, and 4 to pay the arrear as well as current salary to the petitioner with effect from June 1994. Notably, vide impugned order dated 20.12.2014, the respondent No. 1 had rejected the claim of the petitioner for payment of salary.

Background Facts:-

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

"The petitioner was initially appointed as Asstt. Teacher in Bongaigaon district, in the year 1994. After such appointment he had received salaries only for (3) months. Thereafter, his salary was stopped without any notice or showing any reasons. Thereafter, as per the cabinet decision, the District Elementary Education Officer, Bongaigaon, by order, dated 2-5-2006, attached the service of the petitioner in 196 No. Til Pukhuri L.P. School, wherein he has been rendering his service till date. But, the respondents have not released his salaries from June, 1994, till date, in spite of repeated demands.

Being aggrieved, the petitioner as well as 5 others had filed a writ petition, being W.P. (C) No. 143/2009, before this Court, and this Court, after hearing all the parties, vide order, dated 16-03-2010, directed the Commissioner and Secretary to the Govt. of Assam, Education Department to take

necessary step to release the arrear as well the current salaries of the petitioner as well as others.

But, due to non-compliance of the said order, the petitioners had instituted a contempt case, being Contempt Petition (C) No. 263/2010, wherein this Court vide order dated 10.01.2014, was pleased to direct to comply order, dated 16-03-2010, passed in W.P. (C) No. 143/2009 in letter and spirit within a period of 3 (three) months. Even then, the respondent did not carry out the order. The petitioners then filed another contempt case, vide No. 521/14, wherein the respondent No. 1/ contemnor submitted before this Court that the order has already been complied with vide order, dated 20-12-2014.

Then having gone through the impugned order, dated 20-12-2014, passed by the respondent No. 1, it has been found that the said order is absolutely perverse and non-est in the eye of law which is also contradictory to other orders, dated 16-3-2010 passed in W.P. (C) No. 143/2009 etc. The respondent, instead of releasing the arrear as well as the current salaries of others, has rejected the claim of the petitioner by mentioning some unfounded stories in the impugned order. The ground for such rejection is that in the list of 288 employees, the name of the petitioner was not figured within 82, which is misleading, as salaries also have been provided to the candidates whose name figured in Sl.

No. 125 of the list of candidates, vide annexure 2 and 3 of the writ petition."

4. The respondent No.3 had filed affidavit-in-opposition, wherein it had taken a stand that the petitioners were initially appointed as Assistant Teachers in different ME Madrassas by the DEEO, Bongaigaon during the year 1993-1994 without following any selection process. Thereafter, their services have been regularized against non-sanction posts. Therefore, they belonged to irregularly appointed teachers as identified by the Manoharan Committee and the Task forces. It is also stated that the appointments of the petitioners were made by the then authority by ignoring the statutory rules. The decision of the Government to regularize the service of the irregularly appointed teachers was taken advantage of by unscrupulous elements to regularize the service of the petitioners, who never participated in any selection process under the law. It is also stated that the petitioners earlier approached this Court vide WP(C) No. 143/2009, praying for payment of salary w.e.f. date of joining i.e. 12.5.2006 and this Court vide order dated 16.3.2010, directed the Commissioner and Secretary, Government of Assam, Education (Elementary) Department to take necessary steps to release arrear and current salary of the petitioners and for this purpose, whatever enquiry is required to be done, that should be done by the authority. Thereafter, the Government Constituted a screening committee for the purpose of screening of the illegal/irregularly appointed

teachers working in LP/ME schools for the period 1991-2001 in respect of the cases in Lower Assam Division including Bongaigaon district, vide Notification dated 7.1.2012, and pursuant to the aforesaid notification, the petitioners had appeared before the screening committee and the screening committee had furnish the report which indicates that out of the six petitioners, the posts sanction order held by the petitioners could not be verified as same was not produced before the verification authority. It is also stated that due to non-availability of budget allotment of fund and retention of the respective posts held by the petitioners, they are not receiving salary till date. Further, due to non-receipt of Finance (SIU) approval, salary of the petitioners could not be paid. It is also stated that appointments and regularization of 125 Nos. of teachers of Bongaigaon District including the petitioners were challenged in WP(C) No. 2346/2008 (Bharat Chandra Sarkar & Ors. –vs.- State of Assam & Ors.) and this Court vide order, dated 8.5.2013 was pleased to set aside their regularization orders and being aggrieved, the State & Ors. had preferred writ appeals and same were disposed of vide order dated 20.5.2014, in WA No. 211/2013 by setting aside the Judgment and Order dated 8.5.2013 and further directed for fresh hearing by the writ Court and the aforesaid writ petitions are pending for adjudication before this Court and therefore, the State is not able to take any decision on the matter.

