



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

WP(C) No. 3529/2024

Smt. Sonaswari Ramchiary,
W/o Shri Hemanta Sarma,
Resident of Musalpur,
PO & PS-Musalpur, Dist.-Baksa, BTAD,
Assam.

.....Petitioner.

-Versus-

1. The State of Assam,
Represented by the Commissioner & Secretary to the
Government of Assam, Education (Elementary) Department,
Dispur, Guwahati-6.
2. The Commissioner & Secretary to the
Government of Assam, Finance Department,
Dispur, Guwahati-6.
3. The Secretary Education,
Bodoland Territorial Council,
Kokrajhar (BTC), Assam.
4. The Director of Elementary Education, Assam,
Kahilipara, Guwahati-19.
5. The Director of Education,
Bodoland Territorial Council,
Kokrajhar (BTC), Assam.
6. The District Elementary Education Officer,
Baksa, Mushalpur (BTC), Assam.
7. The Block Elementary Education Officer,
Baksa, Mushalpur (BTC), Assam.

.....Respondents.

For the Petitioner : Mr. R. Dhar.Advocate.
For the Respondents : Ms. B. Deka, SC, Edu.,
Ms. B. Bora, SC, BTC.
.....Advocates.

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

Date(s) of Hearing :- 10.02.2026
Date on which judgment is reserved :- 10.02.2026
Date of pronouncement of judgment :- 23.03.2026
Whether the pronouncement is of the operative part of the judgment? :- N/A
Whether the full judgment has been pronounced? :- Yes

JUDGMENT AND ORDER

Heard Mr. R. Dhar, learned counsel for the petitioner. Also heard Ms. B. Deka, learned standing counsel, Education (Elementary) Department, appearing for the respondent Nos.1 and 4 and Ms. B. Bora, learned standing counsel, BTC, appearing for the respondent Nos.3, 5, 6 and 7. None appears for the respondent No.2.

2. In this petition, under Article 226 of the Constitution of India, the petitioner, namely, Smt. Sonaswari Ramchiary has prayed for issuing a

direction to the respondent authorities to join in her post as Assistant Teacher in Brahmapur Bilai L.P. School, in terms of the order dated 14.07.2022 with retrospective effect i.e. from the date of her reinstatement in service vide order dated 22.09.2015.

The Factual Matrix:-

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

“The petitioner was initially appointed as Stipendiary Teacher vide order dated 04.12.1999. Thereafter, the petitioner had undergone Primary Teacher’s Training and after completion of the training, she was regularized and brought to the regular scale of pay w.e.f. 12.03.2003. She continued in the post of Assistant Teacher in Musalpur Jr. Basic L.P. School. Thereafter, suddenly vide order dated 23.06.2009 without giving any notice she was terminated from service. Subsequently, the respondent authorities have found after verification of the record that the petitioner’s termination was illegal and then, the respondent authorities vide order dated 22.09.2015 reinstated the petitioner in service. The petitioner then assumes charge in terms of the said order dated 22.09.2015 and discharged her duties, but, no salary was paid despite several requests to the authorities. Then, being aggrieved, the petitioner along with 91 others similarly situated teachers have filed a writ petition, being WP(C) No.3273/2017. Thereafter, the respondent No.5 had issued an order dated 14.07.2022 by which the service of the petitioner as Assistant Teacher, Mushalpur Jr. Basic School is regularized as Assistant Teacher vice Kameswar Ramchiary,

expired and posted at Brahmapur Bilai L.P. School and she joined on 18.07.2022. But, after 5 days of discharge of her duties, she was not allowed to attend her duties and being aggrieved, the petitioner approached this Court by filing the present petition.”

