

Memo no. HC XXII/.....

4862-4863

/WP

Dtd.....

02/12/23

REGISTERED POST WITH A/D

Form No. 28 for Service on Respondent No. 07

WP(C) No. 4385/2023

IN THE GAUHATI HIGH COURT
[HIGH COURT OF ASSAM:: NAGALAND :: MIZORAM AND ARUNACHAL PRADESH]
(CIVIL EXTRA ORDINARY JURISDICTION)

In the matter of: An application under Article 226 of the Constitution of India praying for issuance of a Writ in the nature of Mandamus/Certiorari and/or any other appropriate Writ, order or direction of like nature.

-And-

In the matter of: **ABHIJIT DUTTA**

....Petitioner(s)

- Versus -

THE STATE OF ASSAM AND 6 ORS

....Respondent(s)

6. INSPECTOR OF COLLEGE

DIBRUGARH PIN NO. 785676, ASSAM

7. SONARI COMMERCE COLLEGE

CHARAIDEO, ASSAM, REPRESENTED BY ITS PRINCIPAL DISTRICT- CHARAIDEO,
ASSAM, PIN- 785690

Opposite Party/Respondents

O.P. 07

Take notice that an application, a copy whereof along with a copy this Court's order thereon are annexed hereto, has been filed by the above named Petitioner/Applicant and they are hereby called upon to show cause as directed in the aforesaid order within 14 days of service of this notice.

**The Rule is made
returnable by :-**

By Order

Called 01/12/23
**Deputy Registrar
Gauhati High Court, Guwahati**

01-12-2023

IN THE GAUHATI HIGH COURT
(High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

CIVIL APPELLATE SIDE

Appeal from _____

N.P.10 No. 4385 of 2023

Civil Rule _____

Abhijit Dutta, Appellant
Petitioner

Versus

State of Assam, Respondent
Opposite Party

Appellant For _____
Petitioner R C Saikia, K. Saikia, N. Dey.

Respondent For _____
Opposite Party

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4

WP(C) No. 4385/2023**BEFORE****HON'BLE MR. JUSTICE NELSON SAILO****19.10.2023**

Mr. R.C. Saikia, learned counsel for the petitioner who submits that the petitioner by filing this writ petitioner prays for a direction to the respondent authorities concerned to provincialise his service since he is the only Grade-IV working in the Sonari Commerce College, Charaideo.

Issue notice of motion, returnable by 4(four) weeks.

Mr. B. Deori, learned Junior Government Advocate accepts notice on behalf of respondent No. 1. Mr. H. Baruah, appears on behalf of Mr. B. Gogoi, learned Standing Counsel, Finance Department who represents respondent No. 4 and Mr. A.R. Tahbildar, learned Standing Counsel Higher Education Department appears for respondent Nos. 2, 3 and 5.

Petitioner to serve extra copies of the writ petition to the learned counsels appearing for the respondents today within 3 (three) days.

Petitioner shall take steps for service of notice upon respondent Nos. 6 and 7 by registered post with A/D due within 3(three) days.

Issue notice on the interim prayer, returnable by
4(four) weeks.

List the matter again after 4(four) weeks.

**Sd/- NELSON SAILO
JUDGE**

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TRUE COPY

P. 01/12/2023

Administrative Officer (Judl.)
Civil Rule (Pending) Section
Gauhati High Court
Guwahati

AK
01.12.2023

DISTRICT- CHARAIDEO

IN THE GAUHATI HIGH COURT

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

(CIVIL EXTRA ORDINARY JURISDICTION)

W. P. (C) No. ⁴³⁸⁵.....of 2023

Abhijit Dutta

.....PETITIONER

- Versus -

The State of Assam & Ors.