Submission of learned counsel for the petitioner:-

5. Mr. Mahmud, learned counsel for the petitioner has launch multipronged attack upon the impugned order, dated 20.12.2014, **(Annexure – 12)**, passed by the Secretary to the Government of Assam, Education Elementary Department. Mr. Mahmud submits that the impugned order was passed ignoring the direction issued by this Court vide order dated 16.3.2010, in WP(C) No. 143/2009. Instead the Secretary to the Govt. of Assam, Education Department, had taken into account irrelevant materials for rejection of claim of the petitioner. Mr. Mahmud submits that the petitioner was initially appointed as Asstt. Teacher in Bongaigaon district, in the year 1994 and he was paid salary only for (3) months and thereafter, his salary was stopped. He also submits that the State Cabinet had taken a decision on 24.02.2005, to regularize the service of 125 candidates of Bongaigaon district as per the cabinet decision. Thereafter, the Director Elementary Education, Assam had regularized 125 numbers of teachers of Bongaigaon district vide Order dated 30.01.2006 and the name of the petitioner figured in serial No. 118 of the said list. And thereafter, District Elementary Education Officer, Bongaigaon, by order, dated 2-5-2006, attached the service of the petitioner in 196 No. Til Pukhuri L.P. School, wherein he has been rendering his service till date. But, the respondents have not released his salaries from June, 1994, till date, in spite of repeated demands.

5.1. Mr. Mahmud also submits that the petitioner along with 5 others had filed a writ petition, being W.P. (C) No. 143/09, before this Court, and this Court, after hearing all the parties, vide order, dated 16-03-2010, directed the Commissioner and Secretary to the Govt. of Assam, Education Department to take necessary step to release the arrear as well as the current salaries of the petitioner along with others. But, said order was not complied with for which Contempt Petition (C) No. 263/2010, was instituted wherein, this Court had directed the contemnor to comply the order, dated 16-03-2010, passed in W.P. (C) No. 143/2009 in letter and spirit within a period of 3 (three) months. Even then the respondent did not carry out the order. The petitioners then again instituted another contempt case, vide No. 521/14, wherein the respondent No. 1/ contemnor submitted before this Court that the order has already been complied with vide order, dated 20-12-2014.

5.2. Mr. Mahmud also submits that the impugned order, dated 20-12-2014, is absolutely perverse and non-est in the eye of law which is also contradictory to other order, dated 16-03-2010 passed in W.P. No. 143/09 etc. The ground for such rejection is that in the list of 288 employees, the name of the petitioner was not figured within 82, which is misleading, as salaries also have been released to the candidates whose names figured in the list of 125 candidates who have been regularized as per cabinet decision.

5.3. Mr. Mahmud also submits that though the list of 125 candidates was set aside by a learned Single Judge of this Court in WP(C) No. 2346/2008, vide order dated 08.05.2013, filed by Bharat Ch. Sarkar and Others, yet the state had preferred one appeal being Writ Appeal(W/A) No. 211/2013, wherein the order dated 08.05.2013, so passed by the learned Single Judge had been set aside and the matter was remanded for fresh hearing, vide order dated 11.11.2021. And as such, the Cabinet Decision dated 24.02.2005 and the consequent regularization order dated 30.01.2006, of the petitioner and 124 others came to be restored. And as such the respondent authority has no option but to carry out the direction to release the salary of the petitioner, as per order, dated 16-03-2010 passed in W.P. (C) No. 143/2009.

5.4. It is also the submission of Mr. Mahmud that the WP(C) No. 2346/2008, which was remanded to the learned Single Judge for hearing a fresh, was subsequently dismissed for non prosecution by a Co-ordinate Bench of this Court vide order dated 11.11.2021. And as such, the regularization order so passed by the Director Elementary Education as per Cabinet Decision has attained finality and therefore, Mr. Mahmud has contended to allow this petition directing the respondent authority to release the current and arrear salary of the petitioner forthwith.