4. The respondent Nos.3, 5, 6 and 7 filed their affidavit-in-opposition, wherein it is admitted that the petitioner was appointed as a Stipendiary Teacher at Mushalpur Jr. Basic School vide order dated 04.12.1999 against a converted post sanctioned vide Government creation dated 16.11.1991 with a fixed stipend of Rs.900/- per month, on the condition that the said appointment was subject to successful completion of prescribed training and only upon such condition would her appointment be considered for regular scale of pay and then the petitioner joined on 06.12.1999 and the said appointment was not in accordance with the norms and procedure of the Education Department, particularly due to absence of proper advertisement, selection and approval and it is also admitted that the petitioner was released to attend Junior Basic Training as per order dated 17.01.2002 and thereafter, the petitioner has passed the one year in-service Primary Teacher’s Training and secured ‘B’ Grade as per the certificate dated 09.04.2003 issued by the Basic Training Centre, Kokrajhar and her service book was opened and GPF account was allotted. But, her initial appointment lacked adherence to the proper recruitment norms and her continuation in service or issuance of GPF number cannot by itself confer regular status and vide order dated 23.06.2009 she was terminated from service and it was issued in pursuance to Secretary BTC’s letters dated 13.09.2005 and 06.11.2008, on the ground of non-fulfillment of basic recruitment criteria, such as, lack of advertisement, absence of approval by the State Level

Empowered Committee, no record of interview or score sheet, no selection list and absence of Education Board of Secondary Education approval and it is also admitted that vide order dated 22.09.2015 her termination order was withdrawn by the Joint Secretary, BTC and such withdrawal was made with prospective effect only, meaning thereby no retrospective benefit or continuity from the earlier period was recognized and she was allowed to join pursuant to the order dated 22.09.2015 with prospective effect. However, the issue of payment of salary remained unresolved due to nature of her initial engagement and the petitioner is not entitled to salary as a matter of right without compliance with regular recruitment norms and the petitioner was appointed as a Tutor in LP/UP School purely on temporary basis at a fixed pay of Rs.10,800/- per month vide order dated 01.04.2022 and vide order dated 14.07.2022, the service of the petitioner was regularized as Assistant Teacher vice Kameswar Ramchiary, since deceased at Brahmapur Bilai L.P. School. But, the said order was subsequently cancelled vide order dated 27.07.2022, since there was no double scope of service benefits who willingly joined the service by giving the undertaking to the authority and has been receiving salary as Tutor from the said school on fixed pay of Rs.10,800/- p.m. and that one representation from the petitioner was received for accommodation of the teacher instead of tutor based on her training engagement history and the petitioner cannot derive any legal right from such communication without administrative sanction and under such circumstances, it is contended to dismiss the petition.

5. The petitioner has submitted her reply to the affidavit-in-opposition filed by the respondent Nos.3, 5, 6 and 7 and she stated that her service was confirmed and brought to regular scale of pay w.e.f. 12.03.2003 and she cannot be denied the benefit for no fault on her part and that the

termination order dated 23.06.2009 issued by the respondent No.5 was illegal, arbitrary and was nonest in the eye of law and the said termination order was withdrawn by the Joint Secretary to the BTC, vide order dated 22.09.2015 and after withdrawal of the termination order with prospective effect was absolutely illegal and arbitrary and she was terminated from service without affording any reasonable opportunity of being heard and it was in gross violation of the principle of natural justice, equity, good conscience and administrative fairness and subsequently, it was found after verification that her termination was illegal and the respondent authority has withdrawn the same showing the reinstatement of the petitioner as prospective which is ex-facie illegal, unjust and needs to be interfered with by this Court and the respondent authorities may be directed to count her period of her service from the date of her regularization w.e.f. 12.03.2003 or to direct the respondent authorities to count her entire period of service for the purpose of pensionary benefit and she accept the offer of Tutorship under duress at the pay of Rs.10,800/- per month only to save her daughter, who is suffering from cancer and needs considerable amount of money per day and under such circumstances, it is contended to allow this petition.

Submissions:-

6. Mr. Dhar, learned counsel for the petitioner submits that the petitioner was appointed as Stipendiary Teacher on 04.12.1999 in Mushalpur Jr. Basic L.P. School and after success completion of her Basic Training, her service was regularized as Assistant Teacher w.e.f. 12.03.2003 and while she was serving, suddenly, vide order dated 23.06.2009 she was terminated from service. But, subsequently, vide order dated 22.09.2015, the same was withdrawn, as after verification it

was found that her termination was illegal. But, she was allowed to join with prospective effect only and no salary was paid to her. Thereafter, vide order dated 14.07.2022, the respondent authorities have reinstated her against the post of one Kameswar Ramchiary, since expired and posted at Brahmapur Bilai L.P. School. But, after 5 days of discharge of her service she was not allowed to attend and that the service book of the petitioner was opened, GPF account was also opened and appointment of the petitioner as Tutor again in the year 2022 is illegal and arbitrary and since the termination order dated 23.06.2009 is withdrawn vide order dated 22.09.2015, the petitioner is entitled to her salary with effect from the termination order dated 23.06.2009 and she is also entitled to the pensionary benefit and though the petitioner has accepted the Tutorship, yet, the same was under duress as the daughter of the petitioner is suffering from cancer.

