

GAHC010193062017



2025:GAU-AS:9858

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/890/2017

THE WORKMAN - SMTI. ARCHANA DIHINGIA
REP. BY THE SECRETARY, ASSAM CHAH KARMACHARI SANGHA,
PANITOLA CIRCLE, TINSUKIA, PIN.- 786125, ASSAM.

VERSUS

THE MANAGEMENT OF M/S. UDALGURI TEA ESTATE and ANR.
P.O. PANITOLA, DIST. DIBRUGARH, PIN.- 786183, ASSAM.

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER and SECRETARY
LABOUR DEPTT.
DISPUR
GUWAHATI- 781006

For the Petitioner(s) : Ms. B. Chowdhury, Legal Aid Counsel

For the Respondent(s) : Ms. M. Hazarika, Sr. Advocate

: Mr. D. Khan, Advocate

Date of Hearing : **31.07.2025**

Date of Judgment : **31.07.2025**

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Heard Ms. B. Chowdhury, the learned legal aid counsel appearing on behalf of the petitioner and Ms. M. Hazarika, the learned Senior counsel assisted by Mr. D. Khan, the learned counsel appearing on behalf of the respondents.

2. The petitioner herein has assailed the award dated 30.04.2016 in Reference Case No.4/2011 whereby the learned Industrial Tribunal, Dibrugarh had decided the reference in favour of the respondents herein thereby upholding the termination of the petitioner.

3. The instant writ petition was listed before this Court on 18.07.2025 wherein taking into account the facts involved, this Court had made a specific query upon the learned counsels representing the parties as to whether the reference so made to the Industrial Tribunal, Dibrugarh seeking adjudication was at all in accordance with the provisions of Industrial Disputes Act, 1947 (for short 'the Act of 1947') on the ground that the petitioner herein does not appear to be a workman coming within the ambit of Section 2(s) of the Act of 1947. This query was made on the ground that the petitioner herein was a teacher and was entrusted with the administration of the midday meals and the allegations therein was that the petitioner while discharging her duties entrusted for administration of the midday meals had committed certain misappropriation.

4. Pursuant to the order passed by this Court on 18.07.2025, the learned Senior counsel representing the respondent Management drew the attention of this Court to the judgment of the Supreme Court in the case of ***Miss. A. Sundarambal Vs. Government of Goa, Daman and Diu and Others*** reported in ***(1988) 4 SCC 42*** wherein the Supreme Court categorically held that a teacher employed by educational institutions, whether the said institutions are imparting primary, secondary, graduate or post-graduate education cannot be called as workmen coming within the ambit of Section 2(s) of the Act of 1947. Paragraph No.10 of the said judgment being relevant is reproduced herein under:

“10. The court held that the employee Mukerjee involved in that case was not a workman under Section 2(s) of the Act because he was not mainly employed to do any skilled or unskilled manual or clerical work for hire or reward, which were the only two classes of employees who qualified for being treated as “workman” under the definition of the expression “workman” in the Act, as it stood then. As a result of the above decision, in order to give protection regarding security of employment and other benefits to sales representatives, Parliament passed a separate law entitled the Sales Promotion Employees (Conditions of Service) Act, 1976. It is no doubt true that after the events leading to the above decision took place Section 2(s) of the Act was amended by including persons doing technical work as well as supervisory work. The question for consideration is whether even after the inclusion of the above two classes of employees in the definition of the expression “workman” in the Act a teacher in a school can be called a workman. We are of the view that the teachers employed by educational institutions whether the said institutions are imparting primary, secondary, graduate or post-graduate education cannot be called as “workmen” within the meaning of Section 2(s) of the Act. Imparting of education which is the main function of teachers cannot be considered as

skilled or unskilled manual work or supervisory work or technical work or clerical work. Imparting of education is in the nature of a mission or a noble vocation. A teacher educates children, he moulds their character, builds up their personality and makes them fit to become responsible citizens. Children grow under the care of teachers The clerical work, if any they may do, is only incidental to their principal work of teaching. We agree with the reasons given by the High Court for taking the view that teachers cannot be treated as "workmen" as defined under the Act. It is not possible to accept the suggestion that having regard to the object of the Act, all employees in an industry except those falling under the four exceptions (i) to (iv) in Section 2(s) of the Act should be treated as workmen. The acceptance of this argument will render the words 'to do any skilled or unskilled manual, supervisory, technical or clerical work' meaningless. A liberal construction as suggested would have been possible only in the absence of these words. The decision in May and Baker (India) Ltd. v. Workmen precludes us from taking such a view. We, therefore, hold that the High Court was right in holding that the appellant was not a "workman" though the school was an industry in view of the definition of "workman" as it now stands."

5. In the backdrop of the above, let this Court now take into account the facts which led to the instant proceedings.

6. The petitioner herein was working as an Assistant Teacher of Udalguri Garden Primary School w.e.f. 09.02.1995. The Government of India initiated the National Programme of Nutritional Support to Primary Education on 15th August, 1995 with an aim and objective to help, improve the effectiveness of primary education by improving the nutritional status of primary school children and also with a view to enhancing enrollment, retention and attendance among the children.