5.5. On another ground also Mr. Mahmud attacked the impugned order that one Anjumanara Khatun, Hafizur Rahman, Naresh Ch. Mandal and one Tulshi Barman whose names were there in the

list of 125 candidates and whose services were regularized by the Director Elementary Education, has been receiving salary and some of them received the same pursuant to order of this Court, but the claim of the petitioner was rejected arbitrarily.

5.6. Mr. Mahmud has also referred following decision in support of his submission:-

(i) **Man Singh vs. the State of Uttar Pradesh Through Secretary & Ors.**, reported in 2022 LiveLaw(SC) 341.

Submission of learned counsel for the respondent:-

6. Per contra, Mr. Kaushik, learned standing counsel for the respondent authorities has supported the impugned order. He submits that as per report of the Monoharan Committee, the name of the petitioners were in the list of irregular teachers of Bongaigaon, who were appointed as Assistant Teachers in different ME Madrassas by the DEEO, Bongaigaon during the year 1993-1994 without following any selection process. Thereafter, their services have been regularized against non-sanction posts. Mr. Kaushik also submits that the petitioners earlier approached this Court vide WP(C) No. 143/2009 praying for payment of salary w.e.f. date of joining, i.e. 12.5.2006 and this Court, vide order dated 16.3.2010, directed the Commissioner and Secretary, Government of Assam, Education (Elementary) Department to take necessary steps to release arrear and current salary of the petitioners after conducting enquiry. Thereafter, one screening

committee for the purpose of screening of the illegal/irregularly appointed teachers working in LP/ME schools for the period 1991-2001 in respect of the cases in Lower Assam Division including Kamrup (M), Kamrup (R), Nalbari, Barpeta, Bhubri, Goalpara and Bongaigaon district, vide Notification dated 7.1.2012, and pursuant to the aforesaid notification, the petitioners had appeared before the screening committee and the screening committee had furnish the report which indicates that out of the six petitioners, the posts sanction order held by the petitioners could not be verified as same was not produced before the verification authority.

6.1. Mr. Kaushik also submits that due to non-availability of budget allotment of fund and retention of the respective posts held by the petitioners and also for non-receipt of Finance (SIU) approval, salary of the petitioners could not be paid. Mr. Kaushik further submits that the appointments and regularization of 125 Nos. of teachers of Bongaigaon District including the petitioners were challenged in WP(C) No. 2346/2008 by one Bharat Chandra Sarkar & Ors. and this Court vide order, dated 8.5.2013 had set aside their regularization orders. Thereafter, the State had preferred writ appeal and same were disposed of vide order dated 20.5.2014, in WA No. 211/2013 by setting aside the Judgment and Order dated 8.5.2013 and further directed for fresh hearing by the writ Court and the aforesaid writ petitions are pending for

adjudication before this Court and therefore, the State is not able to take any decision on the matter.

6.2. Further contention of Mr. Kaushik is that the name of the petitioners were in the list of irregular teachers of Bongaigaon District and as such they are not entitled to any relief as prayed for.

6.3. Mr. Kaushik has also referred to following decisions to bolster his submissions:-

- (i) **The State of Bihar and Others vs. Devendra Sharma**, reported in (2020) 15 SCC 466.
- (ii) **WP(C) No. 2346/2008 (Bharat Ch. Sarkar & Ors-Vs-State of Assam & Ors.**

7. Having heard the submission of learned Advocates of both the parties, I have carefully gone through the petition and the documents placed on record and also perused the impugned order dated Dispur the 20th December, 2014 (**Annexure-12**) so passed by the Secretary to the Government of Assam, Education Elementary Department. Also gone through the decisions referred by Mr. Mahmud, learned counsel for the petitioner and also by Mr. Kaushik, learned standing counsel for the respondent authorities.