7. Per contra, Ms. Bora, learned standing counsel for the respondent BTC submits that the petitioner was appointed vide letter dated 01.04.2022 as Tutor and she joined on 02.04.2022 at Mushalpur Jr. Basic School and that her initial appointment was not in accordance with the rule and on such count, her service was terminated w.e.f. 23.06.2009, but the same was subsequently withdrawn vide order dated 01.10.2015 with prospective effect and that since she has accepted the tutorship by giving an undertaking she is not entitled to regularization of service as well as pay from the date of her termination i.e. 23.06.2009 and under such circumstances, it is contended to dismiss the petition.

8. Having heard the submission of learned counsel for both the parties, this Court has carefully gone through the petition and the

documents placed on record and also perused the order dated 01.04.2022, by which she was appointed as Tutor.

The Issue Before the Court:-

9. In view of the pleadings of the parties and also in view of the submissions advanced by their respective learned counsel, the issue to be decided in this petition is formulated as under:-

- (i) Whether the petitioner is entitled to join in her post as Assistant Teacher in Brahmapur Bilai L.P. School, in terms of the order dated 14.07.2022, with retrospective effect i.e. from the date of her reinstatement in service vide order dated 22.09.2015.
- (ii) Whether by willingly joined to the post of as Tutor in Brahmapur Bilai L.P. School, on fixed pay of Rs.10,800/- p.m., pursuant to order dated 14.07.2022, she is entitled to the benefit as claimed for?

Discussions:-

10. The basic facts herein this case, are not in dispute. The petitioner was appointed as Stipendiary Teacher against a converted post sanctioned vide Government creation letter No.EPG.567/91/105, dated 16.11.1991 and posted at Mushalpur Jr. Basic School at a stipend @ Rs.900/- per month as per Memo No.873-79, dated 04.12.1999 of the Deputy Inspector of Schools, Nalbari. She joined on 06.12.1999 and thereafter, she was released for undergoing Junior Basic Training w.e.f. January, 2002 and after completion of Junior Basic Training, the Block Elementary Education Officer, Baksa, Mushalpur, allowed her to draw monthly salary w.e.f. 12.03.2003 and granted her scale of pay.

Thereafter, she was terminated from service w.e.f. 23.06.2009 having found her appointment dehors the rule and thereafter, on verification the termination order was found to be illegal and the same was withdrawn w.e.f. 01.10.2015 and she was allowed to join with prospective effect and admittedly, no payment of salary was made to her. Then, again she was appointed on 01.04.2022 as Tutor and she joined on 02.04.2022 at Mushalpur Jr. Basic School. It is to be noted here that a question was put to the learned standing counsel for the BTC that if the termination order dated 23.06.2009 is withdrawn having found the same to be illegal after verification of record, why her regularization vide order dated 12.03.2003 will not be restored, then the learned standing counsel for the BTC could not give any answer to the same.

11. If, as per its own affidavit of the respondent Nos.3, 5, 6 and 7, the termination order dated 23.06.2009, is found to be illegal and the same was withdrawn w.e.f. 01.10.2015, the petitioner has to be reverted to her earlier position before 23.06.2009. There is no doubt that had she not been terminated from service illegally, then she would have continued to discharge her duty. By the illegal termination order she was prevented from discharging her duty. And as such, denial of salary to the petitioner w.e.f. 23.06.2009, and denying to join her to her original post and her subsequent appointment as Tutor w.e.f. 01.04.2022, all are illegal and arbitrary action of the state respondents. Therefore, the principle of no work and no pay is also not applicable in this case as by the action of the respondent authorities, the petitioner could not discharge her duties. She has not discharged her duties on her own volition, but due to the illegal action of the respondent authorities. Mr. Dhar, learned counsel for the petitioner has rightly pointed this out at the time of his argument and this Court find sufficient merit in the same.