.....RESPONDENTS

SYNOPSIS

The petitioner has all along had a good academic career. The petitioner appeared before the interview board of Sonari Commerce College, Charaibahi district and he was selected for the post of Office Assistant ^{office peon} (L.D.A.) and he was appointed by the Principal/Secretary of Sonari Commerce College, on 4/6/2011 and till today without any break he does his job sincerely. On 25/6/2018 the Principal of Sonari Commerce College issued a Certificate in favour of the petitioner wherein it is stated that he has been working in Sonari Commerce College as Office Peon, (4th Grade) from 1/6/2011 and he is sincere, honest and punctual in his duties and his service is indispensable. The petitioner on 4/1/2021 filed a representation before the Minister of Education, Government of Assam for provincialization of service of the petitioner. At the time of appointment, the petitioner was eligible and qualified for

provincialization of the service. It is stated that the petitioner was appointed as Office Peon, (4th Grade) fulfills all the required eligibility criteria prescribed under section 3 of the aforesaid Act of 2018 and he is qualified from all sides he should be declared deemed to be provincialized. Moreover, the services of similarly situated employees like the petitioner has already been provincialized. As such the petitioner has approached this Hon'ble Court for the ends of justice.

Hence the instant Writ Petition.

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DISTRICT- CHARAIDEO

IN THE GAUHATI HIGH COURT

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

(CIVIL EXTRA ORDINARY JURISDICTION)

W. P. (C) No.of 2023

Abhijit Dutta

.....PETITIONER

- Versus -

The State of Assam & Ors.

.....RESPONDENTSLIST OF DATE

Sl. No.	Date	Particulars
1.	2002	HSLC
2.	2017	B.A.Passed
3.	4/6/2011	Appointment letter
4.	25/6/2018	The Principal of Sonari Commerce College issued a Certificate in favour of the petitioner
6.	4/1/2021	Representation before the Minister of Education, Government of Assam filed by petitioner.

DISTRICT- CHARAIDEO

IN THE GAUHATI HIGH COURT

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

(CIVIL EXTRA ORDINARY JURISDICTION)

W. P. (C) No.of 2023

Abhijit DuttaPETITIONER

- Versus -

The State of Assam & Ors.RESPONDENTSI N D E X

Sl. No.	Particulars	Page Nos.
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5.	Annexure – 3 The Principal of Sonari Commerce College issued a Certificate on 25/6/2018 in favour of the petitioner	15
6.	ANNEXURE -4 Representation dated 4/1/2021	16

DISTRICT- CHARAIDEO

IN THE GAUHATI HIGH COURT

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

(CIVIL EXTRA ORDINARY JURISDICTION)

W. P. (C) No.of 2023

Category Code:

To,

The Hon'ble Mr. Justice Sandeep Mehta, Hon'ble Chief Justice
of the Gauhati High Court and his Lordship's companion Justices of the
said Hon'ble Court.

IN THE MATTER OF:

An application under Article 226 of the
Constitution of India for issuance of a
Writ in the nature of Mandamus and/or
Certiorari and/or any other appropriate
Writ, Order(s), Direction(s) of like
nature;

-AND-

IN THE MATTER OF

Arbitrary and illegal action on the part of the respondent authorities in delaying/denying provincialization of service of the petitioner inspite of fulfillment of all condition's precedent by the petitioner.

-AND-

IN THE MATTER OF

The Assam Education Provincialisation of Services of Non-Teaching Staff of Venture Educational Institution Act, 2018.

-AND-

IN THE MATTER OF

Infringement of the petitioner's rights guaranteed under Articles 14, 16, and 21 of the Constitution of India.

-AND-

IN THE MATTER OF

Enforcement of petitioner's fundamental as well as other legal rights guaranteed under the Constitution of India.

-AND-

IN THE MATTER OF

Violation of the Principles of Legitimate
Expectation and Administrative Fair play.