8. From the contentions being made in the respective pleadings of the parties and also from the submissions of learned counsel for both the parties, following facts and circumstances emerges:-

- (i) The petitioner was initially appointed as Asstt. Teacher in Bongaigaon district, in the year 1994 and he was paid salary only for (3) months and thereafter, his salary was stopped.
- (ii) As per report of the Monohoran Committee, the name of the petitioner figured in the list of irregular teachers of Bongaigaon District.
- (iii) The State Cabinet had taken a decision on 24.02.2005 to regularize the service of 125 irregular teachers of Bongaigaon District.
- (iv) As per the cabinet decision, the Director Elementary Education, Assam had regularized 125 numbers of teachers of Bongaigaon District vide Order dated 30.01.2006.
- (v) The name of the petitioner figured in serial No. 118 of the said list.
- (vi) Thereafter, District Elementary Education Officer, Bongaigaon, by order, dated 2-5-2006, attached the service of the petitioner in 196 No. Til Pukhuri L.P.

School, wherein he has been rendering his service till date.

- (vii) But, the respondents have not released his salaries from June, 1994, till date, in spite of repeated demands.
- (viii) Then the petitioner along with 5 others had filed a writ petition, being W.P. (C) No. 143/2009, before this Court, and this Court, after hearing all the parties, vide order, dated 16-03-2010, directed the Commissioner and Secretary to the Govt. of Assam, Education Department to take necessary step to release the arrear as well the current salaries of the petitioner.
- (ix) But, said order was not complied with for which Contempt Petition (C) No. 263/2010, was instituted wherein, this Court had directed the contemnor to comply order, dated 16-03-2010, passed in W.P. (C) No. 143/2009 in letter and spirit within a period of 3 (three) months.
- (x) But, thereafter also the respondent did not carry out the order for which the petitioners again instituted another contempt case, vide No. 521/14, wherein the respondent No. 1/ contemnor submitted before this Court that the order has already been complied with vide order, dated 20-12-2014, by which the claim of the petitioner was rejected.

- (xi) And this order, dated 20-12-2014, is under challenge in the present petition.
- (xii) The list of 125 teachers, whose services were regularized by the Director Elementary Education, Assam was set aside by a learned Single Judge of this Court in WP(C) No. 2346/2008, vide order dated 08.05.2013, on being challenged by one Bharat Ch. Sarkar and Ors.
- (xiii) The State had preferred one appeal, being Writ Appeal(W/A) No. 211/2013, wherein the order dated 08.05.2013, so passed by the learned Single Judge had been set aside and the matter was remanded for fresh hearing, vide order dated 11.11.2021.
- (xiv) In view of order dated 11.11.2021, the regularization order dated 30.01.2006, so passed by the Director Elementary Education, Assam pursuant to the Cabinet Decision dated 24.02.2005 came to be restored.
- (xv) The WP(C) No. 2346/2008, which was remanded to the learned Single Judge for hearing afresh, was subsequently dismissed for non prosecution by a Coordinate Bench of this Court vide order dated 11.11.2021.
- (xvi) And as such, the regularization order so passed by the Director Elementary Education as per Cabinet Decision

has attained finality and as such the respondent authority has no option, but to carry out the direction to release the salary of the petitioner, as per order, dated 16-03-2010 passed in W.P. (C) No. 143/2009.

(xvii) One Anjumanara Khatun, Hafizur Rahman, Naresh Ch. Mandal and one Tulshi Barman whose names were there in the list of 125 candidates and whose services were regularized by the Director Elementary Education, has been receiving salary and some of them received the same pursuant to order of this Court, but the claim of the petitioner was rejected.

9. Moving forward this Court deemed it appropriate to peruse the impugned order dated 20th December, 2014, which is extracted here in below:-

**GOVERNMENT OF ASSAM,
EDUCATION (ELEMENTARY) DEPARTMENT**

No. ELC/WPC1143/2009/13/P/270, Dated Dispur the
20th December, 2014

ORDER

Perused:- The Order did. 16/03/2010 passed by Hon'ble High Court in WP(C)143/2009 (Md. Solim Uddin & 5 Ors -Vs-State of Assam & Ors) in connection with payment of arrear & current

salaries of the petitioner who were appointed irregularly as Assistant Teachers in LP/UP school under undivided Bongaigaon District during 1991-2001 as reflected in the report of the Monoharan Committee

Also read:- 1. The petition dtd. 12/01/2011 and did. 15/09/2014 submitted by Md. Solim Uddin & 5 Ors.