12. It is not in dispute that after withdrawal of termination order, and petitioner joined and discharged her duties, continuously till 01.04.2022. Though a stand has been taken in the affidavit-in-opposition and also in the submission that appointment of the petitioner is not in accordance with the rule, yet, the same contention is not tenable in view of the fact that her termination order dated 23.06.2009, is found to be illegal by the respondent authorities itself and accordingly withdrawn the same subsequently. The contention of the respondent and the submission of the learned standing counsel, both are not based upon any material.

13. Now, the issue to be addressed is - can the state respondent extract the service of the petitioner with effect from 01.10.2015, till her accommodation as Tutor vide order dated 01.04.2024, without paying salary. This issue was dealt with by Hon'ble Supreme Court in the case of **Sukhdeo Pandey vs. Union of India**, reported in (2007) 7 SCC 455, wherein it has been held that it is well-settled principle in service jurisprudence that a person must be paid if he has worked and should not be paid if he has not. The relevant para is extracted herein below:-

“17. Before parting with the matter, however, we may make one thing clear. From the record, it appears that after the appellant was reverted from the cadre of Postman to his substantive post of EDBPM, he has not joined duty and has not worked. No interim relief was granted by any court including this Court in his favour. In the circumstances, it was obligatory on him to report for duty as EDBPM. He, however, failed to do so. We, therefore, hold that if the appellant has not worked, he will not be paid salary for the period for which he has not worked. It is well-settled principle in service jurisprudence that a person

must be paid if he has worked and should not be paid if he has not. In other words, the doctrine of "no work, no pay" is based on justice, equity and good conscience and in absence of valid reasons to the contrary, it should be applied. In the present case, though the appellant ought to have joined as EDBPM, he did not do so. He, therefore, in our considered opinion, cannot claim salary for that period. But he will now be allowed to work as Postman. He will also be paid salary as Postman but we also hold that since the action of the respondent authorities in reverting him to his substantive post of EDBPM was strictly in consonance with law, the appellant would be entitled to pensionary and other benefits not as Postman but as EDBPM which post he was holding substantively."

13.1. Again a Division Bench of this Court in the case of *State of Assam and Ors. vs. Arunima Chetia*, reported in (2016) 3 GLR 198; answered the same 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.”

13.2. And in view of the decision of the aforesaid proposition of law, the petitioner is entitled to salary for the aforesaid period on the principle of "quantum meruit".

14. It is also to be noted here that in the case of Man Singh vs. the State of Uttar Pradesh Through Secretary & Ors., reported in 2022 LiveLaw(SC) 341, also 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.”

15. In that view of the matter, the prayer of the petitioner for allowing her to join with retrospective effect i.e. from the date of her reinstatement in service vide order dated 22.09.2015, cannot be said to be unjustified, while she is entitled to be re-instated with effect from the date of her termination, i.e. dated 23.06.2009, with all service benefits. Therefore, the Issue No.(I) formulated herein above has to be answered in affirmative and accordingly the same stands answered.

16. Now, moving forward to the Issue No. (II) this court finds that though it has been argued that in view of such undertaking, now the petitioner cannot turn around and claim the benefit of past service rendered by him prior to 01.04.2022, this Court afraid such an argument cannot be accepted in view of settled proposition of law by the Hon'ble Supreme Court in the case of **Central Inland Water Transport Corpn. vs. Brojo Nath Ganguly**, reported in (1986) 3 SCC 156, wherein, dealing with the issue of labour and service and unequal bargaining power of the labour qua the State, it has been held as under:-

“89. Should then our courts not advance with the times? Should they still continue to cling to outmoded concepts and outworn ideologies? Should we not adjust our thinking caps to match the fashion of the day? Should all jurisprudential development pass us by, leaving us floundering in the sloughs of 19th century theories? Should the strong be permitted to push the weak to the wall? Should they be allowed to ride roughshod over the weak? Should the courts sit back and watch supinely while the strong trample underfoot the rights of the weak? We

have a Constitution for our country. Our judges are bound by their oath to “uphold the Constitution and the laws”. The Constitution was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before the law and the equal protection of the laws. The principle deducible from the above discussions on this part of the case is in consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great equality clause in Article 14. This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that

contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction. In today's complex world of giant corporations with their vast infrastructural organizations and with the State through its instrumentalities and agencies entering into almost every branch of industry and commerce, there can be myriad situations which result in unfair and unreasonable bargains between parties possessing wholly disproportionate and unequal bargaining power. These cases can neither be enumerated nor fully illustrated. The court must judge each case on its own facts and circumstances.”