-AND-

IN THE MATTER OF:

Abhijit Dutta , aged about 40 years,

Son of Uma Kanta Dutta

Sonari Thukubil Satra

P.O.- Sonari,

District- Charaideo, Assam. Pin- 785690

_____ ***Petitioner***

-Versus-

1. The State of Assam represented by the Chief Secretary to the Government of Assam, Dispur, Guwahati-781006.
2. The Principal Secretary to the Government of Assam, Education (Higher) Department, Dispur, Guwahati-781006.
3. The Commissioner and Secretary, Education (Higher) Department, Government of Assam, Dispur, Guwahati-781006.
4. The Commissioner and Secretary, Finance Department, Government of Assam, Dispur, Guwahati-781006.

5. The Director of Higher Education, Kahilipara.
Guwahati-19, Assam.
6. Inspector of College, Dibrugarh
Pin no. 785676, Assam
7. Sonari Commerce College, Charaideo, Assam,
represented by its Principal
District- Charaideo, Assam. Pin- 785690

— **Respondents**

The humble petition of the petitioner above
named:

MOST RESPECTFULLY SHEWETH:

1. That the petitioner is an Indian citizen having his permanent residence within the State of Assam. As such he is entitled to all the rights and privileges entitled to him under the Constitution of India and the laws framed thereunder.
2. That the petitioner has all along had a good academic career in as much as he passed his H.S.L.C. examination in the year 2002 with third division, B.A. examination in the year 2017 from the Krishna Kanta Henrique State Open University.

Copies of the certificates of the petitioner is annexed
herewith and marked as **ANNEXURE-1** series.

3. That the petitioner appeared before the interview board of Sonari Commerce College, Charaibahi district and he was selected for the post of Office Peon, (4th Grade) and he was appointed by the Principal/Secretary of Sonari Commerce College, on 4/6/2011 and till today without any break he does his job sincerely. The petitioner is sincere, honest, and punctual in his duties and his service is indispensable.

A copy of the aforesaid appointment letter dated 4/6/2011 is annexed herewith and marked as **ANNEXURE-2.**

4. That on 25/6/2018 the Principal of Sonari Commerce College issued a Certificate bearing no. SCC/Misc/1343/2018 in favour of the petitioner wherein it is stated that he has been working in Sonari Commerce College as Office Peon, (4th Grade) from 1/6/2011 and he is sincere, honest and punctual in his duties and his service is indispensable.

A copy of the aforesaid certificate dated 25/6/2018 is annexed herewith and marked as **ANNEXURE-3.**

5. That the petitioner begs to state that on 4/1/2021 filed a representation before the Minister of Education, Government of Assam for provincialization of service of the petitioner.

A copy of the aforesaid representation dated 4/1/2021 is annexed herewith and marked as **ANNEXURE-4.**

6. That the petitioner begs to state that at the time of appointment the petitioner was eligible and qualified for provincialization

of the service. It is stated that the petitioner was appointed as Office Peon, (4th Grade) fulfills all the required eligibility criteria prescribed under section 3 of the aforesaid Act of 2018 and he is qualified from all sides he should be declared deemed to be provincialized.

7. That the respondents have committed serious illegality and resorted to serious discrimination by not provincializing the service of the petitioner. Therefore, the action on part of the respondents is in gross violation of Articles 14 and 16 of the Constitution of India and Principle of Legitimate Expectation and Administrative Fair play and the same incurs interference of this Hon'ble Court.

8. That the service rendered by the petitioner in his college is perennial in nature and he has spent a considerable period of his life in continuously discharging his duties diligently without any benefit and regular scale of pay. The respondents are not at all keen to provincialize the service of the petitioner for reason best known to them. Moreover, the petitioner has become over aged to seek appointment for any other service and as such it would cause grave prejudice and irreparable loss if his services are not provincialized by the concerned authority.