2. Report No. EHA-22/09/119, did. 30/05/2014 submitted by DEE. Assam.

3. Report No. GG/12/2014/6 dtd 27/11/2014 submitted by Commissioner of Lower Assam Division

Findings:- It appears that the Hon'ble High Court in its order dtd. 16/03/2010 passed in WP(C)143/2009 directed that the Commissioner & Secretary Govt. of Assam. Education Department would cause to take necessary steps so that the arrear and current salaries of the petitioners are released and for this purpose whatever enquiry is required to be done that should be done by the authority keeping in mind the fact as indicated above in the order. The Commissioner & Secretary is also directed to make a necessary communication wherever found necessary to the Finance Department for granting necessary sanction to which there is no objection as indicated by the Finance Department provided that the

petitioners are duly appointed by the authority. In the said order the Hon'ble High Court has observed that the petitioners has also brought to the notice of the court about the order dtd 23/12/2008 passed in WP(C) No. 3696/2008 by which the similarly situated teachers were granted relief by the court on consideration.

Pursuant to the order dtd 16/3/2010 passed in WP(C)No.143/2009, the Department taken up the matter of release of arrear and current salaries of the petitioners for consideration. The matter was also referred to Finance Department and Additional Advocate General, Assam, Gauhati High Court. But it is seen that Shri Bharat Ch. Sarkar and ors challenge the regularization of 125 teachers of Bongaigaon District which covered by Monoharan Committee. In the list of said 125 teachers of Bongaigaon District name of all the petitioners of instant case were also included. The case of Bharat Ch. Sarkar has been disposed of by the Hon'ble High Court dtd, 08/05/2013 with the opinion that likewise in Bongaigaon District, different lists(s) of irregularly appointed teachers were generated by falsely projecting the names in the list as those identified by the Manoharan Committee and the task forces. But in reality, the last regular appointment in Bongaigaon was made in the

year 1993 and since none in this district was identified to the a irregular appointee, it is obvious that the regularization of beneficiaries in Bongaigon district, could not have been based on the recommendation of Manoharan Committee. Therefore, it is clear that in this district also, so called list of irregularly appointed teachers were generated.

The appointments in Bongaigaon and Karimganj districts in these 2 (two) proceedings were made by ignoring the Statutory Rules. The decision of the Govt to regularize the service of the irregularly appointed teachers was taken advantage of by unscrupulous elements to regularize the service of those who never participated in selection process. Moreover, these beneficiaries were not appointed through any competent appointment order. Therefore, the private respondents cannot be put in the category of irregular appointees and it has to be declared that their appointments are absolutely illegal. In such circumstances, the State cannot invoke the power under Article 162 of the constitution to regularize the service of people who were appointed through fraudulent process. Here appointment orders were fabricated and fake appointment lists were generated and there was no declaration by the Manoharan Committee that the private

respondents are in the category of irregular appointees. In such backdrop having regard to the ratio of the Supreme Court decisions referred to above. I feel that the petitioners have made out a case for judicial intervention. Consequently the regularization of the respondent Nos. 8-132 in the WP(C) No. 2346/2008 is held to be unsustainable and it is declared accordingly by quashing the impugned orders. On the same reasoning, the adjustment appointment in Karimganj district of respondent No. 16-138 in the WP(C) 7492/2005 are hold to be illegal and consequently the impugned order dtd. 05/02/2005 issued by the DEE, Assam is quashed. In view of the conclusion the State is directed to ensure that their services are discontinued forthwith" However, Govt. preferred an appeal being No. WA.211/2013 challenging the impugned judgement & order dtd. 08/05/2013 passed by the learned single judge in WP(C) No. 2346/2008 (Bharat Ch. Sarkar & Ors-Vs-State of Assam & Ors) in consideration of the irreparable loss and suffering faced by the petitioner who were regularized pursuant to the Cabinet decision and have rendered services for a long time without break. Subsequently, by order dtd. 20/05/2014, the Division Bench allowed the Writ Appeal to set aside the judgment & order dtd. 08/05/2013 and directed for fresh hearing by the writ court.