7. It is an admitted fact that as per the instructions of the respondent management, the petitioner was to look after the Midday Meal Scheme of Udalguri Tea Garden Lower Primary School including distribution of free text sincerely, satisfactorily, smoothly and without any dispute whatsoever. On 19.03.2010, the respondent management issued a charge sheet against the petitioner, alleging certain irregularities in the distribution of the midday meals. The petitioner was asked to show cause in the said charge-sheet as to why disciplinary action should not be taken against the petitioner on account of theft, fraud or dishonesty in connection with the company's business and property; willful insubordination and/or disobedience; habitual unauthorized absence and gross irregularity in attendance; utter negligence in teaching and other works in the school and habitual breach of the rules and instructions. To the said charge-sheet, the petitioner submitted a reply on 26.03.2010 denying the allegations. A domestic enquiry thereupon was conducted wherein the charges made against the petitioner were proved. Thereupon, the petitioner was dismissed from her service.

8. The materials on records show that thereupon, reference was made under section 10 of the Act of 1947 by the Government of Assam to the Industrial Tribunal and terms of the reference are as herein under:

“(i) Whether the management of Udalguri T.E, P.O, Panitola, Dibrugarh is justified in dismissing Smti. Archana Dehingia w.e.f. 01/10/2010?”

“(ii) If not, whether the said workman is entitled to reinstatement with full back wages or any other relief in lieu thereof?”

9. It is seen that in the said reference proceedings, evidence was adduced by both sides and thereupon learned Labour Court decided the reference against the petitioner and in favour of the management holding inter alia that the petitioner was not entitled to reinstatement with back wages or any other relief.

10. From the materials on record, it is apparent that the petitioner was appointed as an Assistant Teacher and she was entrusted with the duty to carry out the distribution of the midday meal to school. This Court has duly taken note of the definition of workman as contained in Section 2(s) of the Act of 1947 as well as the observations made by the Supreme Court in ***Miss. A. Sundarambal (supra)***. In the opinion of this Court, the petitioner would not come within the ambit of a workman as defined under section 2(s) of the Act of 1947. Consequently, it is the further opinion of this Court that the reference so made cannot also be said to be in relation to an industrial dispute coming within the ambit of Section 2(k) of the Act of 1947 as there is no dispute between the employer and workman. The natural corollary thereof would be that if there is no industrial dispute, the question of making a reference under Section 10 of the Act of 1947 does not arise inasmuch as the powers so conferred upon the appropriate Government is only when there is an industrial dispute. Under such circumstances, the reference so made by the Government of Assam vide notification No. GLR252/96/Pt/54 dated 05.08.2011 in absence of industrial dispute is a nullity inasmuch as the precondition of the existence of an industrial dispute being absent, the exercise of jurisdiction under Section 10 of the Act of 1947 could not have been made. The consequential effect of the above opinion is that the award

so passed in respect to a reference being made by the Government is also a nullity.

11. This Court however finds it very pertinent to take note of that if the termination of the petitioner pursuant to the fact finding enquiry is not in accordance with law, it would be an illegal termination which may entitle the petitioner for compensation and damages.

12. Accordingly, the instant petition therefore stands disposed of with the following observations and directions:

(a) The petitioner is not a workman within the meaning of Section 2(s) of the Act of 1947.

(b) The petitioner not being a workman, the dispute on account of the termination of the petitioner cannot come within the ambit of an industrial dispute as defined in Section 2(k) of the Act of 1947.

(c) There being no industrial dispute, the exercise of jurisdiction by the appropriate Government i.e. the Government of Assam to make a reference is contrary to the provisions of Section 10 of the Act of 1947 inasmuch as the power which is being conferred upon the appropriate Government is only upon existence of an industrial dispute.

(d) The impugned award dated 30.04.2016 which has been passed by the learned Industrial Tribunal, Dibrugarh in Reference Case No. 04/2011 is a nullity and without jurisdiction inasmuch as the reference so made by the Government of Assam dated 05.08.2011 is bad in law and without

jurisdiction.

(e) The termination of the petitioner whether legal or illegal, can only be adjudicated before a competent Civil Court.

(f) This Court duly takes note of that on account of the reference made by the Government of Assam and the proceedings thereupon before the learned Industrial Tribunal, Dibrugarh which had led to the present proceedings, the petitioner was bonafidely litigating as regards the alleged illegal termination of the petitioner. Under such circumstances, this Court is of the opinion that Section 14 of the Limitation Act, 1963 would duly apply in the facts of the instant case. Accordingly, the period from the date of the termination of the petitioner till date be excluded while computing the period of limitation.

13. Before parting with the records, this Court makes it clear that this Court has not observed anything as regards the legality or illegality of the termination and the same shall be adjudicated by the competent Civil Court, if the petitioner so approaches, without being influenced by the observations made in the instant judgment as well as the findings of the learned Industrial Tribunal, Dibrugarh in the impugned award dated 30.04.2016 which is declared to be a nullity.

14. The Registry is directed to return the TCR to the learned Court below.

JUDGE

Comparing Assistant