9. That the services of other employees in the college who are similarly situated have already been provincialized. The petitioner had time and again approached the concerned authority for provincialization of his services and on such occasions, he was told that the process has already been initiated and the concerned file is waiting for financial concurrence only. Under the circumstances, the petitioner has been legitimately expecting provincialization of his services at any point of

time but that was all in vain. As such the action/inaction of the concerned respondents is liable to be declared illegal and unconstitutional being violative of Principles of Legitimate Expectation and Administrative Fairplay. The respondents have not paid any salary to the petitioner but utilize continuously and thereby has exploited the petitioner.

10. That the petitioner begs to state that the petitioner has been serving in the aforesaid college till today ever since it was Venture College with full dedication and diligence with no adverse remark from any quarter whatsoever. He has been financially dependent on his job and the sudden disruption/discontinuation of salaries has resulted in acute financial crises and is literally crippling her livelihood and his life has been adversely affected. If his service is not provincialized his family which is depending on his earning will loss not only social and financially security but will be thrown to the streets.

11. That the impugned action of the respondents of not provincializing the services of the petitioner inspite of having all the requisite qualifications and inspite of regularizing the services of similarly placed Junior Assistant Grade IV, serving in the same college in a blatant discriminatory manner being discriminatory, arbitrary, exploitative is violative of Articles 14 and 16 of the Constitution of India.

12. That for not provincializing the service of the petitioner he has faced great hardship and irreparable loss and injuries will not compensated in terms of money for last 13 years continuous service to the college in the Education Department not a single fording has been paid to the

petitioner while other similar situated persons are getting their regular salary. This arbitrary action of the respondents have curtail the fundamental right of the petitioner granted under the Constitution of India and unless the Hon'ble High Court interferes with the respondents and malafide action of the respondents the petitioner shall continue to suffer irreparable loss and injuries.

13. That in view of the above of the aforesaid facts and circumstances of the case it has become apparent that the delayed action on part of the respondents in provincialization of service of the petitioner and forcing him to move from pillar to post contributed tremendously to his present precarious condition.

14. That unless the Hon'ble Court interferes with the arbitrary actions of the respondents the petitioner shall continue to suffer irreparable loss and injuries which can not be compensated in terms of money.

15. That the balance of convenience is in favour of the petitioner.

16. That there is no alternative efficacious remedy and the remedy sought for is just and proper.

17. That this petition is filed bonafide and for ends of justice.

In the premises aforesaid, it is most earnestly prayed that Your Lordships would be pleased to admit this petition, call for the records and issue a Rule calling upon the respondents to show cause as to why a writ /

Certiorari shall not be issued to provincialize the service of the petitioner as per aforesaid Act, 2018 itself with all consequential benefits and/or as to why a writ of Mandamus shall not be directing the respondents to provincialize the services of the petitioner and on cause or causes being shown and upon hearing the parties and on perusal of the records be pleased to provincialize the service of the petitioner under the relevant Act and/or pass such order/orders as Your Lordships may deem fit and proper in the facts and circumstances of the case.

And

Pending disposal of the petition your Lordship may kindly be pleased to direct the authorities not to fill up the post of Office Peon, (4th Grade) in the Sonari Commerce College, Charaideo.

And for this Act of kindness your petitioner as in duty bound shall ever pray.

AFFIDAVIT

I, Abhijit Dutta , aged about 40 years, Son of Uma Kanta Dutta Sonari Thukubil Satra, P.O.- Sonari, District- Charaideo, Assam. Pin- 785690, Assam, do hereby solemnly affirm and state as follows:-

1. That I am the petitioner in the instant case and as such am acquainted with the facts and circumstances of the case.
2. That the statements made in this affidavit and in paragraphs 1, 6 to 17 are true to my knowledge, those made in paragraphs 2 to 5, being matters of record are true to my information derived therefrom which I verily believe to be true and the rest are my humble submissions before this Hon'ble Court.

Oath

I swear that this, my declaration is true, that it conceals nothing and that no part of it is false, so help me God.

And I sign this affidavit on this day of July, 2023 at Guwahati.

Identified by

Advocate.