Meanwhile, Govt. constituted a screening committee for the purpose screening of the illegal irregularly appointed teachers working in LP/ME schools for the period 1991-2001 in respect of the cases in Lower Assam Division covering Kmarup(M), Kamrup (R), Nalbari, Barpeta, Dhubri, Goalpara and Bongaigaon District vide notification No. ELC/WP(C)1048/2004/ 988/P1-111/41 dtd. 07/01/2013. It also appear that Md. Solim Uddin and 5 Ors petitioners in WP(C) 143/2009, have already appeared before the aforesaid screening committee. Therefore, the Chairman of the screening committee was asked to furnished the report immediately. From the report of the screening committed as forwarded by the Commissioner of Lower Assam Division vide letter No GG/12/2014/6 did. 27/11/2014. Inter-alia, it appears that the post sanction order in respect of the petitioners could not be verified as the same was not produced before the verification authority during the screening by the DEEO office and as such it could not be ascertained whether appointments are made against sanctioned or non-sanctioned posts. Besides, it appears from the report that out of 6 (xix) petitioners the name of 4 (four) namely (1) Abdur Rashid (2) Hafizar Rahman (3) Solim Uddin (4) Mostafa Ahmed were recommended by the Sub Divisional Advisory Board (SDLAC), North

Salmara Sub-Division, Abhayapuri and 2 (two) petitioners namely (1) Sahjahan Ali Ahmed and (2) Assatan Nesssa was not been recommended by the Sub-Divisional Advisory Board along with two other petitioners (1) Sahjahan Ali Ahmed (2) Asatan Nessa. The petitioner Abdur Rashid is it Sl. 169. Hafizur Rahman at Si. 106 and Solim Uddin at St 360. All the selected petitioners are below St. 82 in the select list of General Candidates furnished by the DEEO, Bongaigaon.

However, on scrutiny of the records as available in the Department, it reveals that the names of (1) Sahjahan Ali Ahmed (2) Asatan Nessa does not appear in the photocopy of the select list prepared by the Sub-divisional Committee. Therefore, these appointments are irregular and cannot be regularized. It is also seen that although the Commissioner. Lower Assam Division has mentioned that Mostafa Ahmed was recommended by the Sub-Divisional Committee, but the name of Shri Mostafa Ahmed could not be located in the photocopy of the select list as available in the file. Besides, there were only 82 (eighty two) sanctioned post for Bongaigaon District as per letter No. ECA.20/94/6 dtd 06/07/94. Therefore, only 82 persons are entitled for appointment. The name of the three petitioners namely Hafizur Rahman. Abdur Rashid and Solim Uddin (appeared at

No. 106,169 and 360 respectively in the select list. These petitioners are from the General Category and they are not entitled for appointment below from 82 of the select list. Their appointments are irregular excess and cannot be regularized in view of law laid down by the Hon'ble Supreme Court and Hon'ble Gauhati High Court.

In view of the enquiry as stated above the claim of the petitioners cannot be entertained.

This is issued in compliance of order 16/03/2010 passed by Hon'ble High Court in WP(C)143/2009.

Sd/R.C. Jain, IAS
Secretary to the Govt. of Assam
Education (Ele.) Department

10. This impugned order, when considered in the light of the submissions, so advanced by Mr. Mahmud, learned counsel for the petitioner, this Court finds sufficient force in his submission. It appears from the impugned order that basically on the following ground the claim of the petitioner for releasing his salary was rejected:-

(i) One Shri Bharat Ch. Sarkar and Others challenged the regularization of 125 teachers of Bongaigaon District which were covered by Monoharan Committee, in WP(C) No. 2346/2008 wherein such regularization is

held to be unsustainable and accordingly the same was set aside vide order dated 08.05.2013.

