

**2023 LiveLaw (SC) 691 : 2023 INSC 752**

**IN THE SUPREME COURT OF INDIA**  
**CIVIL APPELLATE JURISDICTION**  
***HIMA KOHLI; J., RAJESH BINDAL; J.***  
**CIVIL APPEAL NO.4455 OF 2012; August 22, 2023**  
**SMT. DULU DEKA *versus* STATE OF ASSAM & ORS.**

**Service Law - Once appointment is declared illegal and *void ab initio*, one cannot legally continue in service and claim salary.**

*For Appellant(s) Mr. Pravir Choudhary, AOR Mr. Prince Arora, Adv. Mr. Venketa Balaji Kodavali, Adv. Mr. Gourav Chhabra, Adv.*

*For Respondent(s) Mr. Shuvodeep Roy, AOR Mr. Deepayan Dutta, Adv.*

**J U D G M E N T**

**Rajesh Bindal, J.**

1. The writ petition<sup>1</sup> was filed by the appellant in the Gauhati High Court in the year 2008 praying for release of her salary from 12.03.2001 onwards. It was claimed that she was rendering service as an Assistant Teacher in Bengabari M.E. School and had not been paid any salary. The writ petition was dismissed<sup>2</sup> by the Single Judge. The order was upheld in an intra-court appeal<sup>3</sup>. The said orders are impugned in the present appeal.

2. The facts of the case as enumerated in the order passed by the High Court are that, on 28.12.1996 an advertisement was issued by the Director of Elementary Education, Assam, for filling up 7,500 posts of Assistant Teachers in M.E./M.V. Schools. The appellant claimed that she applied for the post and appeared for interview in July 1997. The selection list was not published by the Director of Elementary Education, Assam, because the Government of Assam imposed a ban on the appointments. After the ban was lifted, the Selection Committee for Udalguri Sub-Division (General Area) in its meeting held on 12.03.2001, recommended the appellant's name with other candidates for appointment against vacancies in three Legislative Assembly Constituencies, namely, Dalgaon, Majbat and Udalguri. The appellant's name appeared against the vacancies in the Udalguri Legislative Assembly Constituency. The appellant was appointed as Assistant Teacher in Bengabari M.E./M.V./M.E.M. School *vide* order dated 12.03.2001 issued by the District Elementary Education Officer, Mangaldoi, Darrang, on a fixed salary of ₹ 2,000/- (Rupees Two Thousand) per month under the Central Government's sponsored Scheme, namely, Operation Black Board Scheme. According to the appointment order, the term of the service was upto 31.03.2002. It is claimed by the appellant that she has been working in the said school since then, however, she has not been paid any salary. A direction was sought to the State to pay the salary to the appellant. However, the High Court did not find any merit in the submissions made.

3. Learned counsel for the appellant submitted that the order passed by the High Court deserves to be set aside as the appellant cannot be made to work without payment of salary, which amounts to *Begar*, not permissible in law.

4. On the other hand, the learned counsel for the respondents submitted that the appointment of the appellant itself was illegal. In 2001, the Director of Elementary Education, Assam conducted an enquiry into the matter and *vide* his order dated 18.10.2001, declared all the appointment (Total 509 teachers) including the appellant's appointment, made by the then District Elementary Education Officer, Darrang, Mangaldoi as illegal and *void ab initio*, as all such appointments were made against non-existent posts. The aforesaid order was never challenged by the appellant. It was further submitted by the respondents, that the selection of the appellant, as claimed, was

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<sup>1</sup> WP (C) No.595 of 2008.

<sup>2</sup> Dated 08.09.2008.

<sup>3</sup> W.A. No.42 of 2009 Dated 08.01.2010.

made against the vacancies in the Udalguri Legislative Assembly Constituency, however, she was appointed as an Assistant Teacher in Bengabari M.E./M.V./M.E.M. School by the District Elementary Education Officer, Darrang, Mangaldoi, which was beyond the Udalguri Legislative Assembly Constituency. Therefore, the appointment of the appellant beyond the Udalguri Legislative Assembly Constituency was invalid and in violation of the Rules.<sup>4</sup> There is no error in the orders passed by the High Court and the appeal deserves to be dismissed.

5. After hearing learned counsel for the parties, we do not find any error in the order passed by the learned Single Judge, as confirmed by the Division Bench of the High Court.

6. The appellant claimed that she was appointed as an Assistant Teacher in Bengabari M.E. School against the vacancies in Udalguri Legislative Assembly Constituency by the Sub-Divisional Selection Board in the meeting held on 12.03.2001, pursuant to an advertisement dated 28.12.1996 issued by the competent authority to fill up the regular posts of Assistant Teachers. However, no appointment letter was issued to the appellant in pursuance thereof. Rather, the appointment letter dated 12.03.2001 issued to the appellant by the District Elementary Education Officer, Darrang, Mangaldoi, shows that she was appointed as an Assistant Teacher in Bengabari M.E. School, which falls in Mangaldoi, a sub-division of Darrang District. As is noticed in the impugned order passed by the Division Bench of the High Court, the same does not fall within the Udalguri Legislative Assembly Constituency. It is nowhere stated in the appellant's appointment letter that the said appointment was in pursuance of any advertisement issued or the candidates had undergone any selection process for the same. In fact, all the appointments made by the District Elementary Education Officer, Darrang, Mangaldoi, from 08.03.2001 to 31.03.2002 were declared to be illegal and *void ab initio* by the Director of Elementary Education *vide* order dated 18.10.2001. The appointment of the appellant was also included therein. It was found that the District Elementary Education Officer had appointed 509 teachers illegally against non-existent posts. The appellant did not challenge the order dated 18.10.2001. The Division Bench, further noticed that the appellant having been selected against the vacancy in Udalguri Legislative Assembly Constituency could not have been appointed in a school beyond the jurisdiction of the said Constituency. It was further noticed by the High Court that the appellant had not placed on record any material to show that there was any advertisement issued or the selection process undertaken for appointment in the school, where she was offered appointment and claims to be working.

7. Once the appointment of the appellant had been declared illegal and *void ab initio*, and was cancelled by the Director of Elementary Education, Assam *vide* order dated 18.10.2001, the appellant could not legally continue in service thereafter, unless that cancellation order was set aside. It has been noticed by the High Court that the order dated 18.10.2001 was never challenged by the appellant. Thus, the appellant had no legal right to continue in service, especially when there is no order or letter placed on record by the appellant that she was allowed to continue beyond 31.03.2002. No claim for payment of salary could be made for any period. Even otherwise, it is difficult to believe that a person has been working for two decades without any salary. Even the writ petition was filed by her in the High Court in the year 2008, claiming salary from 12.03.2001 onwards i.e., seven years later.

8. For the reasons mentioned above, we do not find any reason to differ with concurrent findings of facts recorded by the High Court. While concurring with the reasons recorded by the High Court, the appeal is dismissed. There shall be no order as to costs.

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<sup>4</sup> Assam Elementary Education (Provincialisation) Rules, 1977