16.1. Further, a co-ordinate Bench of this Court also dealt with this issue in Writ Petition (C) No. 5286/2004 (Mrs. Usha Rani Goswami & 5 Others vs. State of Assam and 4 others) and held as under:-

“11. When the Government secured such undertaking, the teachers were desperate and were serving without salaries which was stopped w.e.f. May 1995. They were also anxious to have their services regularized. In such backdrop, when the State offered to regularize the services of the teachers with a pre-condition that they will not claim their arrear salaries, the teachers were hardly in a position to bargain and resist giving the undertaking to the State, as they were on the back foot and were not on equal bargaining position.

12. But in this context of the unequal bargaining power of the State vis-a-vis the teachers who were desperate for salaries and regularization, the Clause incorporated by the State through unequal bargaining power is nothing but an unconscionable covenant, forced by the State on a group who hardly had any strength to resist the might of the State. In fact, the Petitioners had practically no choice in the matter and had to relinquish their claim for arrear salaries, despite rendering service for long years. This type of covenant can't be said to be right or reasonable and amounts to unconscionable contract, as has been held by the Apex Court in Brojo Nath Ganguly (supra).

13. Accordingly having regard to the decision of the Apex Court in Government of Orissa Vs. Ashok Transport Agency and Others, the offending contract is declared to be a void covenant which can't be enforced in law. Unlike a voidable contract, it is ab initio void and the Court is disinclined to refuse relief to the Petitioners, on the basis of such void covenant.

14. In view of above and considering the law laid down by the Apex Court in Sukhdeo Pandey (Supra) and this Court's decision in the case of State Land Use Board Casual Employees'' Association (Supra), I declare that the Petitioners are entitled to their arrear salaries from their respective dates of appointment.”

16.2. The proposition of law, that can be crystallized from the aforesaid decisions, is that “the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who

are not equal in bargaining power.” It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line, in a prescribed or standard form, or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be.

17. In the instant case, it is not in dispute that the petitioner had given an undertaking and joined her new assignment as Tutor in Brahmapur Bilai L.P. School, on fixed pay of Rs.10,800/- p.m., pursuant to order dated 14.07.2022. However, it is the categorical contention of the petitioner in her affidavit in reply that she has accepted the offer of Tutorship under duress at the pay of Rs.10,800/- per month, only to save her daughter, who is suffering from cancer and needs considerable amount of money per day, factum of which is not controverted by the respondent authorities. And in that view of the matter, the alleged undertaking cannot stand in the way of legitimate entitlement. Because of her unequal bargaining power and because of her compulsion to save her daughter alive, who is suffering from cancer, she has accepted the Tutorship with pay of Rs.10,800/. And under such circumstances, the contention of the respondent authorities, to the considered opinion of this court, cannot be accepted. The Issue No. (II), as formulated above, has to be answered in negative and accordingly, the same stands answered.

18. In the result, this Court finds sufficient merit in this petition and accordingly, the same stands allowed.

19. By a mandamus of this Court, the respondent authorities are directed to carry out the followings:-

- (i) The petitioner shall be restored to her original position in which she was on the date of her termination i.e. 23.06.2009.
- (ii) All service benefits, including arrear pay, shall be extended to her which she is legally entitled to as the principle of no work no pay is not applicable herein this case as she was terminated from service with effect from 23.06.2009, by an order, which in own version of the respondent authorities, was illegal.
- (iii) Her service benefit, that have been accrued to her from the date of regularisation, shall be extended to her.
- (iv) 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 petitioner shall obtain a certified copy of this order and place the same before the respondent authorities within a period of one week from today.

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

Sd/- Robin Phukan
JUDGE

Comparing Assistant