- (ii) The Govt. had preferred an appeal being No. W/A No. 211/2013 challenging the impugned judgement & order dtd. 08/05/2013 passed by the learned single judge in WP(C) No. 2346/2008 (Bharat Ch. Sarkar & Ors-Vs-State of Assam & Ors). And subsequently, by order dtd. 20/05/2014, the Division Bench allowed the Writ Appeal to set aside the judgment & order dtd. 08/05/2013 and directed for fresh hearing by the writ court.
- (iii) Govt. constituted a screening committee for the purpose of screening of the illegal irregularly appointed teachers working in LP/ME schools for the period 1991-2001 in respect of the cases in Lower Assam Division covering Kmarup(M), Kamrup (R), Nalbari, Barpeta, Dhubri, Goalpara and Bongaigaon District vide notification No. ELC/WP(C) 1048/2004/988/P1-111/41 dtd. 07/01/2012. It also appears that Md. Solimuddin and 5 others petitioners in WP(C) 143/2009, have already appeared before the aforesaid screening Committee.
- (iv) From the report of the screening committee as forwarded by the Commissioner of Lower Assam Division vide letter No GG/12/2014/6 dtd. 27/11/2014. Inter-alia, it appears that the post sanction order in respect of the petitioners could not be verified as the

same was not produced before the verification authority during the screening by the DEEO office and as such it could not be ascertained whether appointments are made against sanctioned or non-sanctioned posts.

- (v) The report indicates that out of 6 (six) petitioners the name of 4 (four) namely (1) Abdur Rashid (2) Hafizur Rahman (3) Solim Uddin (4) Mostafa Ahmed were recommended by the Sub Divisional Advisory Board (SDLAC), North Salmara Sub-Division, Abhayapuri and 2 (two) petitioners namely (1) Sahjahan Ali Ahmed and (2) Assatan Nesssa was not been recommended by the Sub-Divisional Advisory Board along with two other petitioners (1) Sahjahan Ali Ahmed (2) Asatan Nessa. The petitioner Abdur Ras hid is in Sl. 169. Hafizur Rahman at Sl. 106 and Solim Uddin at Sl. 360.
- (vi) There were only 82 sanctioned post for Bongaigaon District as per letter No. ECA.20/94/6 dtd 06/07/94. Therefore, only 82 persons are entitled for appointment. Since the name of the three petitioners namely, Hafizur Rahman, Abdur Rashid and Solim Uddin appeared at Sl. Nos. 106, 169 and 360 respectively in the select list and they are from the General Category, and as such they are not entitled for appointment below from 82 of the select list.

(vii) Their appointments are irregular excess and cannot be regularized in view of law laid down by the Hon'ble Supreme Court and by this Court.

11. However, none of these grounds assigned in the order appears to be sound and justified. As submitted by Mr. Mahmud, learned counsel for the petitioner, though the list of 125 teachers, whose services were regularized by the Director Elementary Education, Assam was set aside by a learned Single Judge of this Court in WP(C) No. 2346/2008, vide order dated 08.05.2013, on being challenged by one Bharat Ch. Sarkar and Ors. yet, the State had preferred one appeal being Writ Appeal(W/A) No. 211/2013, wherein the order dated 08.05.2013, so passed by the learned Single Judge had been set aside and the matter was remanded for fresh hearing, vide order dated 11.11.2021 and as such, the regularization order dated 30.01.2006, so passed by the Director Elementary Education, Assam pursuant to the Cabinet Decision dated 24.02.2005 came to be restored and after the WP(C) No. 2346/2008, which was remanded to the learned Single Judge for hearing a fresh, was subsequently dismissed for non prosecution by a Co-ordinate Bench of this Court vide order dated 11.11.2021, and that being so, the regularization order so passed by the Director Elementary Education as per Cabinet Decision has attained finality and as such the respondent authority has no option, but to carry out the direction to release the salary of the

petitioner, as per order, dated 16-03-2010 passed in W.P. (C) No. 143/2009.

11.1. Further the respondent No.1 had relied upon the report of the screening committee constituted by the Govt. for the purpose of screening of the illegal irregularly appointed teachers working in LP/ME schools for the period 1991-2001 in respect of the cases in Lower Assam Division covering Kamrup (M), Kamrup (R), Nalbari, Barpeta, Dhubri, Goalpara and Bongaigaon district vide notification No. ELC/WP(C) 1048/2004/988/P1-111/41 dtd. 07/01/2012. Said committee was constituted after the order dated 16/03/2010, being passed in WP(C)143/2009, where in it was directed that the Commissioner & Secretary Govt. of Assam. Education Department would cause to take necessary steps so that the arrear and current salaries of the petitioners are released and for this purpose whatever enquiry is required to be done that should be done by the authority keeping in mind the fact as indicated above in the order. The Commissioner & Secretary is also directed to make a necessary communication wherever found necessary to the Finance Department for granting necessary sanction to which there is no objection as indicated by the Finance Department provided that the petitioners are duly appointed by the authority.

11.2. In the said order, the this Court has also observed that the petitioners had brought to the notice of the Court about the order dtd. 23/12/2008, passed in WP(C) No. 3696/2008, by which the

similarly situated teachers were granted relief by the Court on consideration.

11.3. It is well settled that the direction issued by this Court in the order dated 16/03/2010, so passed in WP(C)143/2009, has to be considered in the light of the facts and circumstances that had already in existence. Subsequent events should not have been considered by the respondent No.1 while rejecting the claim of the petitioner.

11.4. It is also not in dispute that one Anjumanara Khatun, Hafizur Rahman, Naresh Ch. Mandal and one Tulshi Barman whose names were there in the list of 125 teachers and whose services were regularized by the Director Elementary Education, has been receiving salary and some of them received the same pursuant to order of this Court. Being similarly situated, the claim of the petitioner should not have been rejected by the respondent No.1 and on such count, the impugned order appears to be arbitrary and on this count also the same is liable to be interfered with.

12. It is noted here that on another ground also the impugned order cannot withstand the legal scrutiny. In the case of **Man Singh (supra)**, Hon'ble Supreme Court has held as under:-

The Single Judge in its order dated 11.05.2000 maintained the order dated 24.12.1998 of cancellation of appointment of the appellant as Principal on account of violation of Chapter 3

Rule 4 of U.P. Educational Manual prescribes that a close relation mentioned in said Rule cannot be appointed as Principal.

The appellant was appointed as a principal in the year 1974-75 when junior High School was upgraded as High School and was recognized by the State Government. Thus, the appellant has worked for almost 24 years before the services came to be cancelled for the reason that he is Reason: relative of the member of the Selection Committee.

The order dated 24.12.1998 also records that the money be recovered from the appellant which has been paid to him, as a result of his irregular appointment for the post of Principal.

We find that the High Court has failed to consider the fact that even if the appointment was irregular, the appellant had discharged the duties and in lieu of duties, he had to be paid. The State cannot take any work from any employee without payment of any salary.”

12.1. Besides, a Division Bench of this Court also in the case of **State of Assam and Ors. vs. Arunima Chetia**, reported in (2016) 3 GLR 198, held as under:-

“9. Upon hearing the rival contentions and after going through the order of the learned single Judge in question, it is an admitted fact that all the respondents in the appeals are continuously working as teacher and their salaries are being paid by virtue of the Court's order. Arrears of salary from July

2007 are not being paid. When the respondents are continuously serving as teacher, the question whether they are illegally appointed or otherwise it matter-less. However, for the services rendered by the private respondents and availed by the State, on the principle of "quantum meruit" the salaries have to be paid. In that view of the matter we find no ground to interfere in the order of the learned single Judge. Accordingly the appeals are dismissed.”

12.2. And in view of the aforesaid proposition of law, the ground for rejection of claim of the petitioner for payment of arrear salary fails to withstand the legal scrutiny and on this count alone and also on the principle of "quantum meruit" the same is liable to be interfered with.

13. Under the given factual and legal matrix the impugned order No. ELC/WP(C)1143/2009/13/Pt/370, Dated Dispur the 20th December, 2014 passed by the respondent No.1, failed to withstand the legal scrutiny and accordingly, the same stands set aside and quashed.

14. By a mandamus of this Court, the state respondents, more particularly the respondents No. 1,2 and 3 are directed to pay the current and arrear salary to the petitioner, with effect from June 1994 till date.

15. Let the exercise, mentioned in para No. 14 be carried out within a period of three months from the date of receipt of certified copy of this order. The petitioner shall obtain a certified copy of this order and place the same before the respondent authorities, within a week from today. In the event of failing to carry out the direction in para 14, the entire amount of arrear salary shall carry interest @ Rs. 9% per annum from the date of accrual till final payment.

16. In terms of above, this writ petition stands disposed of leaving the parties to bear their own costs.

J U D G E

Comparing Assistant